From glass walls to 'windows of opportunity'

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From glass walls to 'windows of opportunity'

Framing and policy advocacy
for children affected by parental imprisonment in Ireland

Dissertation

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by

Elizabeth Ayre

Approved, after corrections
Prof.dr. Rianne M. Letschert,
Rector Magnificus

SUPERVISORS & ASSESSMENT COMMITTEE

Supervisors
Professor dr Tannelie Blom

Dr Ria Wolleswinkel

Assessment Committee

- Professor dr. Esther Versluis, Professor of European Regulatory Governance, Faculty of Arts and Social Sciences, University Maastricht – Chair of the Committee

- Professor dr. Suzan van der Aa, Professor of Criminal Law and Criminal Procedure, Faculty of Law, University Maastricht

- Dr. Fiona Donson, Senior Lecturer of University College Cork Law School, Director of the Centre for Criminal Justice and Human Rights.

- Professor dr. Pauline Schuyt, Professor of Penal Law and Sentencing, Faculty of Law, University Leiden.

- Dr. Elissaveta Radulova – Assistant Professor of European Studies, Faculty of Arts and Social Sciences, University Maastricht .

To the many children the world over separated

from a parent in prison

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ACKNOWLEDGEMENTS

Author's note: This study does not claim by any means to have deconstructed and examined all of the complexities and intricacies of Ireland's social welfare, political, economic, criminal justice and child rights systems that have influenced prison policy and the development of acquis for children with imprisoned parents. But it does attempt to trace, albeit in simplified form, the evolution of some of the mechanisms and policies involved in advancing the rights and meeting the needs of these children in Ireland, and to capture an overview of the social and political landscape in which these mechanisms and policies came to light.

LIST OF ABBREVIATIONS

AGS: An Garda Síochána (national police service of the Republic of Ireland)

BOBF: Better Outcomes Brighter Futures (national policy framework for youth)

CIPs: Children with imprisoned parents

COPE: Children of Prisoners Europe

COE: Council of Europe

CRC: 1989 UN Convention on the Rights of the Child

D: Deontological frame

DAFM: Department of Agriculture, Food and the Marine

DAHG: Department of Arts, Heritage and Gaeltacht

DCENR: Department of Communications, Energy and Natural Resources

DCYA: Department of Children and Youth Affairs

DECLG: Department of the Environment, Community and Local Government

DES: Department of Education and Skills

DF: Department of Finance

DGEI: Department of Jobs, Enterprise and Innovation

DH: Department of Health

DI: Discursive Institutionalism

DJE: Department of Justice and Equality

DSP: Department of Social Protection

DPER: Department of Public Expenditure and Reform

DTTS: Department of Transport, Tourism and Sport

EEAS: European External Action Service

ECHR: European Convention on Human Rights

EctHR: European Court of Human Rights

EU: European Union

EU Charter: Charter of Fundamental Rights of the European Union

F1: Child as rights holder frame

F2: Child as victim frame (e.g. poverty)

F3: Child as means (e.g., to reduce recidivism of parent)

HI: Historical Institutionalism

HSE: Health Services Executive

IHRC: Irish Human Rights Commission

IPRT: Irish Penal Reform Trust

IPS: Irish Prison Service

LPA: Lone Parent's Allowance Scheme

NESF: National Economic and Social Forum

NGO: Non-governmental organisation

PFA: Policy Frame Analysis

SI: Sociological Institutionalism

SMO: Social Movement Organisation

SRG: Strategic Review Group

TD: Official Irish title of a member of the Dáil, for "Teachta Dála" (literally, Deputy to the Dáil). Members are called TDs or Deputies.

TEU: Treaty on European Union

Tusla: Child and Family Agency

U: Utilitarian frame

UN: United Nations

UNCAT: United Nations Committee against Torture

UNDHR: United Nations Declaration of Human Rights

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1. CHAPTER ONE: Introduction

1.1. Introduction and overview: framing and child rights

Recognition of the best interests and the right to family life of children in Europe has evolved significantly since the adoption of the 1950 European Convention of Human Rights, the latter seen as the authoritative source for the new European political community's human rights system[1], and the 1989 UN Convention on the Rights of the Child (CRC), which has guided European Union (EU) policies and actions with regards to children's rights.[2] An overall EU child rights strategy framework put into motion in 2006[3] was bolstered by the 2009 Lisbon Treaty, marking the first explicit commitment to protect and promote the rights of the child in European Union internal and external actions (Treaty on the European Union, 2012, Art. 3.3. and 3.5)[4]. The 2011 EU Agenda for the Rights of the Child linked the European Union's commitment to the rights of the child to 'a coherent approach across all relevant EU actions using the Treaties, the Charter[5] and the CRC as a common basis for all EU action regarding children' (Tuite 2013)[6]. This was bolstered by an EU policy document entitled "EU Framework of Law for Children's Rights" in 2012. More recently, the Council of the European Union adopted EU Guidelines for the promotion and protection of the rights of the child in 2017, revising the 2007 guidelines and incorporating the numerous developments since then with respect to child rights, both globally and as a result of the evolution of EU policy on children in EU external action. Within this context, recognition of the best interests and the right to family life of children separated from a parent in prison in Europe has also evolved to a great extent since the 1989 CRC, most significantly with the 2018 adoption of the Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents, highlighting their

rights and needs. Yet the evolution of policy initiatives to protect the child's best interests and safeguard their right to family life based on the principles inherent in these Conventions, Charters and Treaties has failed to keep pace. National criminal justice policies and legislation in EU member states generally do not incorporate a child rights perspective when a parent is imprisoned; most government policies for children do not address the rights and needs of children with incarcerated parents. The result is a considerable policy gap. Some countries, however, have been moving to close this policy gap, with variations in policy developments for these children, both in terms of levels and of areas of focus, observed among member states (Philbrick et al. 2014; Jones et al. 2013; Smith and Gampell 2011). Understanding the origin of such policy developments is no easy task. The issue of parental incarceration is complex, involving a multitude of cross-sectoral child welfare, community, state and criminal justice agencies, from the police to the courts, the prison establishment, social services and schools. It functions within a variety of contexts, contingent upon those who define policy agendas and their scope. As it journeys across sectors and through a wealth of policy spheres, the issue takes on different meanings and is subject to a variety of interpretations, depending on social culture, political histories and legal traditions. Operating within this complex context, advocacy on behalf of these children can draw on a variety of issue frames, from children's rights, needs and welfare; to social inclusion for affected families; to the rights of the imprisoned parent; to promoting the parent's rehabilitation, reducing recidivism and crime and cutting public spending.

1.2. De-concocting 'policy primeval soup': the research question

The specific aim of this study is to take a closer look at the role of activism, advocacy and policy brokering in putting the issue of children with imprisoned

parents on policy agendas in EU member states, drawing on a case study using a constructivist frame-reflective lens. Through the analysis of activism, public policy and discourse, the study has examined how the issue of children affected by parental imprisonment evolved in Ireland from 1994 to 2014, moving from a non-issue to a '"misfortune" that warrants only charitable consideration', to an 'injustice that demands correction' (Turner 1969: 391, cited in Snow 2004: 383), with a look at which policy solutions would be most efficient, appropriate and acceptable in remedying this injustice. The study has done this from a "policy framing" or "frame-critical" perspective—how the issue of children with imprisoned parents was identified, represented and legitimised or "framed"; how these frames resonated with decision-makers; which frames have been the most persuasive in promoting systemic shifts; and the broader structural and contextual constellation influencing action on behalf of these children. In this way, a "policy framing" perspective lends insight into how provisions and policies, or "acquis", for children of the incarcerated were seeded, grounded and developed, exploring the social construction of policies, with policymaking processes for this designated group operating in the highly complex sphere detailed above. While addressing the main research question — what role does frame-reflective policy advocacy, and specifically 'frame-fit', play in the evolution of this policy sector and its outcomes — it also looks at the role of European and international fundamental rights standards, shared beliefs and norms in this evolution. While recognising the role of domestic concerns, it seeks to gauge the potential influence of these standards and norms on policy processes and on levels of awareness of the existence of children of the incarcerated as a group in and of itself, as rights-holders with specific needs. High-level bureaucrats and policymakers in member states are "Europeanised" at discussion platforms in Brussels. If national elites via the European context are accommodating European discourse and norms, this may be influencing

domestic policy developments. The study looks at how these factors can be identified in policymaking processes and the varying degrees of receptiveness to such discourses measured. It examines frame dynamics, exploring, for example, whether policy frames for children with imprisoned parents were somehow competing, misfiring or operating in parallel "silos" during the study's timeframe, given that justice for this topic is pursued through both the criminal justice system (rights of the imprisoned parent) and the civil justice system (rights of children who have a parent in prison). Or whether issue advocates had to contend with a split agenda with respect to parental incarceration, diluting their efforts and undermining the establishment and evolution of this policy sector, given the far-reaching cross-sectoral nature of the specific issue itself.

The qualitative, inductive and frame-critical strategy used in this study places the clearest emphasis on policy frame analysis in examining the development of this policy sector. This robust, precise method is applicable to virtually all situations and is therefore a particularly useful tool in analysing the complex policymaking processes for children of the incarcerated, which cut across a range of policy areas, actors and cross-sector competencies. It throws light on how the issue of children affected by parental incarceration in the European Union is framed; the discursive action (and non-action) by decision-makers in response to these frames; the level of "frame-fit" that results (the degree to which issue frames "fit" elite discourse); and the various country-specific structural factors which may be impeding or enhancing this frame-fit. This study argues not only that the level of "thickness" of acquis for children of the incarcerated is influenced by frame-fit, but also that European and international action and human rights norms, both binding and non-binding, serve as a metaframe/superstructure that influences this frame-fit in domestic contexts,

as do structural and issue-related factors specific to the national context. This metaframe of EU action and norms can be compared to Europeanisation when this process is defined as 'the institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies' (Radaelli 2003: 30). Two research stages have been carried out—an analytical and an empirical one. The <u>analytical stage</u> theorised the processes of discursive institutionalisation, social movement organisation and agenda-setting to develop a set of analytical lenses for examining policy processes for children of the incarcerated. As mentioned, the concept of frame-fit (independent variable) was seen as playing a pivotal role in determining levels of legal provisions and national policies (acquis, the dependent variable) for children affected by parental incarceration in EU member states. The <u>empirical stage </u>was driven by the research question indicated above: How and to what degree does frame-reflective policy advocacy, and specifically frame-fit, affect policymaking processes and related policy outcomes in member states of the EU? Drawing on a case study (Ireland), this stage involved data collection and analysis of framing dynamics and discursive interactions among policy entrepreneurs and political actors. Structural and issue-related factors examined for their impact on frame-fit and domestic policy processes include national focusing events, the aforementioned Europeanisation and national mood—the hearts and minds of the electorate. Data collection provided an overview of national policies and legal entitlements for children within both criminal justice and human rights spheres in Ireland, tracing the development and evolution of relevant provisions and policies. This analytical strategy is based on the theory of discursive institutionalism, coupled with the methodology of frame analysis. It allows insight into dynamics at both

the actor level and the institutional level, and not only can identify relevant factors impeding or promoting policy, but also enhance understanding of these factors, for example, the adverse impact on frame resonance for decision-makers as a result of the issue's association with prison, relegating it to what Peters has categorised as a "pariah" issue (Peters 1996: 126), one associated with difficult topics. Through this enhanced understanding, the study can offer strategic tools to inform policy advocacy relevant to this group of children within a variety of national contexts throughout the European Union and beyond.

Ireland was selected as the case study because it provided ways to gain new insights into framing's impact on policy development; and into the influence of Europeanisation and framing integration in this development. Ireland is a relatively new state. The Irish Free State was formally created in 1922; it became a fully fledged independent republic in 1949 (although the Constitution dates from 1937 and it had been nominally referred to as a republic in 1916 and 1919). Not only does Ireland regularly rank as one of the world's most globalised countries (Gygli et al. 2019), but its relationship and history with Northern Ireland offered a glimpse into the inner workings of another set of institutions. Both of these facts potentially provided intriguing opportunities for Europeanisation influences, lateral and top-down. The 1985 Anglo-Irish Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland, for example, granted Ireland an advisory role in Northern Ireland's government through the establishment of advisory cross-border agencies. Significantly, the archives of the Irish Parliament (Oireachtas) offer a rich database of Dáil deliberations recorded verbatim; dating back to the First Dáil, which convened from 1919 to 1921. Tracing the development of an issue that has not yet been recognised, let alone problematised—indeed that does not yet really even exist in the minds of many—requires the subtlest

exploration of the cogs and wheels and gears of discourse over time. The Oireachtas archives provided the perfect arena in which this could take place.

An earlier, more ambitious plan for the current research involved a comparative study of France, the Netherlands and Ireland using the same research question and methodological approach. This earlier attempt, ultimately scaled back, afforded a glimpse into two other case studies with longstanding traditions, institutions and codes. As mentioned, Ireland is a newer state and offers greater fluidity and transparency in mapping vis a vis its institutions, some of which have been established only relatively recently — an Institute of Criminology, for example, was not established in Ireland until 2000 despite efforts in the 1970s to found an Irish Society of Criminology. The researcher can trace the period both prior and subsequent to the founding of key penal, criminological and human rights institutions and thus better measure each institution's impact.

Summary of research

Purpose. The purpose of this study is to better understand the intricacies of frame-reflective policy advocacy by social movement organisations (SMOs) and elite frame entrepreneurs for children affected by parental imprisonment. Using a discursive approach, the role of SMOs in the areas of fundamental rights and penological reform is clarified, and agenda-setting, Europeanisation and related structural factors are discussed. Examining processes of social interaction within public policy discourse can help better understand how parental imprisonment and child rights as social phenomena are constructed and developed, how certain paradigm shifts take place, what the impetus has been for a specific issue being placed on a policy agenda, how policymaking evolves, how political change comes about. **Design/methodology/ approach.** The empirical study of discourse uses a frame-analytical lens to pinpoint

action by SMOs and elite policy brokers in problematising the issue of children with imprisoned parents, opening up 'new discursive spaces' and fostering the development of acquis in a case study (Ireland). Two successive waves of 'frame-fit' in Ireland are examined from 1994 to 2014. Three expert interviews were carried out. **Research limitations/implications**. As this study looks at only one case study, a comparative study could be a next step, as could interviews with a wider variety of SMOs, activists, prison personnel and policy experts. **Practical implications.** A practical implication of this research is its ability to enhance advocacy for other groups of vulnerable children using a contextualised frame-reflective approach to maximise impact. SMOs could draw on one of a series of policy advocacy equations that maximise persuasiveness of frames, depending on context (e.g., whether consensual political culture or majoritarian as per Lijphart). These range from the utilitarian foot-in-the-door frame that targets a reduction in recidivism via maintaining family ties; to the deontological frame of child as rights-holder entitled to protection of their right to family contact and support.[7] **Originality/value**. The study innovates in its deconstruction and analysis of constitutive, normative, cognitive and policy substructures of government and SMO advocacy and discourse relevant to children of the incarcerated, using a frame-critical lens. At the same time, it looks at how the issue of children of the incarcerated has been defined and problematised by policy brokers within a specific context, examining developments using Kingdon's multiple streams framework, and the impact this has on the broader discussion surrounding the issue. It thus fills an empirical gap with respect to studying children of the incarcerated and may be the first of its kind on this topic using this specific focus and frame-critical approach. **Relevance.** An increasing number of advocacy coalitions and activists are turning their attention to further refining the ways in which they frame messages for and about children by incorporating their advice on how to use sensitive, child-friendly language devoid of stigma or judgment. One particular "no go zone" for children impacted by parental imprisonment is any reference to trans-generational crime — "the apple doesn't fall too far from the tree"— whereby children are seen as being at high risk of becoming criminals themselves. This type of frame or message has been shown to have adverse effects on children's wellbeing, encouraging them to conceal the parent's imprisonment, mask their emotions, prevaricate to peers, bottle up emotional stress. Greater awareness,

information and data, coupled with major human rights instruments, better equips advocacy on behalf of this group of children to effect change. The findings of the present study and the frame-reflective tools that are articulated can make advocacy even more far-reaching and adaptable to a variety of contexts, as it enhances understanding of the cross-sectoral spheres involved in advocacy and policymaking processes for children affected by parental incarceration. It thus provides a model for a more fully integrated policy advocacy approach.

2. CHAPTER TWO: Literature review

2.1. Discursive approaches and the 'stuff that happens'

The purpose of this study is to better understand the intricacies of frame-reflective policy advocacy by social movement organisations and elite frame entrepreneurs with respect to the 'intractable' issue of children affected by parental incarceration. Using a discursive approach, the role of social movement organisations (SMOs) in the areas of fundamental rights and penological reform is clarified, and agenda-setting, Europeanisation and related structural factors are discussed. The interplay between policymaking and social movement framing remains 'understudied and under-theorised' (Bergeron et al. 2014). This study draws on social movement literature — with such thrusts as activism, interpretive framing processes, policy advocacy and social problem construction—and political theory (e.g., agenda-setting dynamics, policy formation), bringing them together in an intricate interplay to engage with one another. At the same time, it examines Europeanisation and the impact of the downloading of social and political norms on policy advocacy and frame resonance in unpacking the formation of policy. More specifically, the study helps fill a void in the literature with respect to frame-reflective policy advocacy on behalf of children with imprisoned parents, a public policy issue that remains primarily relegated to SMO efforts to this day. Using a child rights lens, it demonstrates why the issue of parental imprisonment needs to be placed higher up on policy agendas, with frames and framing processes representing and legitimising the issue as it takes on new meanings and significance within the rich discursive architecture. It furthers theoretical and empirical understanding of how discursive institutionalism, coupled with an apt analytical tool and a frame-critical lens, can be harnessed to examine "frame-fit" and the development of a policy sector. *Discourse lends visibility to the internal cogs and wheels of social*

structures and helps identify what leads to change, and how and why these changes came about, issue advocacy being a key impetus in this change. Tracing the development of a 'non-issue' that had not yet been problematised in the early years of the study's timeframe requires the subtlest examination by the analyst of these cogs and wheels, through discourse. The tangible nature of communication and discourse constitutes the beauty of this methodology, and a key reason why <u>discursive approaches</u> were opted for in the present study.

Discursive approaches draw on de Saussure's conceptualisation of language as being more than a reflection of objective social reality and actually *constituting* social reality, and highlight the role of language and communication in moulding and forging the social world around us (De Saussure 1989). These approaches are concerned with both the meaning of language and concrete aspects of action, with action being steered and embedded and delimited by this discourse, determining what may or may not be said. Discourse has been defined as ways in which knowledge is constituted in society, expressed in beliefs and ideas, as well as in social practices and power relations, with power being inscribed within and transmitted by this discourse (Foucault 1972, Habermas 1984a). Foucault sees discourse not as a deterministic structure but one with infinite possibilities, subjecting individuals to forms of power while offering opportunities for individual agency and action. According to Foucault's definition of discourse, power and meaning occur in 'a creative tension between agency and constraint' (Chouliaraki 2008: 2). He is less concerned with the form and content of linguistic statements than with the rules governing the formulation of these statements and practices (Foucault 1981). At a more concrete level, discourse can be analysed as 'an ensemble of cognitive schemes, conceptual articulations, rhetorical strategies, pictures and images, symbolic actions (rituals), and structures (architectures), enunciative modalities, and

narrative flows and rhythms' (Torfing 2005: 14). These ideas, concepts and categorisations, according to Hajer (1993: 44), 'are produced, reproduced and transformed in a particular set of practices and through which meaning is given to political and social realities'. Through its internal organisation, language provides a vehicle for thought, communication and action (Purvis and Hunt 1993: 485), shaping that communication and the meanings that emerge from it, allowing certain aspects to be communicated while excluding others (Fook 2002: 63). Some go as far as arguing that discourse is a <u>main</u> vehicle/mechanism for preserving the status quo or enacting policy change (Radulova 2011: 33), part of a universe of competing discourses and meanings and thus a locus of political struggle, with language attributing meaning to reality (Weedon 1997: 22-23). A system or structure with variably open boundaries, discourse allows for the complexities of a given social reality, highlighting the entire linguistic and cultural context which ultimately shapes the individual and positions them in society. It lends understanding to culture and social reality from within, and to the interplay of power and meaning that underpins social practices.

Discourse theory surfaced in the late 1970s and provided a new analytical perspective exploring the rules and meanings that influence the construction of social, political and cultural identity, along with new analytical tools (Torfing 2005: 1). Discursive approaches have gained prominence over the past half-century, and post-structuralist discourse theory is now a well-established branch of social and political science (Torfing 2005: 3). Discourse, according to Schmidt (2008: 305), includes both the substantive content of ideas and the interactive processes by which they are channelled: 'Discourse is not just ideas or "text" (what is said) but also context (where, when, how and why it was said)', with the terms referring to both structure (what is said, where and how) and to agency (who said what to whom). Hajer emphasises that discourse needs to be distinguished analytically from discussion. Discourses are made up of *structures*

that are embedded in language, to be identified and traced by the analyst (Hajer 2005: 301). In addition to identifying these structures, the analyst can measure the influence of discourses through two concepts, according to Hajer. These include <u>discourse structuration</u>, which happens when discourse begins to have power over the way a social entity (e.g., a policy domain or a society) construes the world; and <u>discourse institutionalism</u>, when discourse coalesces into a given institutional arrangement through the mobilisation and restructuring of discourse coalitions, groups of actors who share a social construct (Hajer 1993: 45). Taking it a step further, Torfing provides insight into how these discursive structures evolve and develop through what Radulova describes as a process of "mutual constitutiveness" (Radulova 2011: 36):

> A discourse is forged and expanded by means of articulation, which is defined as a practice that establishes a relation among discursive elements that invokes a mutual modification of their identity. Articulations that manage to provide a credible principle upon which to read past, present and future events, and capture people's hearts and minds, become hegemonic.
>
> —Torfing 2005: 15

Torfing describes the added value of discourse theory by citing its focus on both continuity and change, conscious of the need to disentangle the interplay between discursive path-shaping and discursive path-dependency as individual discursive formations break down and new discursive structures coalesce as a result of political struggle, reconfiguring social reality (Torfing 2005: 23). He explains that these processes are not about conscious and rational decisions

taken by discursive agents (influenced, for example, by SMOs and policy advocacy in the present study), but are instead a series of 'de facto decisions' stemming from 'decentered strategic actions' as these agents seek to constitute a hegemonic discourse, discourse that has gained authority. Power is conceptualised in terms of political acts of inclusion and exclusion that influence social meanings and identities.

As mentioned, examining these processes of social interaction within public policy discourse can lend insight into how social phenomena are constructed and developed, for example how a certain paradigm shift took place, what led to a specific issue being placed on a policy agenda, how policymaking evolved, how political change came about. As suggested by Schmidt, discursive institutionalism (DI)—the 'newest new institutionalism'—offers a more dynamic approach to institutional change (and continuity) than do rational choice institutionalism (RI), historical institutionalism (HI) or sociological institutionalism (SI), all of which she describes as less dynamic and more inert. In DI, identity and interests are endogenous, social constructs, whereas rational choice institutionalists see them as 'exogenous and given' (Ruggie 1998: 864, cited by Schmidt 2008: 320). DI provides a more dynamic approach in that institutions are seen as both structures and constructs of meaning internal to agents whose 'background ideational abilities' and 'foreground discursive abilities' produce a dynamic, agent-centric approach to change (Schmidt 2010). How does DI explain change? An example: according to HI, change, which is path-dependent, is associated with critical junctures, just as it is in DI—milestone transformations or instances when Kingdon's 'windows of opportunity' open and new policy programmes are sought out (Kingdon 1993). But whereas the changes in the former are without explanation, changes within the DI framework are objects of explanation through ideas and discourse—

drawing on what actors think and say to trigger changes—about how and why historical structures are restructured (Schmidt 2008: 316). Once again, discourse's ability to provide visibility to the internal cogs and wheels of social phenomena comes into play.

In sum, as an analytical framework, DI is based on the assumption that as ideas are expressed in the public realm, discourses emerge and, over time, transform into rules-based systems of concepts and categories (Radulova 2011: 35, Lynggaard 2007: 294), with institutions being defined as 'authorized and sanctioned discourse' (Lynggaard 2007: 294). Schmidt's model of DI holds that ideas, the substantive content of discourse, exist on three levels—policies, programmes, philosophies—and are categorised as either cognitive (what is necessary) or normative (what is appropriate). Discourse is the interactive process and vehicle for these ideas, and also comes in various forms: 'coordinative' and 'communicative' (Schmidt 2005: 773). Policy spheres are the domain of this coordinative discourse, articulated by those who create, elaborate and justify policy and programmatic ideas (e.g., advocacy networks, activists, elected officials, experts, civil servants), exchanging with one another about policy construction. Political spheres are the realm of communicative discourse, where those involved in showcasing, discussing and justifying political ideas (e.g., grassroots organisations, political leaders, media, government spokespeople) engage with the general public about the value and importance of particular policies.

As a caveat, Schmidt emphasises that DI does not set out to explain all change:

> [T]his would be a big mistake since 'stuff happens', events outside of people's control occur all the time, material conditions do change, actions often have unintended consequences, and actors often act

without prior ideas and discourse about what it is that they will do. As HI scholars remind us, processes of change are often unconscious—people may act without any clear sense of what they are doing, creating new practices as a result of 'bricolage' and destroying old ones as a result of 'drift' (Thelen 2004; Streeck and Thelen 2005). DI, however, shows that much change can and should be explained in terms of sentient agents' ideas about what to change (or continue)—if nothing else, in response to occurrences to the outside, that is, to the stuff that happens.

—Schmidt 2010: 12

2.2. Social movement theories and framing: what the game's about

Framing as a concept has been explored and used in a variety of fields, including policy studies (Schön and Rein 1994, Yanow 2000), psychology (Bartlett 1932; Tversky and Kahneman, 1981), sociology (Goffman 1974; Gamson et al. 1983; Snow et al. 1986), anthropology (Bateson 1955/1972; Hymes 1974; Frake 1977) and artificial intelligence (Minsky 1974). According to Goffman, frames are 'schemata of interpretation' that guide individuals 'to locate, perceive, identify, and label' events and conditions around them (Goffman 1974: 21). Goffman sees frames as a pivotal part of a culture and as being institutionalised in a variety of ways (Goffman 1981b: 63). His conceptualisation of 'frame analysis' explains the structures that shape and inform social interaction and communication processes. To Rein and Schön, who pioneered frame analysis within the public policy domain in the late 1970s, a frame is 'a perspective from which an amorphous, ill-defined problematic situation can be made sense of and acted on,' while framing is a way of 'selecting, organizing, interpreting and making sense of a complex reality to provide guideposts for knowing, analyzing,

persuading and acting' (Rein and Schön 1993: 146). They initially began exploring frames to better grasp how policy actors make the 'normative leap' from the 'is' to the 'ought' (Schön and Rein 1994), how frames determine what counts as a fact and how one 'leaps' from facts to prescriptions for action and policy recommendations. During the 1980s, a new strand of research began to focus on framing as a process involved in the operation of SMOs and advocacy networks (e.g., Snow et al. 1986; Snow & Benford 1988, Snow et al. 2000), leading to an abundance of studies on collective action frames and framing processes, so much so that there is a consensus in social movement literature that framing processes and frame entrepreneurship are now considered to be, along with resource mobilisation and political opportunity processes, 'a central dynamic in understanding the character and course of social movements' (Benford and Snow 2000: 612). Whether articulated by state actors or non-state actors, the prevailing discourse of policy elite or "counter-hegemonic" frames set up an interpretive framework, highlighting select aspects of a social phenomenon, which according to Yanow, 'highlight and contain at the same time that they exclude' (Yanow 2000: 11), similarly to the way a camera frames a given object when producing an image, including certain features of that object and excluding others. Frames are seen as prioritising certain topics, defining social problems in specific ways, embracing certain value judgments and interpreting the world in a particular way (Dryzek 1993: 222, cited in Radulova 2011: 42). Radulova highlights their importance in that they provide keys to understanding how an issue is identified, represented and given legitimacy, and how the need for public intervention is justified (Radulova 2011). Others emphasise the importance of frames in that they determine who has a voice in political decision-making; who has a voice in the political decision-making process depends on 'what the game is about', with issue definition establishing the 'choice of political battlefield' (Daviter 2007: 3, 43, citing Schattschneider 1960).

Surel emphasises the role of cognitive and normative frames in policymaking, elements that construct "mental maps" and set priorities for practices, behaviour and action (Surel 2000: 498). He describes these frames as 'coherent systems of normative and cognitive elements which define... "world views", mechanisms of identity formation, principles of action, as well as methodological prescriptions and practices for actors subscribing to the same frame' (Surel 2000: 496). Cognitive frames establish a world view and define appropriate action. They are constituted and modified by the interplay of actors, with paradigms being both the end result and the determinant of exchanges between individuals, groups and the state. As paradigms shift, these exchanges are transformed through a reconfiguration of power (Surel 2000: 500). Rein and Schön, in turn, distinguish between two other categories of frames, rhetorical (frames that underpin the use of story and narrative in policy debates) and action (frames that inform policy practice), with the two categories overlapping at times (Schön and Rein 1994: 32). They see action frames functioning at three different levels: policy, institutional action and metacultural. A policy frame is what an institutional actor uses to problematise a particular policy situation. Institutional frames are more complex, generic action frames—the beliefs, values, perspectives of institutions and interest groups on which policy positions are based. They are local articulations of overarching, culturally shared systems of belief organised around metaphors called metacultural frames—nature versus nurture being one example. Action and rhetorical frames are based on policy narratives that emerge from these metacultural frames. Figure 2.1. explores the interplay of discourse and frames.

Figure 2.1. Ladder of reflection (Schön and Rein 1994)

Policy practices (regulation, screening, verification)
Policymaking process (debates, struggles)
Positions and arguments of advocates and opponents in policy debates
Institutional action frames: beliefs, values, perspectives of institutions and interest groups: policy positions are based on these
Metacultural frames: broadly shared beliefs, values, perspectives

2.3. Social movement dynamics: framing issues to spawn novel understandings

Purvis and Hunt emphasise how 'new discursive spaces' that seek to bring together disparate and dispersed discursive elements into cohesive popular social movements can always be opened up, some the result of alternative discourses gaining ground over once-dominant discourses (Purvis and Hunt 1993: 484), corroborating Gramsci's notion of counter-hegemony (Gramsci 1971; Snow and Benford 1988: 204). How SMOs manoeuvre within the discursive architecture (dominant and peripheral discourse) is crucial in

defining the trajectory of an issue. In other words, in terms of conventional agenda-setting, the social and political construction of an issue—how it is framed—is as important to the final determination of how the issue will be processed and decided as is the initial decision to consider it at all (Peters 2001: 61).

Snow and Soule highlight the interactive connection between the social movement frame and the cultural context in which it is formulated:

> Movement frames are not only anchored, in part, to empirical events or conditions but constrained by the cultural contexts in which they are embedded. Cultural contexts provide the interpretative material—the codes, narratives, ideologies, general values and beliefs—that is drawn on to frame events and conditions. However, these materials are not determinative of social movement frames. Instead, they constitute resources that can be tapped and articulated in different ways to produce, through framing processes, alternative and novel understandings of events and conditions, whether past or new.
>
> —Snow and Soule 2010: 58

Those frames with greater resonance with the existing culture are more likely to be met with success (Snow and Soule 2010: 222). Snow and Benford differentiate between more common movement-specific frames, and what they call 'master frames' (Snow and Benford 1992), which can be likened to Rein and Schön's metacultural frames in that they are broad in scope, flexibility and cultural relevance, functioning as a kind of "master algorithm" which 'colors and constrains the orientations and activities of other movements' (Benford and

Snow 2000: 618). They underscore the limited number of collective action frames encompassing the interpretive scope, flexibility and cultural resonance required for master frames, citing human rights frames, injustice frames and environmental justice frames as examples, among others (Snow and Benford 2000: 619).

Snow and Benford see 'three core framing tasks' for advocacy: 'diagnostic framing' (identifying the problem and its relevant attributions), 'prognostic framing' (articulating the proposed solution and strategies needed to carry out this solution); and 'motivational framing'—a 'call to arms' and justification for collective action (Snow and Benford 1988: 199-202). They argue that the first two tasks are geared towards obtaining consensus mobilisation (Klandermans 1984, 2004: 368), the latter task towards action. Competing or inhibiting frames may need to be 'reframed', a process which van Hulst & Yanow describe as 'an under-theorized part of Schön and Rein's work that advocates bridging contending frames through a new, overarching one' (van Hulst & Yanow 2009: 1). This would involve modifying the discursive architecture through coupling and recombining new and old policy frame dimensions. Other strategic processes integral to social movement framing for recruiting prospective constituents or resource providers were originally conceptualised by Snow et al. as 'frame alignment processes' (Snow et al. 1986: 464). These include *frame bridging* (bringing two ideologically harmonious yet unlinked frames together, from SMO to individuals, or across SMOs); *frame amplification* (embellishing or intensifying cultural values and beliefs intrinsic to the frame to tap into the cultural zeitgeist); *frame extension* (couching a frame as going beyond an SMO's beliefs to appeal to beliefs and values of prospective adherents, making it relevant and accessible); and *frame transformation* (modifying existing conceptualisations and meanings and /or generating new ones). Snow et al. refer to frame alignment processes as 'a crucial aspect of adherent and

constituent mobilization' for effective lobbying (Snow et al. 1986: 476). These strategies are integral to the theoretical framework presented in the following chapter and to issue-related factors such as grievance mobilisation.

Within the power structure of society, 'organization is the mobilization of bias', Schattschneider argued, claiming that 'some issues are organized into politics while others are organized out' (Schattschneider 1960: 71). For bias to exist, people have to care. They have to pay attention to an issue, it has to be considered; only then will it have the opportunity to be placed on a government agenda. Agenda-setting strategies, which have been described as a 'crucial' stage in policymaking processes (Princen 2007: 3, Peters 2002: 13), are about getting the issue talked about, about getting policymakers to sit up and take note. These strategies are particularly salient on the domestic level, where the media and public opinion play key roles in agenda-setting. Issue framing, which is at the core of agenda-setting (Rochefort and Cobb 1994), as discussed earlier, is one such strategy for drawing attention to a cause in the policymaking process, the various angles of the issue strategically tailor-defined and targeted to those specific institutions—what Baumgartner and Jones call 'venues'— seen as most receptive to this given angle (Baumgartner and Jones 1991). Baumgartner and Jones, emphasising that policymakers frequently are inundated with information and cannot readily assimilate multiple information streams, describe agenda-setting as 'the process by which information is prioritized for action, and attention allocated to some problems rather than others' (Jones and Baumgartner 2005: viii–ix). In this way, frames can play an integral role in agenda-setting, providing what the FrameWorks Institute calls 'mental shortcuts' for policymakers and offering ways to map and store information in the mind (FrameWorks Institute 2002: 1).

Baumgartner and Jones argue that policy change can be effected when agenda-setters manage to shift debates and decision-making on a given issue from its

original venue to new venues that are receptive to alternative arguments (Baumgartner and Jones 1993). Baumgartner and Jones were exploring venues within the US political scene, but Princen sees their arguments as being relevant within a European context:

> [A] similar argument may be made about the choice between domestic and European institutions. Just as actors may try to shift an issue from, say, the President to US Congress or from one Congressional committee to another, they may also seek to shift an issue from the national to the European (or even global) level in order to have their preferred policy adopted.
>
> — Princen 2007: 27

Multi-governance literature is based on the assumption that subnational governments and individual actors will take their issues to the EU to circumvent national governments (Bache and Flinders 2004: 2–3; George 2004: 118ff.; Hooghe and Marks 2001: 4, 78, all cited by Princen 2009: 27). Similarly, the literature on political protest maintains that social movements will bring their issues to the European level if they determine that the EU level is more amenable to their cause than the domestic level (Imig and Tarrow 2001; Marks and McAdam 1996; cf Princen and Kerremans 2008, all cited in Princen 2009: 27) in terms of getting their issue on a policymaking agenda. Graziano and Vink highlight, however, that according to Img and Tarrow's analysis (2001), Europeanisation had limited effect on the mobilisation capacity of social movements (Graziano and Vink 2013: 16-17), although SMOs did contribute to

building a European public space (Della Porta and Caiani, 2009, cited in Graziano and Vink 2013: 16–17).

Yet agenda-setting is not only about getting an issue on or off an agenda but also about an issue's being placed <u>higher</u> on the agenda (Tallberg 2003: 5). <u>Focus events</u> can generate interest more easily in a cause—Princen illustrates this with the impact that the 9/11 attacks in New York had on the EU agenda. A move to establish a European Arrest Warrant had arisen from the European Council Tampere conclusions on justice and home affairs in 1999, but a Commission proposal was languishing. The 9/11 attacks galvanised the European Arrest Warrant process when the European Council declared its support for combatting terrorism, and the initiative became a top agenda issue, reframed as a response to terrorism. Likewise, in 1990, the death of the first woman in living memory to commit suicide in an Irish prison served as a focus event, pushing the issue of the conditions in which women were detained and the need for reform higher up the agenda, although the Dóchas Centre, the new women's prison, did not open until 1999. Female prisoners previously had been housed in the basement and lower floors of the detention centre for young men (Carroll 2011). <u>Champion actors</u> can also play key roles in prioritising an issue. For example, following a report in 2007 by the Verwey-Jonker Institute on imprisoned mothers and their children that highlighted how Dutch prisons restrict children's contact with an imprisoned parent due in part to prison visiting hours coinciding with school hours, then-Deputy Justice Minister Negahat Albayrak visited a female detention centre at Ter Peel and subsequently introduced measures to improve parent-child contact on a national level. Children who have a parent in prison were subsequently entitled to four visits per year with their imprisoned parent on weekends (Smeets 2008: 6).

Another strategy is reframing or tailoring an issue to fall under a given theme established by set multiannual frameworks—the thematic areas of the European Union Fundamental Rights Agency, for example, adopted by the Justice and Home Affairs Council of the European Union on the proposal of the European Commission after consultation with the European Parliaments, ranging from access to justice, judicial cooperation and victims of crime, to discrimination and rights of the child. In short, reframing as a strategic process 'changes the lens' through which an individual views an issue, allowing new interpretations and outcomes to surface (FrameWorks Institute 2002: 35). In addition, advocacy groups can "force" issues onto member states by referring to European and international human rights metaframes, a kind of "shaming" process by which states are pressured to act to retain legitimacy concerning these human rights. States themselves can draw upon EU metaframes and discourse as leverage, as the Swedish government did in managing to place the issue of conflict prevention onto the EU's foreign policy agenda by reframing conflict prevention as a humanitarian concern, highlighting 'commonly held values, such as democracy, human rights and the rule of law shared by the EU member States' (Björkdahl 2008: 140).

2.4. European and international discourse as metaframe

Metaframes have been defined as 'overarching frames of a higher level of generality that stretch over different policy issues and can be operationalized as the normative aspects of issue frames' (Dombos et al. 2012); as highlighted earlier, they have been called 'master frames' by some social movement organisation theorists (Snow and Benford 2000, 2005), with human rights (and by extension child rights) being broad enough in scope for eligibility as a master frame. Discursive approaches have been used to examine the socialisation of

international human rights norms into domestic practices (Risse & Sikkink 1999: 1–38), exploring argumentative discourses in a Habermasian vein (Habermas 1981). These approaches have focused on socialisation through moral discourse, emphasising communication, argumentation and persuasion processes. Some scholars argue that a higher degree of interconnectedness among European nations has resulted in an increasingly meaningful human rights discourse, reinforcing the idea of the European Union as a 'Community system of human rights protection' (Hall 2000: 195, cited in Vaughan and Kilcommins 2007: 440). Although the crux of the present study addresses less the legalistic or moral dimension of child rights and looks more at 'child rights as policies' that need to be implemented on the ground to have any real impact on children's lives (Peters 2012: 6), it is still interesting to explore the extent to which, if any, relevant European and international action and discourse exert an influence on domestic discourse and policy processes for these children, primarily with respect to the diffusion of EU, UN and Council of Europe child rights norms through a Europeanisation/internationalisation effect. It is also interesting to investigate variation across different domestic contexts which may be more or less receptive to such discourses.

Although there is a consensus among scholars that Europeanisation as a concept has been gaining in popularity since the late 1990s (Graziano and Vink 2006: 3), how this term is conceptualised varies widely—from European-level institutionalisation (Radulova 2011: 27) based on the development of discrete structures of governance, institutions and policy networks at the European level (Risse et al. 2001: 3); to a more classic approach focusing on the domestic implementation of EU policies at national and subnational levels, the natural permutation of the EU, as an example of regional integration, into 'national' politics (Graziano and Vink 2006: 3). Radaelli defines Europeanisation as '[p]rocesses of (a) construction (b) diffusion and (c) institutionalization of

formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies' (Radaelli 2000: 4). Others argue that Europeanisation is not the explanans, but the explanandum (Gualini 2003, cited in Radaelli 2006: 57); that Europeanisation should be seen as a problem, not a solution, and that it is neither a new theory, nor an ad hoc approach, but an "orchestration" of existing concepts and theories, with major theoretical import from comparative politics and theoretical policy analysis' (Featherstone and Radaelli 2003: 340). Olsen also finds it less useful as an explanatory concept than as an 'attention-directing device and a starting point for further exploration'. He argues that the issue is not what Europeanisation 'really is', but rather whether and how the concept can be useful for better grasping the dynamics of the evolving European polity—how it may help us to give better accounts of the emergence, development and impacts of a European, institutionally ordered system of governance (Olsen 2002).

Vaughan and Kilcommins (Vaughan and Kilcommins 2007: 440) argue that efforts have been made since the 1990s to secure greater recognition of binding human rights standards, with the impetus attributed not only to the EU but also the Council of Europe, given that the rights secured by the European Convention on Human Rights (ECHR) are among the rights guaranteed by the Charter of Fundamental Rights of the European Union, and that the Court of Justice has ruled that the ECHR is of particular importance for determining fundamental rights to be respected by member states as general principles of law. They see this recognition of human rights in international treaties as representing a broader political affiliation—'participation in a European identity—than that of a single nationality'. It is interesting to examine how these international human rights norms, and more specifically, child rights norms, are impacting patterns

of domestic compliance, for example, in terms of compliance with the CRC. Early research by constructivists tended to focus on the latter stages of compliance following an initial period of internalisation when the role of choice is circumscribed, and agency governed by rules and a normative logic; more recent research places greater emphasis on process and agency, highlighting social protest/mobilisation and social learning as two causal mechanisms (Checkel 2001: 557).

Scholars posit a variety of models when analysing the various levels of influence on the state. In exploring the relationship between international human rights norms and domestic compliance, Risse-Kappen et al. (1999) draw on a boomerang model developed by Keck and Sikkink (1999: 93), illustrating how reticent state elites are constrained by transnational (e.g., via advocacy networks) and domestic social mobilisation. Others see the emergence of political rule above and below (multilevel governance), via supranational influences and communities of interest (Bache and Flinders 2004), while Vaughan and Kilcommins argue, citing Graziano and Vink (2006), that it might be that 'Europeanisation operates according to a "bottom-top-sideways-down" model as the campaign for rights downloads European norms while pointing to their greater fulfilment in other jurisdictions as a reason for their adoption' (Vaughan and Kilcommins 2007: 455). Regardless of model of influence, universal human rights discourse, according to Levy, is radically changing the face of sovereignty (Levy and Sznaider 2006). In investigating the Europeanisation of human rights' impact on policy advocacy with respect to penal policies and the rights of the incarcerated in Ireland, the present study also traces the evolution of child rights within that context. Defined by the UN Convention on the Rights of the Child and its Optional Protocols, child rights over time moved from a focus exclusively on children's welfare during the early children's rights movement (Platt 1979, cited by Freeman 2009: 377); to

reflection on children's best interests as rights-holders; to recognition of children as rights-holders with agency, what legal scholars see as a standard path of the evolution of children's status in general (Clark 2015: 183). Freeman speaks about children no longer being considered merely as 'becomings' but as 'beings' (Freeman 2018: 3). New international child rights mechanisms, including among other things, the third Optional Protocol to the CRC on a communications procedure (OP3-CRC), which entered into force on 14 April 2014 and provides in effect a complaints mechanism for children or their representatives to claim a violation of their rights, have developed in parallel to this evolution. Legal scholars highlight constraints to the current mechanism, the inadmissibility of collective complaints prohibiting civil society actors or groups of children from initiating the procedure, for example (Grover 2015: 23–26), that serve as obstacles to redress. Yet overall, these instruments have bolstered this trend. The rights of children in Ireland benefited as well, yet faced major challenges. A report published during the latter phase of the current study's timeframe cites key barriers to the realisation of children's rights in Ireland, including children's 'invisibility' in decision-making processes and a lack of child rights-based perspectives in law and policy, as well as insufficient services, complaints mechanisms and monitoring (Kilkelly 2007: 61). The comprehensive report, commissioned by the Ombudsman for Children, highlights barriers for a variety of different groups of children in situations of vulnerability, one being a 'failure to consult vulnerable and marginalized children', ranging from children in rural communities, Traveller children and children in conflict with the law, to children with disabilities. (Kilkelly 2007: 67). No specific mention of children with a parent in prison is made in the report, an example of how children of the incarcerated in Ireland at the time were frequently invisible from lists of marginalised children. As late as 2016, Donson and Parkes do refer to children of the incarcerated in Ireland as being 'vulnerable', yet describe them as 'a largely invisible group' (Donson and Parkes

2016: 332), and this despite developments for this group within the domestic context as described in the present dissertation, as well as developments in international advocacy, including a United Nations Day of General Discussion on Children of Incarcerated Parents, organised in Geneva in 2011 and resulting in a report and recommendations. We now turn to explore the various elements of the theoretical and analytical framework that has been described in this and the previous chapter.

3. CHAPTER THREE: Concepts, theories and methods

3.1. Lending visibility to the invisible

This chapter establishes a theoretical framework based on discursive institutionalism and social movement organisation and agenda-setting theories relevant to policy processes for children of the incarcerated. As we have seen, discursive institutionalism (DI) as an analytical framework is based on the assumption that as ideas are expressed in the public realm, discourses emerge and eventually morph into rules-based systems of concepts and categories (Radulova 2011: 35, Lynggaard 2007: 294). Language, as highlighted in the preceding chapter, is a medium through which actors do not merely describe the world but construct it. It provides policy analysts with useful tools for deconstructing how relations of power are structured and reproduced (Hajer 1993: 45), analysing not only arguments but also counter-arguments to visualise the dynamics of the relational ensemble, or discursive architecture, within policy processes. As the study explored the social construction of these policy processes, the various struggles for power were seen not as a contest of actors or interest groups but as 'a battle of alternative worldviews', with an eye to defining what is socially significant (Radulova 2011: 41). Policy discourse refers to the interactions of individuals, interest groups, social movements and institutions through which issues are problematised, agendas are set, decision-making occurs and action is taken (Schön and Rein 1994: 144). Problematisation involves how a subject becomes a focus for study (Bacchi 2012)—philosophy is the problematisation of thought, for example. It is about how a problem is elaborated and formed, what its limits are and the conditions behind it, 'how and why certain things (behaviour, phenomena, processes) become a problem'

(Foucault 1985a: 115). It is not about seeking one correct response to an issue, but instead looking at how the issue is 'questioned, analyzed, classified and regulated', and this, at 'specific times and under specific circumstances' (Deacon 2000: 127), all of which can vary from actor to actor. Significantly, problematisation thus shapes the various responses and solutions available to a given problem, just as frames do, as previously established.

Indeed, a look at frames can provide insight into this battle of alternative world views—they can be informed by a constructivist position or by a rationalist one, for example. Rationalist schools of thought emphasise cost-benefit criteria and material incentives, while constructivist schools stress socialisation, learning and social norms (Checkel 2001: 553). By extension, frames that focus on ideational constructs underpinning social reality can be labelled constructive; those emphasising material benefits are rational. In her study of policy frames related to childcare provision, for example, Radulova highlights five policy frames: childcare as a remedy to gender equality (F1), decreasing economic growth and effectiveness of the welfare state (F2), demographic crisis (F3), social exclusion (F4) and early child development (F5) (Radulova 2011: 92). F2 is a clear example of a rational frame in which childcare is cognitively linked to higher levels of female labour participation (and higher GDP) and fewer demands on the welfare state; F5 illustrates a constructive frame, with quality childcare linked to positive effects on children's development and learning, which is believed to have effects throughout adulthood (Heckman 2006: 1900; Loeb, Fuller, Kagan and Carrol 2004: 47; Love et al. 2003).

An excerpt from one of Radulova's interviews illustrates this distinction well:

> It makes a real difference whether you talk about childcare as a service that allows for work and private life to be combined, or about early education. The one is a reconciliation instrument, i.e., a means to an end, while the second is a good in its own right.
>
> —Radulova 2011: 33

Likewise, a rationalist cost-benefit frame for children of the incarcerated would emphasise the benefit of supporting children to reduce recidivism, given the correlation found between regular family contact during incarceration and lower rates of recidivism,[8] thereby reducing public spending. A constructive policy frame would emphasise the need for public intervention to protect child development, maintaining the vital child-parent bond through regular prison visits and open communication about the incarceration. Frame deconstruction can enhance understanding and knowledge about the role of frames in policy processes for children with imprisoned parents. This analysis of framing processes provides information on how the world is perceived, with competing frames illuminating not just different policy discourses, but once again also diverging values and world meanings. As Yanow highlights: 'Frame conflict occurs not only because different interpretive communities focus cognitively and rationally on different elements of a policy issue, but because they value different elements differently. The different frames reflect groups' values contending for public recognition and validation' (Yanow 2000: 11, citing Bateson 1955, Goffman 1974, Rein and Schon 1977, Schon and Rein 1994). What is the priority: protecting children and fostering their development, or reducing recidivism, crime and public spending, with the child being a means to achieve this end?

For the purposes of this study, the use of the term "framing" refers to 'the process of selecting and emphasising aspects of an issue according to an overriding evaluative or analytical criterion' (Daviter 2011: 2). As stated previously, frames have been likened to 'organizing principles' which trigger shared reactions and help mould and shape the surrounding world in a meaningful way (Reese 2001: 5). Significantly, frames shape courses of action to be taken (or not). Yanow illustrates this in presenting how families in which the parents have divorced or separated are conceptualised: the term "broken home", a social construct dating from the 1960s and 1970s, connotes a need for welfare policy measures to fix the family unit, to 'glue the pieces back together'; current terminology—"single parent families"—suggests that public intervention is less of an imperative (Yanow 2000: 12). In short, frame analysis helps show how political change comes about.

As detailed, DI's agent-centric approach to change relies on critical junctures and milestones as the impetus for this change. In this way, frame-critical social movement organisation theories and agenda-setting theories feed into and have bearing upon discursive institutionalism. While social movement organisation theories look at 'diagnostic framing' (Snow and Benford 1988), a primary task carried out by movement entrepreneurs and activists described in the previous chapter, agenda-setting theories explore such concepts as 'conflict expansion, issue framing and institutional opportunities and constraints' (Princen 2009: 31). As mentioned earlier, an issue's social and political construction (its frame) controls its fate, an incremental process driven by a constellation of components (Peters 2001: 61). These processes illustrate agenda-setting's dynamic interplay with issue framing. Princen highlights how issue framing can draw the attention of policymakers to a cause through 'big words' or through

'small steps' (Princen 2011: 933). Although he relates this specifically to agenda-setting in the EU, the strategies can be relevant on the domestic level, where attention-arousing is the main objective. The 'big words' strategy involves working to make the issue dovetail with overarching normative values integral to the state's purpose or identity—human rights, democracy, child protection; this strategy, according to Princen, is most effective for issues which have a moral dimension or symbolic import. The 'small step' approach focuses on the more technical aspects of an issue, developing concrete proposals, gradually building up interest in an issue—by carrying out a study to spark debate, for example. These two interest-generating approaches can be complementary, with the higher profile 'big words' opening up pathways for incremental developments. For more difficult issues, agenda-setters may opt for a "behind-the-scenes" approach to consolidate legitimacy and strength and to pre-empt opposition to the issue. Issues relevant to children affected by parental incarceration often fall into the latter category, as this study demonstrates, given the issue's association with prison, crime and punishment, which could negatively impact its resonance with policymakers and decision-makers, given the additional agenda-setting hurdles of its being associated with what could be seen as a 'pariah' group (Peters 1996). In contrast, says Peters, the "child" angle of the issue enhances the chances of it being taken up by policymakers, and negative connotations can be minimised if the issue is framed in a manner conducive to achieving this. Agenda-setting is about providing information that spotlights the particular angle of an issue that will make people more receptive to it (Princen 2009: 34). The ability to spotlight a variety of different angles for a specific issue (e.g., sample angles for supporting the child-parent relation when a parent is in prison: reducing recidivism, decreasing public spending, protecting child development, bettering society) allows agenda-setters to

strategically seek out the venue, or institution, most amenable to the cause. This enables what Baumgartner and Jones call 'venue shopping' (1991), which involves 'shopping around' issues from one institution or decision-making body to the next, ultimately imbuing a given policy issue with certain values and symbols. This may not always involve a rational approach but a 'trial-and-error process or an evolutionary search' (Baumgartner and Jones 1991: 1048). Using the sample angles relevant to children with imprisoned parents cited above, the child-versus-prison dichotomy helps define which institution would be targeted to effect change: a children's ombudsman for the former, for example, highlighting child welfare and the child's right to maintain contact with an incarcerated parent ('big words'); the prison service for the latter, emphasising the need for concrete child-friendly prison visits areas and visits hours that do not coincide with school hours ('small steps'), for example.

Crucial to agenda-setting, according to Kingdon, is the move to capitalise on political windows of opportunity, underscoring how agenda change is often more dramatic when 'issues "hit" suddenly' (1993: 41), although emphasising the incremental nature of policy change. A 'revised version' of Olsen et al.'s garbage can model, Kingdon's multiple streams framework consists of three quasi-independent streams—problems (e.g., issue to be remedied), proposals (proposed solutions) and politics—that can merge to create an open policy window—propitious 'opportunit[ies] for advocates of proposals to push their pet solutions, or to push attention to their special problems' (Kingdon 1995: 165). Savvy policy entrepreneurs can capitalise on these open windows to couple their solutions to given problems or benefit from a given political landscape that provides fertile territory for their issue. The chances of successful

agenda-setting are significantly enhanced if all three streams—problem, proposal and politics—converge. Benford and Snow throw up a caveat to this, however, arguing that 'the degree or extent of political opportunity in any society is seldom, if ever, a clear and easily read structural entity' (Benford and Snow 2000: 631). Framing processes play a significant role in determining the 'existence and openness' of these structural entities of political opportunity. In expounding on key tasks of framing and agenda-setting, Snow and Soule define problematisation as involving 'an assessment of a given social condition or event as troublesome, unacceptable, unjust or intolerable and therefore in need of repair or change. It may be triggered by a change in conditions or events, or it may entail the reinterpretation of the same conditions or events, thus generating a new or different understanding.'

3.2. Theoretical framework and a robust methodological tool: PFA

The next step consists of elaborating an analytical strategy for the study. The strategy twins this theoretical framework with an apt methodological tool: policy frame analysis. It subsequently operationalises the research design by associating this theory + methodology with components of social phenomena and the social construction of reality, enabling an empirical study to be carried out. See Figure 3.1.

Figure 3.1 Theoretical and methodological framework
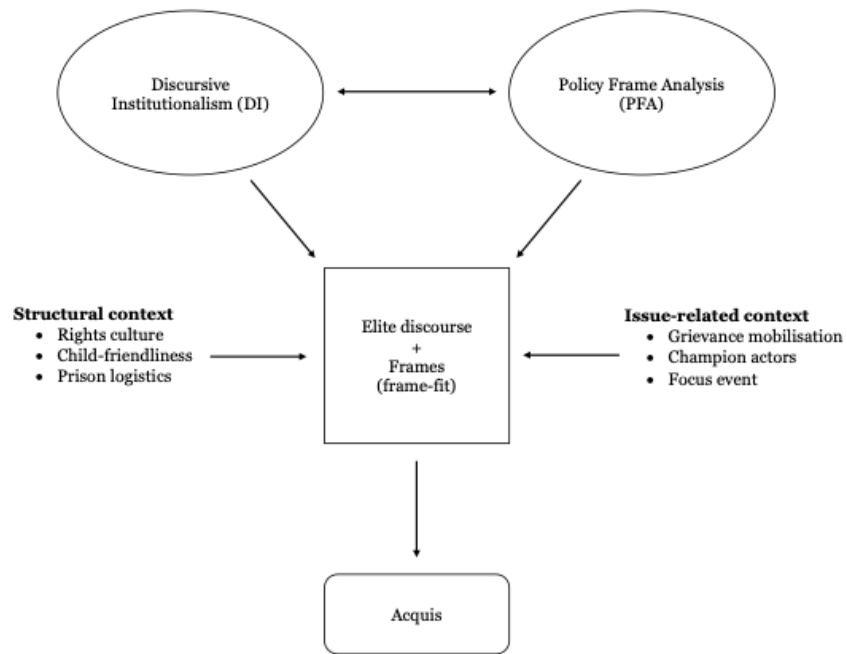
Source: own compilation

As highlighted in the previous chapter, this study furthers theoretical and empirical understanding of how discursive institutionalism could be applied in examining policy processes by studying "frame-fit" when an issue frame fits with and is suitable to elite discourse within a given discursive architecture. Frame-fit is contingent upon <u>frame resonance</u> (Snow et al., 1986: 477), one of the components of which is 'narrative fidelity' (Fisher 1985: 349ff), which is linked

to cultural resonance. Structural and issue-related factors, as well as overarching metaframes, may have a bearing on frame-fit and its impact on policy processes, as posited in the above diagramme. From a social movement organisation perspective, frame resonance involves the relationship between the interpretive work of an issue advocate and its capacity to influence prospective adherents, the latter concerning both the frame's intrinsic coherence and its "fit" with a broader political culture (Snow and Benford, 1988). Snow and Benford see the interplay of two sets of factors as influencing the degree of frame resonance: the credibility of the frame being used; and its relative salience, with credibility linked to the consistency of the frame, empirical credibility and the credibility of the actor generating and using the frame as an organising principle (Snow and Benford 2000: 619).

Policy frame analysis (PFA) with a discursive institutionalism theoretical framework allows the analyst to examine these organising principles more closely, as well as their structural context and the essence of policymaking—'the struggle over ideas' (Stone 2002). PFA is a robust, precise method applicable to virtually all situations. It is, therefore, a particularly useful tool in analysing the complex policymaking processes for children of the incarcerated, which cut across a range of policy areas, actors and cross-sector competencies, as well as the influence of European and international human rights discourse. In developing her methodology of policy frame analysis (PFA), Radulova argues that policy frames can be seen as performing three main functions: <u>identifying</u> a social phenomenon as problematic based on certain shared values, meanings and worldviews, belief systems and ideologies—which drive policymaking processes and determine decision-making throughout these processes; <u>suggesting an explanation</u> for the problem; and <u>tabling a specific policy action</u>

(or non-action) that could help ameliorate this problem (Radulova 2011: 42). In sum, a policy frame is a dynamic construction or 'package' that lays out an action plan for helping to solve the designated problem throughout the decision- and policymaking processes, from problem identification, agenda-setting initiatives, policy formulation and policy implementation.

Going further, Radulova suggests that there are four dimensions with respect to policy frames: normative, constitutive, cognitive and policy (Radulova 2011: 42-43):

• The *normative dimension* relates to the frame's ability to judge and link norms, standards, values and sets of beliefs of a given social reality to phenomena.

• The *constitutive dimension* relates to the frame's function to identify certain conditions and phenomena as problems. This dimension pertains to the 'normative leap' from the *is* to the *ought to be*, discussed earlier (Schön and Rein 1994). When movement entrepreneurs, for example, carry out 'diagnostic framing' (Snow and Benford 1988) in mobilising grievances, they must demonstrate that a given social phenomenon and conditions are 'unjust and intolerable' (Snow and Benford 1992: 137) by juxtaposing this phenomenon with normative values—what is just and tolerable—and making a case for the need for remedy or change. 'Motivational framing' processes (Snow and Benford 1988)—the rallying cry and justification of collective action—are components of the constitutive dimension. Context needs to be integrated into the frame during the problematisation of the issue as part of this dimension.

• The *cognitive dimension* relates to the function of the frame to establish causality by creating a narrative about the root causes, conditions and trends that have resulted in the problem; responsibility is assigned, and a solution and potential actors who could bring this solution to light are tabled as part of this narrative. The cognitive dimension represents the stage at which, in Schön and Rein's paradigm, one 'leaps' from facts to prescriptions for action and policy recommendations, as described earlier, and is the critical link between the constitutive dimension and the policy dimension of the frame.

• The *policy dimension* relates to the function of the frame to lay out a sequence of measures, actions and policy recommendations to make the social condition less of a problem while identifying concrete actors best positioned to initiate, enact and oversee these measures, actions and recommendations.

All four of these dimensions tend to underpin public policies, measures, action and discourse—the decision to build a women's prison in Dublin, for example— and are inherent in social movement organisation processes, making a case for a need for reform to remedy the lack of a women's penal establishment in Dublin at the time, for example. A key task of the analyst is to deconstruct these constitutive, normative, cognitive and policy substructures of government and SMO action and discourse, using the frame-critical lens. Having presented so far some conceptual and theoretical reflections, we now look at how to capture discourse and frames empirically. For this study, Radulova's matrix of frame deconstruction has been adapted for children affected by parental incarceration. See Table 3.1 for an inventory of some possible frames for children who have a parent in prison.

Table 3.1. Sample of frame deconstruction for children of the incarcerated

Frames	a) Invisible children	b) Right to family life not respected	c) Greater costs to society
Normative dimension (values, moral beliefs) – What sort of values underlie one's perception of social reality?	Human rights, equality among children regardless of parental actions, right to emotionally secure base, healthy development, right to discrimination-free childhood, right to support from family and society.	Right to maintain contact when separated from parent when in the child's best interest.	Less crime, safer communities, lower public spending.[9]
Constitutive dimension (need for public intervention) - What is the problem?	CIPs are invisible children, and as such are ineligible for support mechanisms required for healthy development. Suffer from shame, stigma, low self-esteem, greater poverty, trauma associated with separation from parent.	Inadequate prison visit schemes and support lead to breakdown of family ties, as does the need to travel great distances for prison visits.	Breakdown in family ties leads to higher rates of recidivism, higher public spending, higher taxes.
Cognitive dimension (narrative about the phenomenon and cause effect relations) – What has led to the problem?	Lack of government policy for recording number of children with imprisoned parents, who tend to "fall between the cracks".	Lack of specific government support framework.	Lack of awareness of children in legal texts and in criminal justice process (arrest, sentencing, incarceration) results in breakdown of family ties, increased recidivism. Lack of parenting support schemes for imprisoned parents.
Policy dimension (public actions) – What can be done about it?	Establish national watchdog organisations in member states to obtain better data on affected children and to foster interagency collaboration among public and private agencies in the various sectors involved in supporting and making decisions about children and their imprisoned parents. Child impact statements during sentencing.	Establish specific government cross-agency support framework for children with imprisoned parents. Enact policies that ensure quality contact between children and imprisoned parents. Embed family ties as criterion in penal procedure codes and other legal texts.	EU steering of member states to foster family ties for imprisoned parents and reduce recidivism. Embed resettlement support schemes to keep families intact, provide better support for children with imprisoned parents to break 'cycles of crime'.[10]

*Table format conceived and designed by Elissaveta Radulova (Radulova 2011), adapted here for the purposes of this research plan drawing on information in Ayre et al., 2006.

A primary focus of frame analysis, as a discourse analysis method, is to deconstruct and examine how an issue is defined and problematised and the impact this has on the wider discussion surrounding the issue. Research methods for discourse analysis include content analysis (see for example Herrera and Braumoeller 2004, Tankard 2001) and interpretive methods (Yanow 2006). Lynggaard cites drawbacks to both of these methods, maintaining that interpretive methods lack transparency, while the statistical analyses traditionally used in content analysis tend to divorce discourse from the institutional and social context in which it is produced and fail to include background information on the actors generating discourse (Lynggaard 2007: 89–90). As has been argued earlier, 'deep cultural meanings' (Bacchi 2009) have great bearing on framing processes, being integral to the 'discursive opportunity structure' (Koopmans and Statham 1999) in which framing processes unfold. Some see these deep cultural meanings as being more important than actors' intentionality in framing: Actors select from between existing competing frames to make their case as part of strategic framing (several frames generally compete for dominion within a given discursive architecture), but in terms of which frames are available and which ones can have the greatest impact or frame resonance within a particular environment is not up to the individual actors, but is characteristic of the culture and context in which they operate (Dombos et al. 2009).

In investigating social construction processes and their discursive environment, PFA observes policy discourses—how problems are perceived and solutions are proposed (or not), and the evolution of this discourse over time. Lynggaard describes the act of studying and recording articulations of perceptions of

problems over time as a 'very manageable' method of uncovering a discourse empirically:

> A discourse can be said to exist to the extent that it is possible to register and describe a systematic set of rules of how central problems, their sources and solutions are articulated among a set of agents. Such rules may be described in terms of whether the policy problem at hand is seen as caused by individual shortcomings or alternatively is seen as the product of societal structures.
>
> —Lynggaard 2007: 90

3.2.1. Tracking and coding frames: the value of tangible processes

In this way, the primary methodological approach of this study combines contextual analysis with PFA, the latter offering both macro-level (discursive dynamics of the policy arena) at the aggregate level, and micro-level (discursive activities of individual actors—e.g., 'issue champions') analyses of framing processes that make up the substratum of policy processes and outcomes, in deconstructing the discursive architecture. PFA as a methodology is based here on the methodological technique developed by Radulova in her study of Europeanisation through the Open Method of Coordination (Radulova 2011). Its main objective here as a technique involves tracking the overall evolution of the different policy frames to examine how the issue of parental incarceration has been problematised over the designated period of time. As mentioned, scholars cite certain limitations to PFA as a methodology, which is contingent on the existence of a comprehensive dataset of documents in which discourses are embedded, with the documents all having the same weight (Radulova 2011:

209). Moreover, Tankard cautions that if the frame analysis process is not carried out using a systematised approach, frame identification itself risks being a subjective process, and demonstrates how selecting names for the frames themselves involves a kind of framing. Inherent risks if no systematic approach is used include the set of frames not being exhaustive and frames not being mutually exclusive; and researchers finding the very frames they consciously or unconsciously are seeking (Tankard 2001: 97). Although Radulova highlights methodological difficulties with respect to discursive analysis, she maintains that 'the more tangible nature of communication processes and public discourses' make up for these difficulties (Radulova 2011: 37). In addition, coding frames ensures objectivity.

A preliminary phase of empirical data-gathering involved an issue-specific socio-historical and contextual analysis of the case study (Ireland) from 1994 to 2014, providing a comprehensive overview of existing initiatives, entitlements and policies (acquis) for children of the incarcerated in that country and encompassing policy systems (e.g., public policy on record, state and non-state actors, structural context). This preliminary empirical data-gathering phase laid the groundwork for investigating how policy initiatives were seeded, grew and evolved for the stipulated timeframe (macro-analysis); and the role of issue advocacy in the development of this policy sector, tracking when and how the issue appeared on the political agenda, *from problem identification and gaining agenda status, to policy formulation,* looking at critical junctures, focus events, frame evolution, etc.; and identifying actors, both non-state and state (micro-analysis), who participated in these debates, endorsed the frames and influenced when and how these policy developments came about. The macro- and micro-analyses of this issue-history phase provide insight into and a systematic overview of policy formulation and enable the analyst to reconstruct policy processes, with an eye to examining how frames wielded by policy

entrepreneurs fit (or did not fit) with the discourse of policy elites and the existing discursive architecture. They offer a *look at actors' strategic use of discourses during issue advocate initiatives and throughout policymaking processes, from problem identification and gaining agenda status, to policy formulation, adoption and implementation.*

At the same time, investigating the structural context involved exploring factors such as the human rights culture, child support systems, culture of compliance with international rules, administrative capacity, prison management systems and the tradition of charity, all or some of which this study hypothesises have had a bearing on frame-fit and its impact on the formulation of policy. In short, these analyses set the stage for investigating frame-fit and its potential role in policy processes for children affected by parental incarceration in Ireland; and whether certain given factors integral to the broader political culture (structural and issue-specific factors, metaframe) have a bearing on the formulation of policy. The first three steps in tracking the overall evolution of different policy frames included:

1. <u>Inventorying dominant policy frames.</u> This was done by exploring observations of the policy process, notably the development of legislation and parliamentary debates, as well as expert and policy reports, position papers and the rhetoric of public actors, for both policy elites and civil society. A working list of policy frames was established. (See Coding Database excerpt; Appendix A.)

2. <u>Sampling: determining the sources in which relevant discourse </u>(both policy elite and non-state issues advocates) <u>was embedded</u>, to use in forming the

dataset. Sources include *parliamentary debates, prison service reports and non-state reports*.

3. <u>Defining datasets</u>. Three datasets were identified in an attempt to capture discourse in terms of national decisions/legislation and Europeanisation of human rights standards and norms.

a) Official policymaking (macro-level): Department of Justice/Prison Service reports.

b) Micro policy discourses: Parliamentary debates (Dáil Éireann, or lower house); civil society advocacy and discourse involved in the debates and deliberations around these developments were examined through analysis of non-state reports and position papers (NGO, academic, thinktank and watchdog output). In terms of parliamentary debates; the primary source of discourse was Dáil Éireann, the lower house and main chamber of the Irish legislature (Oireachtas). This chamber was selected over Seanad Éireann for examination because the Members of Dáil Éireann are elected by the people of Ireland in a general election. Members of the Seanad, in contrast, are elected in part by vocational panels and by graduates of certain universities; eleven of the sixty members of the Seanad are nominated by the prime minister (Taoiseach). In addition, the Constitution of Ireland stipulates that the government must answer to Dáil Éireann.

c) Metaframe: European/international discourse. The dataset comprises UN reports, Council of Europe rules, EU treaties, and, in a lateral

Europeanisation effect, discourse relevant to Northern Ireland Peace Agreements. This dataset enabled the analyst to track receptiveness to human rights standards from the onset of the study's designated timeframe.

Datasets were incorporated into a Coding Database to provide an overview. See Appendix A.

3.2.2. Sample European and international discourse

In looking at the influence of EU, COE and UN action and norms on the implementation of policies on the domestic context of an EU member state (Ireland), and at mechanisms for norm diffusion and domestic change (fostered by the 'Community system of human rights protection'), this study draws on Radaelli's definition of Europeanisation as highlighted in the previous chapter: 'the institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies' (Radaelli 2003: 30). Varying degrees of receptivity to discourse and norms coming from Brussels, Strasbourg and Geneva within the Irish policy sphere are explored in an attempt to pinpoint change through what Vink has called 'framing integration' (Vink 2001), the combined impact of broader European/international reform objectives. Investigating whether and how action and discourse of the EU (mainstreaming child rights, humanising detention), the Council of Europe (human rights, prison guidelines, notably the European Prison Rules, a driving force for prison reform since the 1970s) and the UN (promoting the rights of the child through the CRC) have influenced domestic child welfare and prison policies provided valuable insight into this Europeanisation effect. Vaughan et al., for example, highlight how the process of

the Europeanisation of human rights, in association with domestic factors, has weakened a trend toward a more repressive model of criminal justice, as a result of greater oversight of policing by the Irish state (Vaughan and Kilcommins 2007: 437).

European/international discourse includes:

United Nations discourse: UN Convention on the Rights of the Child implementation. Keywords derived from relevant principles of the CRC include in particular the principle of the best interests of the child (Article 3.1); the principle that a child, when separated from one or both parents, has the right to maintain regular direct contact with the parent, except when this is contrary to the best interests of the child (Article 9.3); the principle of non-discrimination (Article 2); the child's right to life, survival and development (Article 6); the respect for the views of the child (Article 12). Additional sources of discourse include the Universal Declaration of Human Rights (UDHR), Articles 10 and 23; Committee for the Rights of the Child periodic reports on the national situation of children's rights; UN Committee against Torture (UNCAT) reports and shadow reports.

Council of Europe discourse: the 1953 European Convention on Human Rights /European Convention on Human Rights Act 2003 (Ireland), the introduction of rights-based standards, awareness and discourse (e.g., 'dignity' as applied to prisoners); the 1983 Convention on the Transfer of Prisoners for purposes of justice and social rehabilitation.

European Union discourse: three separate but complementary EU Framework Decisions within a common European area of justice based on mutual trust, covering (1) the transfer of prisoners: 2008/909/JHA, (2) probation and

alternative sanctions: 2008/947/JHA[2] and (3) European Supervision Order: 2009/829/JHA[3]. The three EU framework decisions allow prison sentences, decisions on probation, or alternative sanctions and pre-trial supervision measures to be carried out in an EU country other than that in which the individual has been sentenced or is waiting to be tried. This may be the country of nationality, usual residence or another EU country with which the individual has close ties. In terms of child rights, the position of an EU Commission coordinator for the Rights of the Child was established in 2007 in response to the 2006 communication 'Towards an EU Strategy on the Rights of the Child'. Article 3.3 of the 2009 consolidated version of the Treaty on European Union made the EU objective of protecting the rights of children explicit. Article 24 of the EU Charter of Fundamental Rights protects the rights of children.

3.2.3. The paramountcy of fundamental rights of the imprisoned

Within all of these frameworks, fundamental rights are paramount. The Charter of Fundamental Rights of the European Union (EU Charter) establishes a standard with which all EU member states are obliged to abide by when EU law is being implemented. The European Court of Human Rights (ECtHR) ruled that sub-standard detention conditions can violate the third article of the European Convention on Human Rights (ECHR). Article 4 of the EU Charter is identical to Article 3 of the ECHR; both articles have similar meaning and scope. In addition, Article 19.2 of the EU Charter maintains that no individual can be transferred to a state in which there is a serious risk of inhuman or degrading treatment for the individual. From the inception, the Stockholm Programme invited the European Commission to explore detention and surrounding issues: 'The European Council considers that efforts should be undertaken to strengthen mutual trust and render more efficient the principle of mutual recognition in the area of

detention. Efforts to promote the exchange of best practices should be pursued and implementation of the European Prison Rules, approved by the Council of Europe, supported. Issues such as alternatives to imprisonment, pilot projects on detention and best practices in prison management could also be addressed. The European Commission is invited to reflect on this issue further within the possibilities offered by the Lisbon Treaty.'[11] In its resolution on the Programme, the European Parliament called for the development of an EU criminal justice area through, *inter alia*, minimum standards for prison and detention conditions and a shared set of rights for the imprisoned in the EU. This was reiterated by the European Parliament in February 2011.[12] The European Commission Green Paper on strengthening mutual trust in the European judicial area and the application of EU criminal justice legislation regarding detention[13] stipulates that detention and relevant issues fall under the aegis of the European Union in that they are relevant with respect to rights that need protection to foster mutual trust and guarantee the sound operation of mutual recognition instruments. In addition, it is incumbent upon the EU to uphold specific rights.

The next step in tracking the evolution of policy frames was:

4. <u>Frame deconstruction.</u> Once the datasets were assembled, frame deconstruction coded the frames using qualitative content analysis, mapping the keywords (e.g., imprisoned parent, child of prisoner, family contact, rehabilitation). If both constitutive and cognitive frames occurred within the context in which the concepts are embedded, the concept was deemed to be an eligible policy frame and was recorded, including the total number of instances of relevant concepts and the numbers of the various frame-assigned references. This dataset could thus be analysed statistically. The analyst subsequently screened and observed the structural dynamics and overall evolution of the

framing process, mapping the rise and fall of various frames during the designated timeframe (1994 to 2013, with output in 2014), with an eye to identifying how the Europeanisation /internationalisation) of an issue, in this case, the influence of European and international action and human rights norms, was reflected in changing discourses and practices and, especially, to investigate variation across different domestic contexts which may be more or less receptive to such discourses. This study remained mindful of the difficulties in distinguishing Europeanisation and internationalisation from a broader globalisation process (Graziano 2003).

Interviews of elite actors provided critical information and data about political deliberations leading up to decision-making and action and about micro-level processes (e.g., proponents of macro-frame dynamics, actors who championed innovative angles, frame alignment strategies) to gain better insight into framing dynamics and discursive architecture. In this way, both collective-level changes in discourse and individual-level framing were studied to better understand the macro- and micro-discursive dynamics of policy spheres, and identify both individual influences and aggregate shifts. PFA contributes information on which frames, or combinations thereof, and under which conditions, produced successful outcomes.

Finally, the last step in tracking policy frames involved:

5. Operationalisation of structural factors which could be influencing frame-fit and its impact on policy processes. Factors include, among others:

Human rights culture: Ireland has an adversarial common law system. Legal literature diverges with respect to the influence of the adversarial common law

system on child rights culture. Peters claims that, in contrast to code law, common law's greater dependency on more general legal principles, including rights-based principles that can encompass considering children as rights-holders, may make it more amenable to pinpointing and enforcing child rights (Peters 2012: 24). Understanding of child rights, he argues, can be broadened even in the absence of relevant legislation or regulation enshrining these rights, although common law can be 'piecemeal or ad hoc'. The concept of dignity—what Habermas refers to as the 'moral "source" from which all of the basic rights derive their sustenance' (Habermas 2018)—is key. Others, in contrast, maintain that Ireland's adversarial common law system is ill-suited to complex child welfare matters. McGrath argues that an inquisitorial approach in Ireland would be more compatible with respect to child care proceedings, citing the Dutch legal system's 'highly developed approach to children, both in criminal and civil cases' (McGrath 2005: 137) and underscoring the Dutch inquisitorial system's greater reliance 'on reason than conflict in judicial decision-making' (2005: 138). He maintains that Ireland should move toward adopting a legal system that is more in line with the inquisitorial system, such as the one in place in the Netherlands, which draws on a procedural model in which judges have a more active role and lawyers a more passive one, which could mitigate a certain degree of the stress and conflict often characteristic of adversarial hearings (McGrath 2005, cited in Wexler 2010: 97). Earlier on, Weinstein corroborated this, citing an incompatibility within the U.S. system between its adversarial legal system and definition of children's best interests, maintaining that the system fails to be 'humane' and that its 'win or lose framework' compromises children's welfare (Weinstein 1997: 83-87).

Child-friendliness systems: Relatively few countries have ministries devoted solely to children and their rights (Peters 2012: 12). These include institutional

and policy structures in place to protect children and further children's rights. They usually adopt an approach that is either "rights" based or "welfare" based. In terms of policy, the former perceives children's rights as a discrete policy area; the latter tends to amalgamate children's policies within family or welfare policy. Child-friendliness indicators include formal governance structures devoted to children (e.g., Children's Ministry), presence of a children's ombudsman or children's commissioner; incorporation of CRC into domestic law; the existence of a comprehensive Children's Act.

Administrative capacity: Although Ireland inherited a legacy of weak administrative capacity typical of post-colonial countries, it currently is ranked in the top percentile of the Worldwide Governance Indicator, along with the Nordics and the United Kingdom. Source: World Bank (2017) Worldwide Governance Indicators (database), The World Bank Group, Washington, D.C.

Penology: Prison ethos and prison management. Penal and prison codes are examined to assess the degree of emphasis placed on normalisation and rehabilitation of prisoners.

Traditions of charity work: A look at traditions of giving and philanthropy, including the role of faith-based charity traditions in Ireland, regulated more stringently since the Charities Act 2009; the Charities Regulatory Authority on 16 October 2014 which published a Charities Governance Code on 7 November 2018 requiring trustees to ensure that, *inter alia,* charities act with integrity, work effectively, be accountable and transparent and exercise control. Ireland

ranked fifth in the World Giving Index 2013, fourth in 2014, ninth in 2015 and 2016.

Compliance culture: Falkner, Treib, Hartlapp and Leiber (2005) and Falkner, Hartlapp and Trieb (2007) maintain that a context-sensitive approach is needed in understanding compliance. Falkner and Trieb (2008) argue that there are four different worlds of compliance among EU member states with respect to the transposition and application of EU directives: the World of Law Observance; the World of Domestic Politics; the World of Dead Letters; and the World of Transposition Neglect. Their 2008 study found that Ireland falls under the World of Dead Letters category, characterised by politicised transposition processes and systematic application and enforcement problems. Compliance with international human rights obligations faces an additional hurdle in Ireland given its dualist legal system, which has been cited as a factor in slowing down transposition unless international human rights instruments are incorporated into domestic law (Collins 2013: 591).

3.3. Case study highlights

Ireland scores high on traditional and self-expression values on the Inglehart-Welzel Cultural Map, which is based on the World Values Survey. Traditional values stress the significance of religion, parent-child ties, deference to authority and traditional family values; self-expression values prioritise environmental protection, increasing demands to participate in political and economic decision-making and tolerance for alternative lifestyles and foreigners. Ireland places emphasis on improving children's welfare, holding a top ten position on well-being indicators for children and young people: a 2013 UNICEF overview

of child well-being in rich countries, assessing the lives and well-being of children and young people in twenty-nine nations of the industrialised world, ranked Ireland tenth, well above the United States and the United Kingdom (UNICEF Office of Research, 2013). Ireland has been a party to CRC since 1992. The country's second report to the UN Committee on the Rights of the Child, in 2005, cites the increased number of policies and services developed for children in the 1990s, notably the publication of the National Children's Strategy, *Our Children — Their Lives*, in November 2000, a cross-government strategy grounded in the CRC that calls on statutory agencies, the voluntary sector and communities to strive to better the quality of children's lives. It was the first comprehensive national policy document for statutory and non-statutory providers in the development of children's services in Ireland and offered a framework for better integrating the rights of children into society. The National Children's Office was set up in 2001 to spearhead the strategy. The Children Act, 2001 and the Ombudsman For Children Act, 2002 were passed. In 2012, Ireland amended its Constitution to make child's rights more explicit. In 2014, the first overarching national children's policy framework for children aged 0 to 24 was approved by the government and launched by the Taoiseach and then Minister for Children and Youth Affairs Frances Fitzgerald on 16 April 2014: *Better Outcomes, Brighter Futures: the National Policy Framework for Children and Young People 2014-2020*.

The policy framework was developed following consultation with children and young people (n=67,000); a public consultation; and consultation with the National Children's Advisory Council, representing statutory and non-statutory organisations working with children and young people. Part of the changes that followed the launch of the policy document was the establishment of Tusla, the statutory child and family agency. The primary legislation relevant to children

and the criminal justice system is the Children Act, 2001 and refers specifically to children in youth justice systems, children in detention. The legal system of Ireland is similar to that of Great Britain, as are administrative structures, institutions and legislation which it inherited. Prison policy took a different trajectory following independence, however. The following chapters will take you on this journey.

4. CHAPTER FOUR: Tackling double jeopardy for children with a parent in prison in Ireland

4.1. Laying out the context

Policy with respect to incarceration in Ireland traditionally has been separated from broader questions of criminal justice policy (Irish Penal Reform Trust 2009), with criminology having been referred to as the nation's 'absentee discipline' (Kilcommins et al. 2004: vii), although there is now a shift in this area. With key institutional oversight and management agencies being established only relatively recently,[14] research on criminal justice policy processes has been described as lagging behind that of many other countries (Rogan 2011a). This has impacted the recording of data on Irish criminal justice; no detailed prison statistics were published from 1995 to 2000 (CIPS 1985; Law Reform Commission 1996; O'Mahoney 1997; O'Donnell, I. 2008)[15] and knowledge about the secondary effects of incarceration has emerged only relatively recently (Breen 2010). In parallel, from a historical perspective, the emergence of children's rights in Ireland has been described as 'a haphazard and inconsistent affair', taking form in a developing Irish state with often-contentious social and political concerns (Keenan 2012).[16] Yet despite these multiple barriers and the existence of what constitutes a kind of "double jeopardy" for children separated from a parent in prison—children affected by parental incarceration as an issue is absent from criminal justice proceedings and policies in many countries in Europe, as are the needs of children with imprisoned parents from most child welfare agendas—, there has been a greater focus in recent years on the impact of parental imprisonment on

children in Ireland (Parkes and Donson 2019; Parkes and Donson 2018; Donson and Parkes 2016; O'Malley and Devaney 2016; Donson and Parkes 2012; Irish Penal Reform Trust 2012). Evidence for this lies in the establishment of a national policy agenda that recognises children of the incarcerated, highlights the need to ensure adequate access to an imprisoned parent and commits to improving prison visits conditions for them (*Better Outcomes, Brighter Futures, 2014-2020*); and a prison service strategy with the stated intention of introducing child-friendly visit conditions across the Irish prison estate (Irish Penal Reform Trust 2017).[17]   In addition, steps to implement this new policy agenda, however limited in duration and scope, have been taken: after the Irish Prison Service commissioned the Child Development Initiative, in collaboration with the Parents Plus Charity, to design and deliver a support programme for imprisoned fathers and their families in 2013, for example, a pilot intervention and evaluation of the scheme were carried out.[18]

4.2. The emergence of a new policy agenda for children with imprisoned parents

Examining the development of this new policy agenda for children of the incarcerated by analysing public policy and discourse in Ireland from 1994 to 2014 provides some insight into the underpinnings of this new policy agenda and how the issue evolved. Over time, the latter shifted from a non-issue to a ' "misfortune" that warrants only charitable consideration', to an 'injustice that demands correction' (Turner 1969: 391, cited in Snow 2004: 383). This evolution ultimately enabled the issue to be placed on a policy agenda, and inquiry into which policy solutions would be most efficient, appropriate and

acceptable to remedying this injustice and enhancing children's well-being was carried out. Collective action frames generated by Ireland's social movement arena [issue entrepreneurs from voluntary/community sector] played a key role in mobilising and transforming these grievances into injustices as part of agenda-setting processes. Yet the critical role of deputies within the Dáil, the lower house of the Oireachtas (Irish Parliament), as policy entrepreneurs should not be overlooked with respect to the issue's evolution and the development of relevant policies. Strategic actors in the Dáil served as policy entrepreneurs, steering ideational discourse, capitalising on social movement advocacy and reports, and identifying policy windows of opportunity to help put the rights and concerns of prisoners' families, including those of children, on the agenda. They achieved this in part, this study has argued, through a shaming effect during a preliminary phase, drawing on the social movement 'repertoire of contention' (Tilly 1978, 1993; Traugott 1995; Tarrow 1998, cited in Taylor and Van Dyke 2007: 265) to expose a two-tiered system of justice and human rights, comparing the double standard of respect for the rights and concerns of political prisoners' families in Northern Ireland and England, with the lack thereof for the families of "ordinary criminals" (Dáil Debate, 11 May 1995) in the Irish Republic.

This lateral or sideways Europeanisation effect, with its concomitant impact on human rights, was bolstered by the Northern Ireland Peace Process Agreement, also known as the Good Friday Agreement, ratified by referendum in May 1998 and culminating in what was described at the time as what would become some of the most advanced human rights legislation in Europe. The agreement *inter alia* led to the establishment of the Irish Human Rights Commission in 2000 (later merged with the Equality Authority to form the 2014 Irish Human Rights and Equality Commission). The IHRC's wide-ranging jurisdiction in the area of human rights and fundamental freedoms laid the groundwork for reform in the

areas of human rights and prisoner releases;[19] and, coupled with the more traditional top-down internalisation of rights norms through Europeanisation, opened up a policy solution space for families of prisoners.

As elaborated in previous chapters, pivotal to the process of agenda-setting and the formulation of policy solutions in this study is the mechanism of frame-fit. Framing can only align others in any sustainable way if the given frame is not too remote from core beliefs and values (Snow et al.) and if 'social arrangements that are ordinarily perceived as just and immutable must come to seem unjust and mutable' (Piven and Cloward 1977: 12), allowing for Rein and Schön's 'normative leap from what *is* to what *'to be'* (1977: 240). Yet with respect to parental incarceration in Ireland, there was little awareness in Ireland during the early years of the study's timeframe of what the *is* actually *was*: the issue of children with imprisoned parents had not been problematised, was a non-issue, as it was in most countries in Europe at the time.[20] Preliminary groundwork, therefore, was required for problem identification to occur.[21] What plays out, this research has demonstrated, was the emergence of a preliminary wave of national support schemes for children and families of prisoners, from 1997 to 2003. Although frame-fit as a mechanism appears to have had a role in securing the formulation of policy solutions for children through prisoner-parenting programmes, a closer examination of policy processes reveals that what actually fit was the utilitarian frame promoting the social reintegration of prisoners back into the labour market, with deontological child-specific frames tacked onto its coattails, producing a kind of "mock" frame-fit. National-level support interventions for children affected by parental incarceration proved unsustainable and the preliminary wave of acquis declined. In contrast, a second wave of policies for children of the incarcerated that first emerged in 2010 was grounded successfully in national acquis in 2014 by means of a dominant deontological child-specific frame [child

welfare, child rights]. A crisis of epic proportions revolving around systematic child abuse by religious and other institutions in Ireland,[22] documented by an independent statutory inquiry operating from 2000 to 2009, served as a focus event, helped raise public awareness of the need for greater protection of children's rights and children's welfare, and most likely gave a leg up to the second wave of policies, fostering the leap from what *is* to what *ought to be*. This chapter and the following one explore this and other presumed reasons why child-specific policies aimed at maintaining the relationship with an imprisoned parent failed to be rooted during the first wave, yet found firm footing during a second wave of policies.

4.3. Grounding policies via frame-fit: exploring Ireland's discursive architecture

This research draws on a historic model spanning 1994 to 2014, examining the development, diversity and evolution of discursive frames used by civil society and policy elites with respect to parental incarceration, and how they affect both social movements and government policies, practices and policy formation. The year 1994 was selected as the onset of the timeframe because of two developments. The first was the founding of the Irish Penal Reform Trust, the leading non-governmental organisation in Ireland working on a national scale to promote rights in the penal system and the adoption of policies incorporating restorative justice, a theory and method of criminal justice that emphasises repairing the harm caused by criminal behaviour. The second development was the publication of the Department of Justice's five-year plan *The Management of Offenders* in 1994. The plan included draft new prison rules as an appendix, reviewed prison services and the management of prisoners, charted progress since 1985 based on recommendations made by the *Whitaker*

Report 1985,[23] and, significantly, promoted more humane, personalised approaches to managing prison sentences with enhanced conditions as part of the prison service's formal values, aims and objectives. An approach known as Positive Sentence Management, the latter signalled a clear shift in priorities and a commitment to long-term strategising (Rogan 2011: 180). The year 2014 was selected as the close of the timeframe in that it marked the launch of the aforementioned National Policy Framework for Children, *Better Outcomes, Brighter Futures 2014-2020*, which included the first national framework acknowledgement of children with imprisoned parents, albeit in a limited form.[24]

In addition to examining ways in which children of the incarcerated are perceived or framed through discourse and how these frames evolve and shift over the given timeframe, a cross-sectional look at the relational interplay among factors potentially influencing the discursive architecture and relevant frame shifts is provided. These include social movement frames, structural-cultural factors, focus events, Europeanisation and individual reforming actors, who are seen as playing a significant role in driving change in prison policy processes in Ireland (Rogan 2008: xv). In terms of the latter, however, the key functions of elite policy entrepreneurs as reforming actors in general related less to policy implementation and more to the process of agenda-setting and decision-making, although there were exceptions.[25] This holistic approach yields a better understanding of how key decisions influencing children's lives were made over the timeframe of the study.

4.4. Penology and prison policies in Ireland

Penology and prison policies in Ireland have been described as subject to fits and starts, characterised by periods of intensified activity interspersed with

those of relatively little activity, even inertia (Rogan 2008), and involving the adoption of pragmatic solutions to political crises (Rogan, 2011a). Discussion around crime and punishment in Ireland has been described as having 'a staccato quality' and the establishment of policy as 'grindingly slow' (O'Donnell 2020: 1). Irish penal policy is notable for its lack of any ideological philosophy driving its direction and content (Rogan 2011a, 2011b; O'Donnell 2007; Kilcommins et al. 2004), with a greater use historically of custodial than community measures. While susceptible to policy transfer from abroad, Irish penal policy tends to manifest these influences in 'a dilute and distinctive hybrid form' (Kilcommins et al. 2004: 292). As Rogan summarises:

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

A lack of data, including, for example, baseline statistics crucial to assessing the long-term effectiveness of support schemes for children, has also presented challenges. Statistics on overall prison committals, the act of officially sending

someone to prison, for example, were not published between 1995 and 1998. This can be seen in Figure 4.1.

Figure 4.1. Prison committals in Ireland from 1980 to 2010
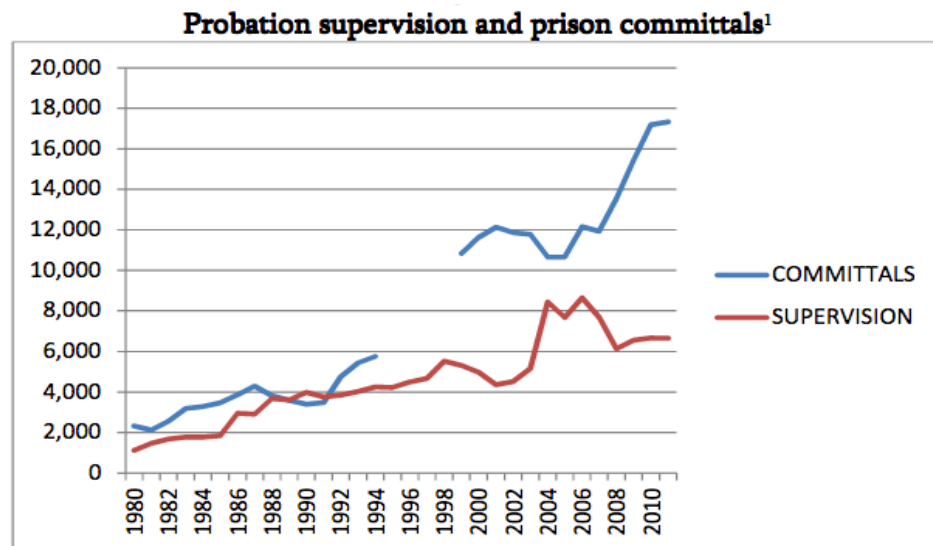
Taken from the Annual Reports of the Probation Service and the Annual Reports of the Irish Prison Service

Source: Deirdre Healy, Experiencing Offender Supervision in Ireland (2012).

Ireland inherited legal and penal traditions and systems from Great Britain, requiring a period of time for a sense of ownership in governance to be fostered, most likely a factor in the relatively late establishment of key institutions in Irish society and updated prison legislation. The 1947 Prison Rules, which were

not revised until 2007, reflected a Victorian ethos with an emphasis on order, cleanliness and religious instruction. The sole mention of children with imprisoned parents was in reference to the admission of infants with their mothers, provided that they were 'at the breast'. The Criminal Justice Act 1960 launched legislative reforms into the prison system, including rules for the introduction of temporary release, originally as a 'humanitarian measure' for those needing to be at home for short periods (Rogan 2012: 13) and as a benefit to long-term prisoners to prepare for release and employment. Yet many provisions of the bill were aimed at children in detention. Discourse around prison reform was galvanised in the early 1960s when Charles Haughey took over as Justice Minister. He voiced his strong commitment to rehabilitation—the press in 1964 lauding changes to operations at Mountjoy Prison as 'startling, even revolutionary'[26]—an approach consolidated by his successor. But by the end of the decade, support for this progressive approach had waned, resulting in rehabilitation becoming more a theory on paper than reality.

The landmark Prison Act 1970 sanctioned better treatment and rehabilitation of prisoners, making these measures integral to how the Irish prison system was to be operated. Yet just two years later, following riots at Mountjoy Prison in May 1972 and the revival of the Curragh military prison, its impact was diluted by the Prison Act 1972 in which security and protection of the state gained ground. These two parallel policy styles, rehabilitation versus security, were to remain strange bedfellows for years. The 1980s saw a growing interest in prison conditions in Ireland (Rogan 2011b: 167), a shift attributed by some to Pope John Paul II's urging bishops in Ireland to focus on the plight of prisoners during a trip there in 1979. A report by the Council for Social Welfare, a committee of the Irish Catholic Bishops' Conference, in 1983 suggested greater availability of custodial options and alternative forms of punishment. A 1985 report by the Committee of Inquiry into the Penal System emphasised the

need to improve facilities for women prisoners, the lion's share of attention being given to male prisons (Report of the Committee of Inquiry into the Penal System, The Stationery Office, 1985).

A rhetorical shift came with the 1994 report *Management of Offenders: A Five Year Plan* with its stated aim of launching 'positive sentence management' committees in every prison. The document represented a shift with respect to the justice department's traditional reluctance to engage in penal planning and examination of the prison system (Fahy 1940: 18), marking a departure away from 'prison reform' (capacity, facilities) towards 'penal reform' (rehabilitation, reintegration) as the thrust of government action. Yet discourse in the 1990s centred largely around logistics, building new prisons and the need to increase available prison space, less around the purpose of prison and the need for rehabilitation and treatment (cf Rogan 2011b: Chap. 9). This trend was exacerbated by the June 1996 deaths of crime reporter Veronica Guerin, who was shot in her car by drug lords on the outskirts of Dublin; and of detective Jerry McCabe, killed during an attempted robbery in County Limerick. The deaths transformed the criminal justice landscape, creating a challenging context for prison reform and for the advancement of the rights of children of the incarcerated, who can fall victim to what Goffman (1963) called a 'courtesy stigma' whereby the child shares the 'spoiled identity' of the prisoner. Guerin's and McCabe's deaths were a primary impetus for a major prison expansion programme (despite falling crime levels) and a policy of zero-tolerance policing, producing some of the symptoms of a 'culture of control' (Garland 2001). Dáil discourse with respect to the 1997 Criminal Justice Bill in June 1998 aptly described the mood:

We all readily acknowledge the tragedy of the death of Veronica
Guerin as being the trigger which focused everyone's attention on
taking a tough stand, particularly against the managers of crime and
the drug barons. Thankfully, as a result of the raft of legislation
brought in by the previous Government, supported by the then
Opposition, criminals are on the run. (Dep. Jim Higgins, Dáil Debate
on Criminal Justice Bill 1997: second stage, 11 June 1998, Vol. 492,
No. 3.).

Paradoxically, however, this emphasis by the state on security, logistics and
space was accompanied by measures that were more progressive, balanced and
humane. The Criminal Justice (Temporary Release of Prisoners) Bill 2001
defined the purposes for which temporary release was granted, including to
assess the ability to reintegrate into society and to prepare for release, and for
health and humanitarian reasons. It also laid out conditions to be factored in
when making decisions about temporary release, including the likelihood that
the measure would help the individual's reintegration into society and enhance
job prospects. When new Irish Prison Rules did come into effect, in 2007, they
were the first new national prison rules in sixty years, although the Council of
Europe's European Prison Rules had been a driving force for prison reform
since the 1970s. As mentioned, key institutional, management, oversight and
investigative agencies such as the Irish Prison Service, a national criminology
institute,[27] a Parole Board and an Inspector of Prisons, among others, were
relatively late in being established in contrast to other countries in Europe.
Even when the first Inspector of Prisons was named, in 2002, it wasn't placed
on a statutory footing until 2007, and the Inspector of Prisons was vulnerable
to restrictions on content (the 2007 Act authorised the Justice Ministry to excise

passages from the report which they deemed threatening to the security of the prison or the state).

In addition to lagging institutions and oversight agencies, there were also structural problems. From 1970 to 2011, the prison population in Ireland increased by 400 per cent (Irish Penal Reform Trust 2015).[28] The resulting overcrowding led to a lack of in-cell sanitation facilities, subjecting some prisoners to the practice of 'slopping out'. In 2006, approximately 72 per cent of prisoners had 24-hour access to toilets. In 2002, Ireland had one of the highest rates of recidivism in Europe, approximately 70 per cent.[29]   The first major study on recidivism in Ireland, led by Ian O'Donnell and launched by University College Dublin in December 2006, found that one in four prisoners had returned to prison within the space of a year; nearly one half were back behind bars within four years. According to the research, based on nearly 20,000 prisoner releases, rates of recidivism were highest among single, unemployed men under age 30 who had previously served a prison sentence.

Excerpts from Dáil debates on the Criminal Justice Bill 2001 and on the Irish Prison Service illustrate these and other shortcomings:

> Ireland has one of the lowest crime rates in Europe but one of the highest rates of re-offending. [. . .] Our prison system has been condemned for its low standard, yet it is one of the most costly in the world [. . .] Ireland's high rate of expensive imprisonment is primarily used to imprison young people and those not convicted of serious crimes. The main failing of the system is that it does not rehabilitate prisoners. We are not getting value for money. When prisoners are not rehabilitated, it is shown that they re-offend. [. . .] (Dep. Aengus Ó Snodaigh, Dáil Debate on Crim. Justice (Temp.

Release of Prisoners) Bill 2001 amending Criminal Justice Bill 1960, 16 May 2003, Vol. 566, No. 6).

Ó Snodaigh continues, appealing for the implementation of schemes that take children and families of prisoners into account:

> Legislation should require judges to consider and rule out other options before imposing a prison sentence. [. . .] Prisoners should be imprisoned no longer than necessary through the introduction of a system of parole with defined eligibility periods. A system of weekend and evening custody should be considered for suitable offenders so they can remain in employment and maintain a stable family life, support their family and pay restitution. (Dep. Aengus Ó Snodaigh, Dáil Debate on Crim. Justice (Temp. Release of Prisoners) Bill 2001 amending Criminal Justice Bill 1960, 16 May 2003, Vol. 566, No. 6).

4.5. Development and evolution of the issue: the role of framing integration

As the issue of children with imprisoned parents gained traction over the designated timeframe, family-specific (and later, child-specific) prison policies emerged, a development influenced in part by an interplay of both a top-down Europeanisation effect from European Union, Council of Europe and United Nations supranational bodies and discourse, as well as a "lateral" effect from the Northern Ireland peace negotiations. This interplay appears to have had a

bearing as well on issue-related factors such as human and child rights norms and the rights of prisoners; and on structural factors, such as inadequate facilities within the Irish prison estate. This dynamic generates a bottom-top-sideways-down "metaframe" for policymaking on behalf of children of the incarcerated in Ireland, which, as mentioned earlier, regularly ranks as one of the world's most globalised countries (Gygli et al. 2019) and is shown here and elsewhere as receptive to discourse and norms coming from Brussels, Strasbourg, Geneva and neighbouring countries in Europe. Vaughan et al., for example, highlight how the process of Europeanisation of human rights in Ireland, in association with domestic factors, has weakened a trend toward a more repressive model of criminal justice, as a result of greater oversight of policing by the Irish state (Vaughan and Kilcommins 2007: 437). Likewise, certain European/international norms influenced human rights norms and standards in the Irish Republic with respect to penology, prison practices and policies and the protection of children and their rights, reflecting Vink's concept of "framing integration" (2001)—the combined impact of broader European/international reform objectives. Objectives include action and discourse of the European Union[30] (EU funding streams, mainstreaming child rights, reducing violence for children, mitigating authoritarian regimes of member candidates); the Council of Europe (human rights, humanising detention, prison guidelines, notably the European Prison Rules, recommendations); and the United Nations (promoting child rights through the CRC; UN recommendations and report on parental incarceration). A sample of relevant discourse during Dáil debates illustrates the receptiveness to top-down rights standards and norms:

> This week, the Council of Europe's internationally respected
> Committee for the Prevention of Torture again shone a light on

Ireland's prisons. While Ireland has been transformed into a modern, wealthy First World nation in the past decade, some of our prisons have remained in a Dickensian time warp. [. . .] The report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has highlighted a prison system that is failing the prisoner, the prison officer and the tax-paying, law-abiding citizenry. (Dep. Charles Flanagan, Dáil Debate on Irish Prison Service, 11 October 2007, Vol. 639, No. 3).

Framing integration in this instance also involves *a lateral Europeanisation effect* from Northern Ireland and England potentially influencing human rights, child rights, child welfare and prison policies in Ireland over the designated timeframe. This effect was influenced in part by the terms of the Northern Ireland peace accords themselves, providing an impetus for the incorporation of the European Convention on Human Rights into Irish law, as required by the terms of the Good Friday Agreement:

I have been giving detailed consideration to the question of possible incorporation of the European Convention on Human Rights into our law, as required by the terms of the Good Friday Agreement. (John O'Donoghue, Dáil Debate, Human Rights Convention, 7 March 2000, Vol. 515, No. 6).

With the European Convention of Human Rights Act 2003's ultimately giving greater weight to the European Convention on Human Rights in Irish law, it

placed an obligation on all state entities, including the Irish Prison Service, to act in a manner compatible with the Convention.

In addition to the requirements of the Good Friday Agreement, this study suggests that during the years *preceding* the 1998 accord, the overall Northern Ireland peace process itself appears to have influenced elite discourse and the development of a human rights consciousness for prisoners incarcerated in the Republic of Ireland, a move toward greater normalisation, and the evolution of penal policies to address a lack of parity with respect to the right to contact with families and children and access to this contact, thus working to reduce what was perceived by some as a double standard in the preferential treatment given to political prisoners in Northern Irish and English prisons in comparison to prisoners in the Irish Republic. Government authorities for the most part maintained that there was parity between Northern Ireland and the Irish Republic in terms of human rights for prisoners and their families, as illustrated by discussions over a bill to allow Ireland to ratify the Council of Europe Convention on the Transfer of Sentenced Persons, 1995, as well as an EU agreement on the Convention's application by EU member states. In addressing the Dáil with respect to the Transfer of Sentenced Persons Bill, 1995, Justice Minister Owen claimed this parity with respect to human rights for prisoners, with access to the Convention being driven primarily by the peace process:

> The thinking behind the convention—and of the Bill—is that persons serving sentences in other countries may have to endure added suffering beyond that normally involved in the deprivation of liberty. Obvious additional difficulties can arise because of language barriers and cultural differences, but in the vast majority

of cases, the greatest additional penalty is the absence of contact by
the prisoner with family and friends. A major practical concern of
the convention is not just to ameliorate the conditions for prisoners,
but to alleviate the plight of their relatives and to make visiting
easier. I believe Members will equally welcome the fact that the
convention makes no distinctions based on categories of prisoners.
In other words, applications can be made under the convention
irrespective of whether there is a paramilitary background to the
offences for which people are serving sentences. (3 May 1995, Dáil
Debate, Transfer of Sentenced Persons Bill, 119: Second Stage,
Vol. 452, No. 3).

Yet despite this stated intention of ensuring parity between political prisoners
and "ordinary" prisoners, Northern Irish concerns continued to dominate, and
the peace process continued to drive the issue of prison and family contact.
Seventy-five per cent of family-related discursive interventions on prisons from
1995 to 1999 were in reference to Northern Ireland peace processes, reflecting
this two-tiered discourse on human rights and the needs of political prisoners'
families. In 1995 alone, of thirty-two discursive interventions related to family
and child contact of prisoners during Dáil Debates, excluding those in reference
to incest or juvenile justice, twenty-four were in reference to politically
motivated prisoners in Northern Ireland and England and the Northern Ireland
Peace Process whereas eight referred to prisoners in the Republic of Ireland
(one on the Council of Europe Treaty pertaining to the transfer of prisoners was
also recorded). This is demonstrated in Figure 4.2.

Figure 4.2. The influence of the Northern Ireland Peace Process on discursive interventions on family contact for prisoners tabled during Dáil Debates

DAIL DISCOURSE ON FAMILY CONTACT
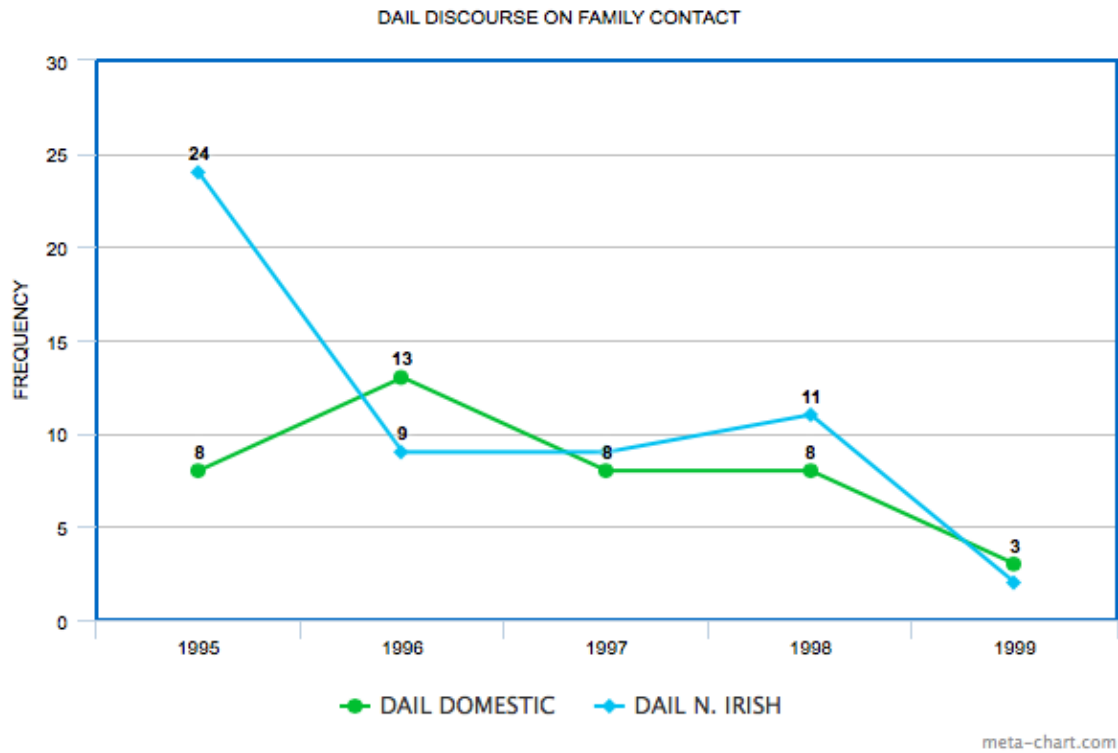
Source: own compilation

During this period, from 1995 to 1999, frames used in reference to children and families of prisoners evolved from those related to child protection (e.g., during prison security procedures) and the need to enhance prisoners' rehabilitation to those pertaining to the rights of political prisoners to maintain family contact and the need to facilitate this contact. Excerpts from Dáil debates on the Transfer of Sentenced Persons Bill (Amendment) 1997 illustrate this:

> Rehabilitation is a fundamental cornerstone of our penal code. Unfortunately, the lack of a transfer arrangement over the years

has ensured that the prisoner's family, not the prisoner, has suffered. Society has not given adequate recognition to the suffering of close members of prisoners' families. There are issues of cost, inconvenience, particularly for those families who visit prisoners in faraway jurisdictions, and loneliness not only for the prisoners but perhaps more particularly for their families. Families suffer more than anyone else. We have not given sufficient recognition to the suffering of the families of prisoners in Northern Ireland, particularly in the context of the peace process. (Dep. Charles Flanagan, Dáil Debate, Transfer of Sentenced Persons Bill (Amendment) 1997 [Seanad]: Second Stage, 17 December 1997, Vol. 485, No. 3).

And in reference to that same bill, using a rights-based paradigm:

The Bill is important as a confidence building measure but it is also concerned with giving prisoners a chance to serve their sentences as close to their families as possible. That is extremely important to them [. . . .] This issue [the question of the setting of tariffs] affects a number of prisoners and I intend to press the Minister and the Taoiseach to try to get these tariffs set because until that is done these people will be unable to apply for repatriation, which is extremely significant to them and their families. This may link the issue to the peace process, I do not want to do that, but it is important. This is a human rights issue. People want to be close to their families and families do not want to break the bonds with their relatives. [Dep. Cecilia Keveanay, Dáil Debate, Transfer of Sentenced Persons Bill (Amendment) 1997 [Seanad]: Second Stage, 17 December 1997, Vol. 485, No. 3.

Examining Figure 4.2. more closely, we see that from 1995 to 1996, children of the incarcerated within the Irish prison estate appear to have benefited from the momentum generated by discussion around children and families of political prisoners in Northern Ireland/UK with discursive interventions on children who have a parent in prison within the Irish prison estate increasing by nearly sixty-two per cent in one year, significantly higher than the number of interventions on children concerned by the Northern Ireland/UK prison estate in 1996. (Carmody and McEvoy's 1996 study on the background, health and substance use of women prisoners at Mountjoy provided a focus issue for prison-based issues, as did the suicide of a young female prisoner there that year). References to children with parents within the Irish prison estate frequently revolved around compassionate grounds, such as the illness of a near relative, a bereavement, a child's christening or first communion. A question tabled by Deputy Perry to the Minister of Justice and Law Reform on 30 March 1999, for example, queries whether a specific prisoner will be transferred 'in view of the fact that he has young children who have to travel a considerable distance to spend 20 minutes with him . . . .' (Dáil Debate, Prisoner Transfers, 30 March 1999, Vol. 502, No. 6). This momentum coincided with the publication of a seminal study in 1999 about the families of politically motivated prisoners in Northern Ireland (McEvoy et al. 1999). The first major survey examining the impact on families and children of the incarceration of politically motivated prisoners in Northern Ireland, it also challenged the finding of earlier studies that the families of politically motivated prisoners did not suffer the stigma that families of 'ordinary' prisoners often did. It also highlighted efforts among scholars and activists to view prison visits from the perspective of the child's right to maintain family contact.

Within this context, two relevant tracks or strands for children affected by parental incarceration were operating in parallel with respect to their rights

and well-being, creating a kind of "silo effect". One strand fell under the *criminal law regime* underpinning prison-related matters affecting child rights and well-being. The majority of such matters during the first half of the study's timeframe (1994-2003) revolved around children in detention, with the rights and needs of children of the incarcerated largely absent from discourse, except for occasional references as in the preceding quote from Dáil Éireann debates. Another strand fell under the *civil law regime*, underpinning developments for all children during the first half of the timeframe. Such developments included plans for establishing an Ombudsman for Children's Office, an idea floated in February 1995; progress on elaborating a national children's strategy; and awareness of the greater need for attention to and protection of all children, as per the issuing of Guidelines for the Catholic Church for reporting sexual abuse of children in January 1996. Framing integration, largely through the Northern Ireland Peace Process, introduced these two separate strands (civil law and criminal law) merged as one, albeit for politically motivated prisoners and their families, into the discursive framework in the Irish Republic. This brought a rights-based paradigm for children and families into discussions about the Irish prison estate and helped lay the groundwork for a first wave of national support policies for children of the incarcerated (1997-2003), detailed in sections to come. This influence would continue into a second wave of national support policies (2010-2014), to be examined in the following chapter.

4.6. Problematising children of the incarcerated: sample frames

During the 1990s, issues relevant to children with a parent in prison began to be problematised and framed in Ireland from three primary perspectives, albeit often subsumed under the term "family" of prisoners. The first two, a child as rights-holder and as a victim of poverty, can be categorised as *deontological* issue frames. The rights-holder frame attributes agency to a child, empowering them to be active participants in making claims based on their rights and holding duty bearers to account. The poverty victim frame, in contrast, relegates a child to a more passive role, subjected to adverse conditions and requiring intervention to remedy these adverse conditions. The third frame, according to which a child (and his or her relationship with the parent) is seen as a cost-benefit means for bettering society, is categorised as a *utilitarian* frame. Examples of how children with parents in prison have been construed as serving society include their role in helping to reduce the incidence of a parent's reoffending, thereby reducing the incidence of crime suffered by society, as well as decreasing the amount of money required by taxpayers to maintain prison costs. See Table 4.1.

Table 4.1. Primary issue frames for CIPs in Ireland 1994-2003

Frames	F1 Child as rights-holder (D)	F2 Child as victim/ poverty stricken (D)	F3 Child as means to better society (U)
Normative dimension (values, moral beliefs) – What sort of values underlie one's perception of social reality?	Right to maintain contact if separated from parent when in the child's best interests. Human rights, equality among children regardless of parental actions, right to emotionally secure base, right to healthy development, right to support from family and society	Needs protection, suffers from loss of parent, financial hardship, lack of sufficient resources, inadequate social protection, school performance can suffer	Facilitates resettlement of imprisoned parent, lower reoffending, less crime, safer communities, lower public spending[31]

D: deontological frame ; U: utilitarian frame
Source: Own compilation, with acknowledgment to Elissaveta Radulova, Paul Stubbs, Anka Kekez Kostro

Frames for parental incarceration in Ireland during the 1990s vary in terms of prevalence. The dominant frame used by issue entrepreneurs within the NGO and social movement arena, as well as by academics and thinktanks, in representing children and families of prisoners during this period, was that of a victim of poverty (F2), given the loss of the parent as the primary wage earner. This frame had its roots in a 1974 means-tested scheme, the Prisoner's Wife's Allowance, introduced to provide income support for women whose spouses were in custody or serving prison sentences greater than six months in length (Government Discussion Paper: Proposals for Supporting Lone Parents, 2006). This scheme ultimately was incorporated into the Lone Parent's Allowance scheme (LPA, 1990), and later—in a rhetorical shift—into the One Parent Family Payment scheme, effective January 1997. Children were now included as recipients in the scheme.

Building on this legacy and on statements in 1990[32] by the children's charity organisation Save the Children Northern Ireland highlighting child poverty and

the victimisation of prisoners' families, the Combat Poverty Agency submitted the following to Ireland's National Crime Forum on children and families in 1998:

> The families of offenders are deeply affected by crime. In particular, they pay a high cost, through a loss in income, disruption of marital and child-parent relationships, and isolation from friends and neighbours. [...] The significance of losing a main wage earner and of an immediate cessation of contact with a kin member places the families of offenders in a financially vulnerable situation (Crime and Poverty: Submission to the National Crime Forum, Combat Poverty, 1998: 11).[33]

The Combat Poverty Agency, described by some as a 'champion of the poor and the marginalized',[34] was an independent statutory body that served as a watchdog, abolished by the government in 2009 and subsumed into the Office for Social Inclusion.

4.7. Capitalising on opportunities: if the frame fits . . . .

Although the poverty frame (F2) continued to drive the issue of parental incarceration as the dominant frame for children into the 2000s, issue frames were evolving. A seminal report on children with imprisoned parents, published by the Dublin Institute of Technology, commissioned by the Mountjoy Visitors Centre (a joint project of the Society of St Vincent de Paul and the Society of Friends) and funded by the Combat Poverty Agency, twinned the

poverty frame with the deontological frame F1, the child as rights-holder, in 2002. An unexpected impetus for the latter came far from the realms of public discourse with the CONNECT project in 1998, funded through the European Union's INTEGRA action research programme and piloted by the Department of Justice in tandem with Governor John Lonergan of Dublin's Mountjoy Prison and the National Training and Development Institute. Introduced using a utilitarian frame (to assist individuals from unemployment back into the workplace, with a particular emphasis on socially disadvantaged communities), CONNECT carried along with it the deontological poverty victim frame (the parent's employment reducing poverty for the family). But it also hitched a deontological rights-holder frame to it: a needs assessment was carried out for prisoners as part of CONNECT, and the Options programme set up in response, which included parenting courses for prisoners.[35] In 2001, three parenting courses were provided at Mountjoy Prison, culminating in a Practical Parenting Day at the completion of each programme.[36] In addition, Strategy 7 of the Irish Prison Service's Strategy Statement 2001-2003 read: *Help prisoners maintain their relationships with family and the community. IPS commits to examine, by the end of 2001, the visiting hours and the potential for visits by appointment, including the possibility of Sunday visits. This review should also examine how visits can be tailored to suit the needs of those travelling long distances, for example from rural areas, as well as ensuring facilities are family-friendly.*

In short, by means of a utilitarian frame (promoting job opportunities and the rehabilitation of prisoners), a deontological frame for children (supporting children's healthy development through contact with an imprisoned parent when in their best interests) was incorporated into policymaking processes. CONNECT had been run at Mountjoy Prison since 1998, was eventually included in a 2000-2006 National Development Plan and was extended to five other prisons in 2001, but the deontological child rights/child welfare angle

(Options programme) was phased out for imprisoned fathers and their children midway, in 2003. Despite its success in reducing recidivism—a 2001 review of the pilot found that participants were ten times less prone to recidivism on release than other prisoners (Lawlor & McDonald, 2001)—in helping to ensure the reintegration of many male prisoners (as well as women, following its expansion to the women's prison), and in providing an impetus for an Irish Prison Service decision to refocus on work training following an internal review, the CONNECT project itself was discontinued in 2003.[37] Some policymakers questioned the wisdom of such a decision (see for example Dáil Debate, 20 October 2004, Vol. 590, No. 5).[38] Exacerbating the difficulties of imprisoned fathers in maintaining contact with their children was the status of single fatherhood itself: it wasn't only children, and specifically those with imprisoned parents, who had to be placed higher up on policy agendas, but natural unmarried fathers as well, the latter having been "disenfranchised" if children were born out of wedlock.[39] In profiling marital status, O'Mahoney's 1997 study of the Mountjoy prison population found that a mere 8.3 per cent of male prisoners were married, with O'Mahoney concluding that 'as a group these prisoners are far less likely to be married than the general male population of a similar age'. Prisoners who were single fathers, therefore, often faced double stigmatisation.

Although CONNECT was discontinued, John Lonergan's efforts to reform and humanise the prison setting, address the root causes of incarceration and introduce the child rights frame of maintaining family contact did not go unrecognised. In response to a criminal justice bill discussed in the Dáil in November 2002, Finian McGrath TD stated that he considered '[t]he John Lonergan approach' to be 'the way forward. He treats prisoners as human beings with dignity, but he also ensures that they are given responsibility. That is the key in trying to make an effort with people who have been damaged by

society.' Paudge Connolly TD went on to say that 'He [Lonergan] also stressed the need for making their sentences as positive an experience as possible. His reasoning was that they would then see imprisonment as a means to an end.' Green Party representative Ciaran Cuffe TD further commented in the debate that 'The Minister of State is presiding over the criminalisation of poverty. He is presiding over the criminalisation of social injustice, and he is not doing anything to combat the divides in Irish society that have brought about the imprisonment of people from a particular class or neighbourhood.' (Dáil Debate, Criminal Justice (Temporary Release of Prisoners) Bill, 2001: Second Stage, 21 November 2002, Vol. 557, No. 6.)

In the early 2000s, Ireland had one of the highest rates of recidivism in Europe, and the utilitarian frame whereby the child's and family's significant role in promoting a prisoner-parent's reintegration back into society following release grew increasingly prevalent. Meanwhile, a 2002 report drafted by The National Economic and Social Forum (NESF), an independent watchdog thinktank, cited three main reasons for supporting prisoner and family contact and for improving support for families, in the following order:

> ● *To better the prison atmosphere: it can help maintain prisoner morale while serving a sentence and also, linked to that, help to maintain order within the prison;*

> ● *To promote rehabilitation: families can play an important role in the rehabilitative process and the Sentence Management Plan, both in prison and post-release, and can offer considerable reintegration support to prisoners on release, both emotional and practical;*

> ● *To promote healthy family bonds: many prisoners have children, and on release will parent again, making it important that healthy family attachments are supported.*

— Forum Report No. 22 — Reintegration of Prisoners, 2002: 77

A third major shift among policy advocates occurred as the 2000s progressed, with greater attention paid to the NESF report's last point—the prisoner-parent reassuming their role as a parent following release. This shift brought the spotlight closer to children's well-being and developmental needs, underpinned by universal rights standards and concern for their best interests. It added leverage to the deontological child rights frame that emerged in the early years of the decade with the publication of a 2002 Dublin Institute of Technology report on children with imprisoned parents and found expression during the relatively brief duration of CONNECT's Options programme. Another focus event influencing frames included the publication in November 2000 of Ireland's first national children's strategy. Children in poverty, homeless youth and children in crisis were highlighted as a priority, thus promoting F2, at the expense of F1. Yet the child right's frame, still subservient to the utilitarian frame of reducing recidivism and fostering rehabilitation, would grow increasingly dominant as the decade progressed.

4.8. A closer look at Wave I national support policies (1997–2003)

Macro- and micro-analyses of the issue's evolution and policy processes in the late 1990s offer a look at actors' strategic use of discourses during issue advocate initiatives and throughout policymaking processes, from problem identification and gaining agenda status, to policy formulation, adoption and implementation. What is interesting is how framing integration introduced a rights-based paradigm into elite discourse, as part of policy processes. Rights-based issue frames wielded by social movement organisations on behalf of children affected by parental incarceration had greater frame resonance because of this "priming" of endogenous elite policy entrepreneurs "from

within" as a result of this frame integration, and notably the lateral influence of the Northern Ireland Peace Process.

This preliminary wave is characterised by a coexistence of issue frame F2 [deontological victim frame, child as a victim of poverty] and elite policy frame F3 [utilitarian, family and child as means for prisoner-parent's successful reintegration] and later on, in 2002, a greater frequency of F1 [deontological, child as rights-holder, needing specific support to ensure welfare and healthy development]. Frames F2 and F3 coexist during this preliminary wave, with a greater number of policy, expert and social movement organisation reports drawing on F2 (the child and family as victim of poverty, and other collateral repercussions of incarceration). F3 (child as means for prisoner-parent's successful reintegration) eventually emerged as the prevailing frame of policy elites, with the piloting and implementation of the EU-funded CONNECT project that aimed to promote rehabilitation through employment. The project was incorporated into a six-year national development plan, hitching onto it a child-focused parenting programme (Options) ultimately phased out in 2003. F1 (child as rights-holder) fails to garner sufficient attention among public representatives and is not embedded. See Figure 4.3.

Figure 4.3   National support schemes for children of prisoners (Wave I)

NATIONAL SUPPORT SCHEMES
FOR CHILDREN OF PRISONERS
WAVE 1
(1997-2003)

EU Integra Scheme

ECHR Act (1995-2003)

PEACE PROCESS

1997 Report on fathers at Mountjoy
Prison (F3)
2002 DIT/Combat Poverty Agency
Study (F1, F2)
2002 Re-integration of prisoners,
NESF report (F3)

CONNECT
project

1998-2000
(pilot)

Death of Veronica Guerin (1996)

CONNECT included in
National Development Plan
(2000-2006)

FRAME F3
Utilitarian (Reintegration)

2003: CONNECT parenting program (OPTIONS) phased out

Source: own compilation

Deliberations over the establishment of the European Convention on Human Rights (ECHR) Act 2003 in Ireland helped produce a top-down Europeanisation effect that influenced framing processes and policies during the first wave of national policies for children with imprisoned parents. The ECHR Act 2003 made the provisions of the convention directly enforceable through Irish courts and reinforced the protection of prisoners' rights, with an obligation of the Irish Prison Service to align its action with the state's obligations under the Convention. This influence is articulated during Dáil debates, particularly with respect to discussions over the Northern Ireland Peace Process,[40] the other major metaframe impacting framing processes during this first wave in a lateral Europeanisation effect on human rights norms and standards. As previously mentioned, discussions centred largely around the Transfer of Sentenced Persons Bill (Amendment) 1997,[41] the original Transfer of Sentenced Persons Act in 1995 fulfilling Ireland's European and international obligations, enabling the state to ratify the Council of Europe Convention on the Transfer of Sentenced Persons 1983. Elite discourse on the 1997 Transfer bill amendment emphasised state commitment to the principle that prisoners in Northern Ireland should be permitted to serve their sentences close to their families wherever possible, as well as the need to ensure open visits, even for high risk prisoners from Ireland in the UK, in line with the European Prison Rules drawn up by the Council of Europe.[42] Dep. Jim McDaid TD, for example, highlighted that Irish prisoners were held on up to 23-hour lockups, in breach of Rules 43 and 64 of the European Prison Rules (Dáil Debate, 19 March 1997, Vol. 476, No. 5). This emphasis on government policy aligning itself with humanitarian provisions of Council of Europe Conventions and Rules endured throughout 1998, with specific mention of children at times: a Dáil Debate on 26 May 1998 about prisoner transfers, for example, focused on the transfer of an Irish prisoner from the UK to be in greater proximity to his five-year-old son.[43] A clear lateral Europeanisation effect on domestic prison policies and the right to

family contact subsequently was observed, in March 1999, with the highlighting of the rights to family contact of an Irish prisoner in the Republic, and discussion of the prisoner's transfer to be closer to his young children, to avoid their travelling great distances for a twenty-minute visit.[44] Significantly, the principles expressed in the ECHR and the European Prison Rules with respect to the right to family contact were no longer being applied only to Irish prisoners in the UK but also to prisoners in custody in the Irish Republic and their families. Human rights consciousness, normalisation and parity of the protection of rights of prisoners and their families between Northern Ireland and the Republic were all increasing, as was protection of the rights of the families and children of prisoners within the domestic context. The European Union scheme, the EU Integra Programme,[45] provided a tool that allowed actors to capitalise on this growing awareness.

Within this context, collective action frames generated by Ireland's social movement arena played a key role in grievance mobilisation and transforming grievances into injustices as part of agenda-setting processes. The poverty frame (F2) found fertile territory with Ireland's introduction of a strategic approach to combating poverty in 1997 in publishing the first *National Anti-Poverty Strategy*. (*NAPS*). Dáil discourse in March 1997 highlighted the link between the anti-poverty strategy and prison, underscoring that some seventy-five per cent of prisoners in Mountjoy Prison come from five identifiable areas in Dublin in which housing estates proliferated.[46] Paul O'Mahony's 1997 survey, *Mountjoy Prisoners: A Sociological and Criminological Profile of Prisoners*, found that 72 per cent of male prisoners at Mountjoy were fathers, yet the primary focus of the publication was on the disadvantaged background of the prisoners (the low marriage rate of 8.3 per cent for male prisoners cited earlier in section 4.7. may have contributed to this prevalence of the poverty frame over

the fatherhood frame). A survey commissioned by the Department of Justice and conducted at Mountjoy by O'Mahony a year earlier found that eight per cent of prisoners interviewed were homeless on committal; the figure for 1996 was more than twice that of the three per cent figure for this category in his 1986 survey. A Combat Poverty Agency submission to the National Crime Forum in January 1998 cited poverty as a primary frame for families and children of prisoners: '*The families of offenders are deeply affected by crime. In particular they pay a high cost, through a loss in income, disruption of marital and child-parent relationships, and isolation from friends and neighbours.'* Reinforcing the F2 frame (child poverty) was the Open Your Eyes to Child Poverty initiative, a coalition of seven charity organisations[47] that pooled their efforts from 2000 to 2002 to promote greater awareness of child poverty and to effect change in public policy to eliminate child poverty. Reinforcing the F3 frame was the aforementioned *2002 National Economic Social Forum Report N°22* on the reintegration of prisoners, which highlighted the importance of maintaining family contact to support the prisoner's reintegration and rehabilitation processes, yet the report did incorporate elements of the F1 frame, highlighting how contact promoted the prisoner-parent's ability to parent following release. Significantly, at the same time, the Combat Poverty Agency's teaming up with the Dublin Institute of Technology in publishing the seminal report in 2002 incorporated a strong F1 child rights frame within a more general F2 poverty frame: *Parents, Children & Prison: Effects of Parental Imprisonment on Children*[48] provided an initial profile of the needs of children with imprisoned parents—to increase awareness of child poverty among these children and to produce recommendations that could be used to lobby for specific changes in prison policy, premised on a rights-based approach.

Key endogenous actor John Lonergan of Mountjoy Prison laid the groundwork for this enhanced rights- and family-based approach to parental incarceration, but many see him as having been too much of a visionary well before his time. He was joined by other champion actors like Aengus Ó Snodaigh TD, who called for alternative measures to custody for eligible prisoners to maintain a stable family life, among other measures.[49] As explored above, the first stage of the EU INTEGRA CONNECT project began at Mountjoy Prison for male prisoners in February 1998. First mentioned in the Dáil in April 2000, the CONNECT project was granted funding as part of the national development plan in May 2000. In 2001, three Parenting Courses were provided at Mountjoy Prison, culminating in a Practical Parenting Day at the completion of each programme.[50] By means of a utilitarian frame (family ties as a key to promoting the resettlement of a prisoner), a deontological frame for children (child welfare through contact with parent) was incorporated and found expression.

4.9. Conclusion

A first wave of national support schemes for children with imprisoned parents from 1997 to 2003 failed to be embedded and was eventually phased out. Reasons posited for this are multiple. Firstly, a) Competing frames: relevant issue frames were competing with one another [with a strong F2, weaker F1 and slight mention of F3, as indicated above], diluting their impact and misfiring as a result. National scale acquis for children of the incarcerated through prison-based parenting programmes were established, yet with child-specific issue frames (F1, F2) vying with one another, the child rights frame was overshadowed by the stronger poverty frame—the Combat Poverty Agency submission to the National Crime Forum cited poverty as the primary frame for

children with imprisoned parents in 1998—and found little resonance with elite policy frames. The steady utilitarian policy frame (F3) which saw children (and families) as an integral means to fostering the prisoner's reintegration ultimately became the dominant elite frame, providing a means for securing European-scale funding (CONNECT), with the weaker F1 child rights frame tacked on by savvy endogenous policy entrepreneurs and "champions", as part of the Options programme. See Figure 4.4.

Figure 4.4. Competing frames for Wave I national support policies for children with imprisoned parents (1997-2003)
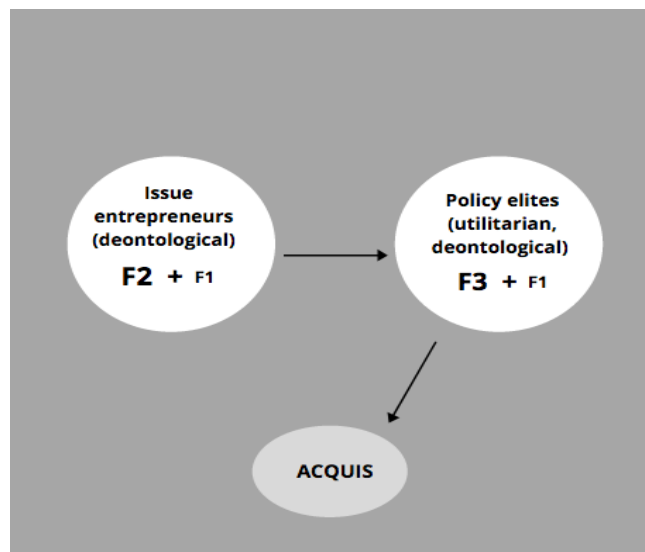
Key: F1 Deontological: child as rights holder, F2 Deontological: child as victim of poverty or impact of association with prison, F3 Utilitarian: family and child as means for prisoner-parent's reintegration

During the first wave, F1's expression in the Options programme was significant yet fleeting. After a spurt in 1997, possibly a result of framing integration, F1 found some resonance in 2002—the year the Dublin Institute of Technology research on children with imprisoned parents was published and the Ombudsman for Children Act 2002 passed. F1 eventually was overtaken by the steady F3 frame and the child-rights-based acquis phased out. Issue entrepreneurs' dominant F2 failed to find sufficient resonance in Dáil discourse. See Figure 4.5.

Figure 4.5. Wave I frames for children with imprisoned parents in Dáil discourse 1997-2003: F1, F2, F3
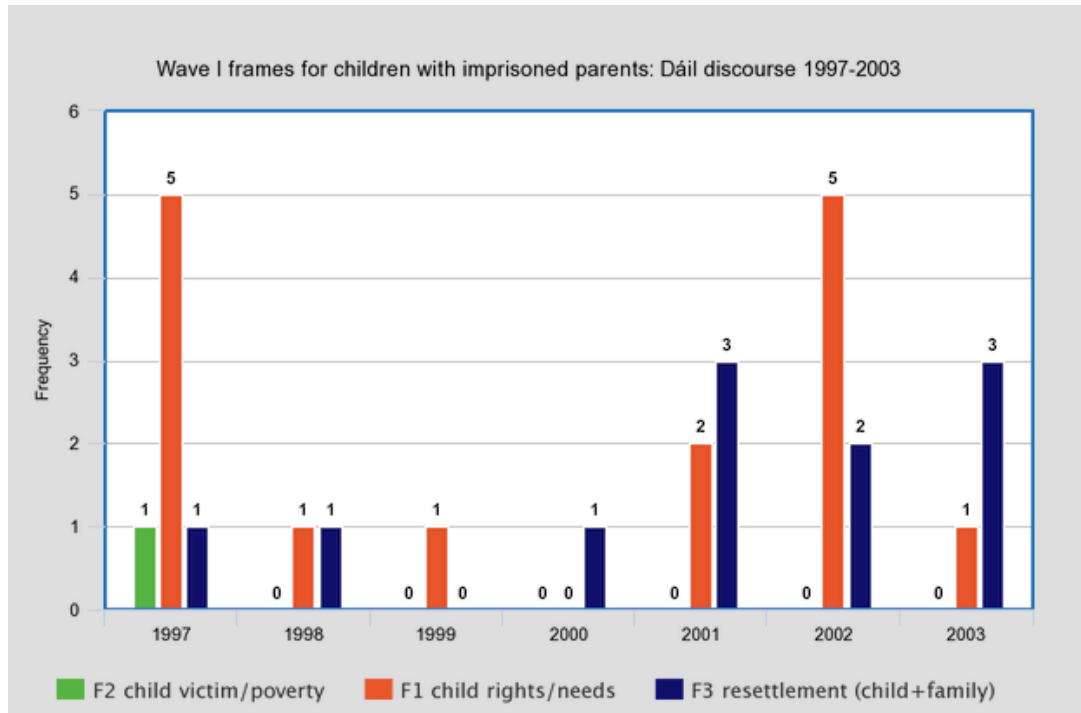
Source: own compilation. Graph refers to the Irish Prison Estate.

b) Secondly, a <u>critical awareness of the issue of parental incarceration and of the rights of children as discrete rights-holders had not coalesced sufficiently</u>. In addition to antagonists not being sufficiently 'demobilized' (Snow & Benford 1988: 198) following the zero-tolerance policy introduced in response to Veronica Guerin's and Jerry McCabe's deaths in 1996, the issue of children separated from a parent in prison remained overshadowed by issues related to juvenile justice. Discussion about children in prison overshadowed discussion of topics relevant to children and families affected by parental incarceration. There were big issues to grapple with in terms of juvenile justice. The Children

Act 2001 raised the age of criminal responsibility from seven to twelve, but there were subsequent efforts to lower it to age ten and children were detained in an adult prison. In addition, according to Section 11 of the Ombudsman for Children Act 2002, children in the criminal justice system were outside the remit of the Children's Ombudsman, who could only examine complaints made by those detained in Children Detention Schools. When the office was established, in 2004, there was, therefore, a need to raise the profile of youth in prison given this loophole in the complaint mechanism, overshadowing the issue of children separated from a parent in prison. This most likely explains the higher frequency of Dáil debates focusing on children in prison than on children separated from an imprisoned parent. See Figure 4.6.

Figure 4.6. Dáil discourse references to children in prison 1995-2002
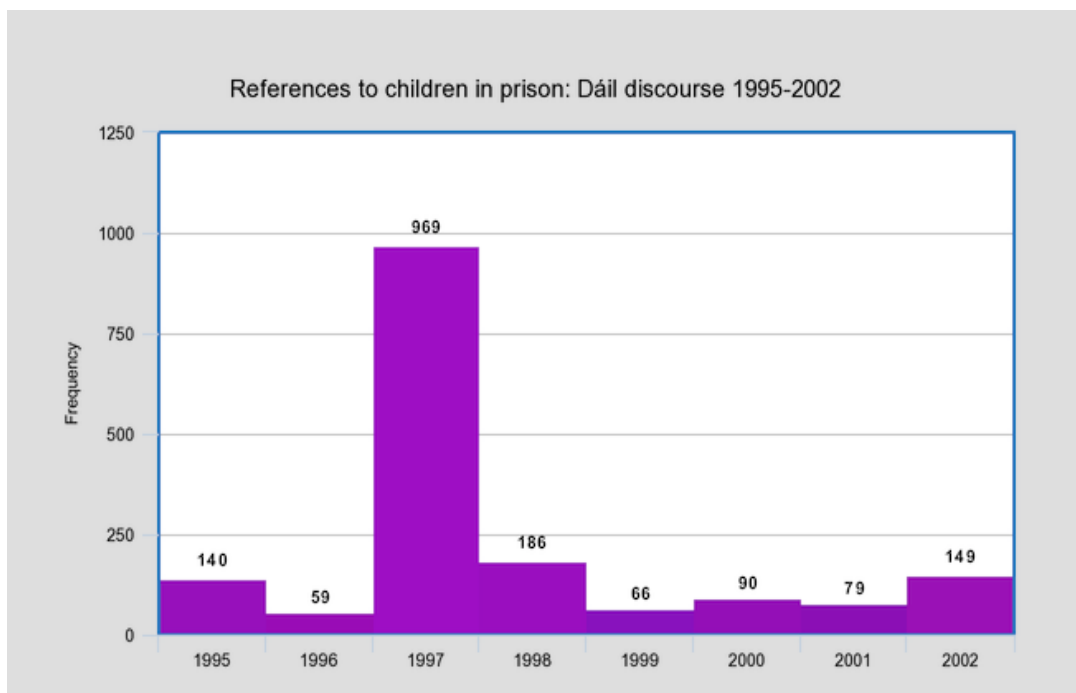
Source: own compilation

c) Structural barriers impeded policy processes for children with imprisoned parents while lagging child-rights institutions, strategies and legislation, as well as criminal justice and penal institutions and oversight mechanisms, contributed to the prevailing inertia. In addition to low standard conditions of the Irish prison estate, the Irish Prison Service was only established in 1999; the first Institute of Criminology in 2000; a Parole Board in 2001 and the first Inspector of Prisons named in 2002. The latter was not given a statutory footing until 2007.

Ireland's first-ever national children's strategy, *The National Children's Strategy: Our Children – Their Lives, 2000-2010,* drove policy for children during that timeframe and earmarked significant resources for developing infrastructure relating to children. It did spur momentum to effect change for children and contribute to a shift in attitudes with respect to child rights and the need to invest in quality support services, yet it was not rights-based, lacked an implementation plan and faced challenges in terms of cross-agency collaboration. Delivery on certain objectives was devolved to the local level, resulting in some inconsistencies of service provision. Significantly, many of the positive developments in infrastructure for children emerging from the strategy came on the heels of the first wave of national support policies, but they came too late to exert a positive influence on policy processes and enhance the resonance of the child rights frame (F1) during that wave. The Office of the Minister for Children and Youth Affairs was established in 2005, the first Ombudsman for Children assumed her post in 2004, the Irish Youth Justice Service in 2005, for example. Debates in the Dáil over the development of these child rights and child welfare mechanisms, institutions and strategies did enhance awareness of the seminal role these instruments play and their far-reaching implications for the health, education and welfare of children and in vindicating their rights as provided in the CRC. In addition, the Commission to

Inquire into Child Abuse Bill, 2000 was published. All of these mechanisms would play a crucial role in the emergence and evolution of a second wave of national support policies, from 2010 to 2014, which will be examined in the following chapter.

5. CHAPTER FIVE: From glass walls to 'windows of opportunity'

5.1. Exploring Wave II policies for children with a parent in prison

If Wave I was a lesson in strategy, Wave II brought together factors for success in terms of frame resonance and frame fit. How were policies put into place, needs identified and various solutions proposed for the issue of children with imprisoned parents? How did the issue go from a non-issue to one involving children challenged by certain conditions, then defined as a problem using a variety of different frames, moving higher up the political agenda, fading in and out of view? How did a policy window open, the deontological child welfare frame gain the upper hand and an explicit government commitment to action be formulated? This chapter pulls together these far-from-linear processes and some of the participants that drove them.

Poverty levels of children affected by a parent's imprisonment provided a systematic indicator of the scope and scale of the problem throughout both Wave I and Wave II, yet did not provide a sufficient catalyst for sustained remedial action. The CONNECT project in Wave I was an attempt to remedy this problem by boosting the employment options of prisoners while promoting child-parent contact, yet as a solution, it faded from view. In Wave II, as seen in the previous chapter, the poverty frame remained a dominant frame wielded by policy entrepreneurs to drive the issue of parental incarceration for children in Ireland during the 2000s. It co-existed with the utilitarian frame of reducing recidivism by means of sustained family ties with the imprisoned parent, a frame with great resonance among many

policymakers in Ireland, as we have seen. The 2007 *Whitaker[51] Report Twenty Years On*, a review of penal policy since the 1985 Whitaker Report[52]—seen as a benchmark for measuring progress in prison policy—highlighted the issue of children affected by the imprisonment of a parent, drawing on the poverty frame, and highlighting consideration for imprisoned fathers and their families:

> Research has shown that the vast majority (70 per cent) of male prisoners in Mountjoy, to take just one example, are fathers[53]—yet few of us seem to consider their families. From the perspective of children and young people, being reared in a one-parent family means that they are three and a half times more likely to live in poverty than anyone else. Of the one in ten children who continue to experience poverty in Ireland today, one in three is from a one-parent family.[54] Those left behind to rear children alone speak of the double stigmatisation of parenting alone and of having a partner in prison.[55]

Many studies and reports during this period continued to refer to children and families of prisoners as 'hidden or forgotten victims of crime', emphasising the adverse economic impact of incarceration on them, exacerbating 'their disadvantage.'[56] An Irish Prison Chaplains' report in 2007 described the family unit as being 'shattered' by the imprisonment, with children suffering acutely from the loss of the parent, 'far-from-friendly' visits conditions and a prison regime offering little if no support.[57] Some cited other studies representing children with imprisoned parents as being vulnerable to transgenerational crime and at risk to anti-social and delinquent outcomes,[58] highlighting children's 'diminished life-chances' as well as an 'increased likelihood that they will become a prisoner' themselves at some stage of their lives.[59] The Limerick-based NGO Bedford Row Family Project published pioneering

qualitative research in 2008 on the needs of families affected by imprisonment, highlighting those of children and the stigma, shame and emotional costs to families of incarceration and urging support.[60] Based on interviews with family members and former prisoners and key staff, the study helped fill a gap in research devoted to exploring the impact of incarceration on families in Ireland. Significantly, from a frame-analytical perspective, the study's executive summary brandished a utilitarian frame right off the bat, emphasising the value of supporting families to help prevent crime and preclude intergenerational criminal activity. Yet the research itself, while confirming the poverty and reduced recidivism frames, urged in the section on children that the 'rights of children affected by a parent's imprisonment be addressed, given that Ireland had ratified the UN Convention on the Rights of the Child'.

Prison policy in general throughout most of the 2000s continued to prioritise increasing the number of available prison places, with less emphasis on fostering reintegration or reducing prison committals, particularly short sentences for non-violent prisoners. Mandatory sentencing was higher up the agenda than rehabilitation of prisoners was, and a new Irish Prison Service Drugs Policy & Strategy — Keeping Drugs Out of Prisons impacted visits for children and families by introducing greater control over who could visit and how many visitors were allowed, while beefing up visits security and supervision:

> [N]ew visiting arrangements are in place in almost all closed prisons whereby only persons who have been nominated by the prisoner and pre-approved by the Governor are permitted to visit.

> Facilities for screened visits have been installed in all closed prisons. In accordance with the Irish Prison Service Drugs Policy and Strategy, prisoners in respect of whom the Governor is satisfied that there is no risk of contraband being passed may be facilitated with open visits. —Minister for Justice, Equality and Law Reform Brian Lenihan, 17 April 2008

Ireland continued its trend to over-incarcerate, with high percentages of committals receiving very short sentences, and imprisonment being used much more frequently than non-custodial measures.[61] Dep. Pat Rabbitte TD pointed out during the Dáil Debate on Ireland's Prison Building Programme (27 May 2008, Vol. 655, No. 3) that '[F]or every ten prisoners serving a sentence for a headline crime such as murder, manslaughter and sexual offences, there are 12 in prison for property crimes without violence.' He queried whether it would not be more appropriate 'for the Government and the prison authorities to focus on how the number of prison places might be reduced, and how to extend the use of alternative penalties as a more effective response to those who come before the courts?'[62]

In short, a commitment to prison expansionism prevailed from 2005 to 2009, backed by many key decision-makers.[63] Government and media maintained that these trends reflected public demand, flying in the face of the findings of a February 2007 survey entitled *Public Attitudes to Prison,* commissioned by the Irish Penal Reform Trust. Contrary to government and media claims, those surveyed preferred to allocate resources toward crime prevention rather than toward prisons, opting for less punitive measures for non-violent prisoners such as drug programmes and community service. Responses of constituents

of the three main political parties more or less converged, particularly concerning the use of prison as a last resort. See Figure 5.1.

Figure 5.1. Survey on public attitudes to prison – February 2007

Agreement With Statements Regarding The Penal System X Party Support
Base: All Respondents

"Increasing the number of people in prison will reduce crime"

	Total (1,000) %		Party Support F.F. (294) %	F.G. (150) %	Labour (76)* %
Completely agree (5)	10		12	14	3
Agree somewhat (4)	20		21	21	18
Neither (3)	13		13	11	16
Disagree somewhat (2)	22		22	18	18
Disagree completely (1)	32		28	32	41
Don't know	4		5	3	4
Mean Score	2.54		2.67	2.66	2.21

* Caution: Small Base

Q. Using a scale of 1 to 5 where 1 is completely agree and 5 is completely disagree, to what extent do you agree or disagree with the following statements.

tns mrbi

the sixth sense of business"

TNS mrbi/155055/Irish Penal Reform Trust – Public Attitudes to Prison/February 2007

12

Source: Irish Penal Reform Trust — Public Attitudes to Prison, February 2007

Yet prison expansion served as a vehicle to raise family contact issues for imprisoned women higher up policy agendas, reaching greater critical mass in particular in relation to ongoing discussions around government plans to

explore relocating the Dóchas Centre from Mountjoy Prison near Dublin city centre to Thornton Hall, in north County Dublin. Although there was a paucity of data on women prisoners at the Dóchas Centre at the time, a majority of them, it is suggested, came from inner-city Dublin.[64] Red flags were raised over perceived difficulties in maintaining family contact between children and their mothers in prison, given the more significant challenges in accessing the prison. There were also concerns over increased stigmatisation of children and families whose only means for reaching the prison would be a designated bus service. Senator Ivana Bacik highlighted this concern in 2008 during Seanad debates on the prison building programme at Thornton Hall, claiming that the prison's location 'could lead to stigmatisation, particularly of children of prisoners, who are to be taken to Thornton Hall on a special prison bus'. (Seanad Debate, 29 May 2008, Vol. 189, No. 21, the comments being later reiterated during a Joint Committee on Justice, Equality, Defence and Women's Rights debate, 17 June 2008).

These concerns over children accessing Thornton Hall also surfaced during Dáil debates, as well as those by the Joint Committee on Justice, Equality, Defense and Women's Rights, comprised of Dáil and Seanad members, and moved issues relevant to parental incarceration higher up policy agendas. As Deputy Dermot Ahern highlighted the role that the Dóchas Centre would play in serving as a model for the new prison at Thornton Hall, Deputy Joan Burton interjected 'Where will their children be?' and 'How will they get out to Thornton Hall?' [Dáil Debate, 27 May 2008, Vol. 655, No. 3]. It was suggested during discussions that women not be housed at Thornton, given their need to be held 'within easy access of visiting families and children'; and that visiting hours at Thornton be scheduled 'at weekends and in the evenings of specified weekdays' to allow 'maximum opportunities for visitation by families' to

individuals housed there—thus acknowledging the importance of male prisoners receiving regular visits from children and families.[65]

Another impetus for the focus on women came from a lateral Europeanisation effect, with the publication of the 2007 Corston Report,[66] a report on female prisoners in the United Kingdom by Baroness Jean Corston of the House of Lords, the recommendations of which were largely taken up by the British government to guide penal policy. The report recommended that prison was not 'appropriate' for the majority of women prisoners and highlighted the risks of a woman's losing her home and her children being placed in care. Senator Ivana Bacik and Deputy Mary O'Rourke met with Corston, and in turn recommended that Ireland follow suit and consider alternatives to custody, pointing out that women prisoners in the republic, for the most part, were non-violent, committed for minor offences and received short prison terms. They highlighted the risks to children following a mother's imprisonment and cautioned against the 'warehousing of women' with the proposed construction of Thornton Hall and its greater capacity. Some 960 women were committed to prison in 2006,[67] representing what Bacik described as '2,000 to 3,000 children in Ireland who are left motherless for a number of days, nights, weeks or months'.[68]

Further focus on family ties came with the resignation of Dóchas Centre governor Kathleen McMahon, in May 2010. She claimed that the prison was being subjected to 'a dictatorship' by the Irish Prison Service,[69] making her role there 'completely impossible',[70] with a regression on policies such as temporary release to low-risk prisoners for the purposes of attending their child's confirmation or communion ceremonies under consideration.

In short, frames specifically for children with imprisoned parents in elite

discourse during this period were either subsumed into concerns about women prisoners or families in general; or linked primarily with child poverty, stigma or victimhood. An emphasis on child rights was still far off, with eligibility for contact and family visits frequently being determined on a merit basis when issues concerning children with imprisoned parents were raised during Dáil debates.

When Deputy Ciarán Lynch queried the Minister for Justice and Law Reform as to the number of children with a parent in prison each year and policies in place to mitigate any adverse impact on children caused by a parent's imprisonment, for example, Justice Minister Dermot Ahern explained that the Irish Prison Service did not collect statistics on this group of children; highlighted the Service's aim of supporting prisoners' relationships with their families 'in as normal a manner as possible'; and described the family visit system as 'incentive based' and 'very successful';

he added:

> Prisoners are facilitated with non-screened family visits if they take a full and active part in the regime available and if they have not had a disciplinary report for a period of time in advance of the family visit taking place.[71] (Dáil Debate, Prison Committals, 16 December 2010, Vol. 725, No. 3)

5.2. Accountability and structural and administrative reform

Some groundwork was being laid for progress within the realms of both child rights and prison policy in the mid-2000s. Both policy fields still operated within distinct and parallel "silos", yet more frequent overlaps carved out new spaces of awareness and gradually began to open up the political and social landscape to change, a knock-off effect being enhanced resonance of child-specific frames. As a backdrop, following on the heels of the creation of the National Children's Office to oversee implementation of the November 2000 Children's Strategy and the establishment of the Children's Ombudsman's Office in 2004, the Committee on a Constitutional Amendment for Children began work in 2007 as did a Minister of Children project to help disadvantaged families.[72] New service providers were set up, such as St Nicholas Trust, a charity to support the relatives of people sentenced to prison, established in Cork in 2008.

In June 2007, former Minister of State for Children Brian Lenihan was named Minister for Justice, Equality and Law Reform. His predecessor, Michael McDowell, had ushered in sweeping changes to the criminal justice landscape with the Criminal Justice Acts of 2006 and 2007, new Prison Rules signed in May 2007, and an explicit intention to eliminate what he described as 'Victorian conditions' across the Irish prison estate. The Prisons Act 2007 established the Office of the Inspector of Prisons on a statutory basis and strengthened independent oversight to a degree, allowing civil society organisations traditionally serving as watchdogs for structural prison conditions, such as the Irish Penal Reform Trust, to broaden their focus to other aspects of prison reform. The establishment of an independent prison management structure meant that independent inspections in principle would

be carried out (although the Act authorised the Justice Ministry to excise passages from the Inspector's report if seen as jeopardising state or prison security, and ministers regularly sidelined critical reports). Carrying out independent prison inspections had been a key recommendation of the 1985 *Whitaker Report*, again, a benchmark for measuring progress in prison policy; yet the follow-up 2007 *Whitaker Committee Report Twenty Years On* lamented the lack of progress with respect to these inspections, in addition to prisoner rehabilitation and reducing social exclusion. While acknowledging that certain proposals featured in the 1985 *Whitaker Report* had been implemented, resulting in mothers in prison in theory in 2007 having greater access to contact with their children, fathers had been left behind, even with the assistance of civil society organisations as well as research highlighting the need for supporting families.

Greater awareness of the need for prisoners' rights in the Irish prison estate seemed to be gaining traction in a move to open up prisons to scrutiny. Aengus Ó Snodaigh asked the Minister for Justice, Equality and Law Reform about government policy on granting human rights monitoring groups like Amnesty International and the Irish Penal Reform Trust access to Irish prisons for the purposes of monitoring compliance with human rights protections and obligations and to conduct research:

> The committee vets all such [research] applications from the point of view of scientific merit and protection of the human rights of prisoners including privacy and personal dignity. There is no restriction placed on the IPRT or Amnesty International forwarding future research proposals to this committee.

—Minister for Justice, Equality and Law Reform Deputy

McDowell, Dáil Debate, Prison Research, 27 November 2002,

Vol. 558, No. 2

The concept of 'human dignity', it has been argued, is one of the central organising principles of human rights and plays a key role in the development of human rights adjudication.[73] Habermas, for example, sees human dignity as providing 'the moral source from which all rights derive their meaning' (Habermas, 2010: 466). Although Ireland had incorporated the concept of dignity into the Irish Constitution, in 1937, with the Catholic Church and its social teaching believed to be a major influence,[74] the notion of 'dignity' was not used regularly in Dáil discourse in reference to prisoners within the Irish prison estate until 2002 and 2003 (with the exception of 1999–2000 references to suicide in prison and to prison officers' attitudes toward non-nationals); prior to this period, it was used most frequently in reference to political prisoners incarcerated in Britain. The adoption of the European Convention on Human Rights Act 2003, signed into law in June 2003, as required by the terms of the Good Friday Agreement, may have had a potential Europeanisation effect on Dáil discourse with respect to human rights and dignity, as would the Council of Europe Committee for the Prevention of Torture (CPT), and the UN Committee Against Torture and Committee on the Rights of the Child. The influence of Mountjoy Prison Governor John Lonergan in enriching prison-related discourse on dignity was also acknowledged within the Dáil, his treatment of prisoners as 'human beings with dignity' being 'the key in trying to make an effort with people who have been damaged by

society', as indicated in the previous chapter (Dáil Debate, 21 November 2002). The concept was later also used in reference to the treatment of children and families, as indicated by Minister for Justice and Equality Alan Shatter's response to Deputy Maureen O'Sullivan's query about training provided to prison staff for dealing with the families of prisoners [Dáil Debate, Prison Staff, 11 July 2012, Vol. 772, No. 2.]:

> The training emphasises the inherent human rights and dignity of every member of the prison community, which includes all visitors to our prisons.

He went on to describe the Irish Prison Service's current work drafting a 'Dignity at Work Charter' and a 'prison wide dignity and respect awareness programme for all prison personnel' that highlights a requirement 'to treat all members of the prison community, including visitors, prisoners' families, staff and management with dignity, respect, courtesy and a professional manner'. These efforts were articulated in a new Irish Prison Service vision statement in 2012, as part of a new three-year Strategic Plan.[75]

5.3. Unleashing the watchdogs

The Ombudsman for Children's Office Ireland was still limited in playing a more active watchdog role for children with imprisoned parents, the issue of children in detention being placed higher up the agenda, given the restrictions to the Ombudsman's investigative powers in response to individual complaints made by or on behalf of children in prison, as per the terms of the

Ombudsman for Children Act 2002, Section 11 (1) (e) (iii). The issue of expanding the Children's Ombudsman remit to include youth justice was highlighted in the first published Children's Ombudsman's Office report following the office's establishment and in Dáil discourse in response to its publication:

> We must look at the limitations and exclusions in her role that she [Ombudsman for Children Emily Logan] has raised, particularly the limitations that apply to children in certain places of detention [...] Central to the office's concern is that these limitations will remove from its investigatory remit some of the most vulnerable children and young people in the State.
>
> —Deputy Neville, Dáil Debate on the Ombudsman for Children,
> 29 June 2005, Vol. 605, No. 4

The restricted remit would remain an issue for years. The Department of Children and Youth Affairs, established in June 2011, took over responsibility for the detention schools operated by the Irish Youth Justice Service in January 2012. Beginning in May 2012, remanded and sentenced 16-year-old boys were to be held in child detention facilities at Oberstown instead of St Patrick's Institution. (Responsibility was transferred to Oberstown from the prison system for all 17-year-old male remands in March 2015.) In June 2012, the subsection of the Ombudsman for Children Act 2002 that excluded children held in St Patrick's from the Children's Ombudsman's complaints remit was removed.

Some traditional prison watchdog bodies, previously working to advance structural reforms across the Irish prison estate, were freed up to a certain extent by accountability and inspection bodies being given statutory footing. The Irish Penal Reform Trust, as mentioned, could now expand its focus away from structural inadequacies and highlighting gaps in minimum standards across the Irish prison estate and drive home the need for more sweeping penal and societal reforms to strengthen human rights, child rights, resettlement, social cohesion and crime prevention through early interventions and support for marginalised populations. It conducted a study from 2009–2010 to examine the provision of reintegration services and support for prisoners leaving custody in Ireland, and to assess progress in implementing recommendations of the 2002 National Economic and Social Forum report *Re-integration of Prisoners,* for example. The report addressed the lack of systematised policies to support resettlement and the need to reform how the state supports former prisoners, 60 per cent of whom go on to reoffend, by some estimates.[76] In short, the Irish Penal Reform Trust's investigative focus from 2001 to 2012 moved in part from structural and health-based topics to more rights-based prison and societal reform. See Table 5.1.

Table 5.1. IPRT reports, inquiries, surveys 2001 to 2012

2001	Solitary confinement of mentally ill prisoners
2002	HIV AIDS and Hepatitis C in Irish prisons
2003	Introduction of observation cells for mentally ill and suicidal prisoners
2004	Dublin Declaration on HIV/AIDS in prisons in Europe, Central Asia[77]
2005	Immigration-related detention in Ireland[78]
2005	Sentencing in the district courts, 2003
2006	Alternatives to Custody
2007	Survey: Does prison stop crime? Is it effective?
2009	Penal policy with imprisonment as a last resort
2009	Planning the future of Irish prisons
2010	Reintegration of prisoners in Ireland
2010	Investment in prevention and early intervention
2011	Briefing on spent convictions[79]
2012	*Know Your Rights*: rights of prisoners[80]
2012	*Picking Up the Pieces*: Rights and needs of children with imprisoned parents

Source: own compilation

5.4. Bringing children's rights centre stage

Along the same vein, in April 2011, the Irish Penal Reform Trust joined forces with the Irish Council for Civil Liberties to address human rights issues in a Joint Shadow Report to the First Periodic Review of Ireland under the UN Committee against Torture (UNCAT).[81] The report, endorsed by thirty-one Irish non-governmental organisations, drove home the need for rights-based policies and interventions for prisoners and contained fifty recommendations to the government for action to meet state obligations under the UN Convention Against Torture, including the establishment of an external complaints system by means of a Prisoner Ombudsman or extending the remit of the existing Office of the Ombudsman.

Within this rights-enriched context, two developments would serve as key focus events in galvanising national awareness on the need for stronger protection of children and their rights, most likely enhancing awareness and thus resonance for children impacted by parental incarceration. Firstly, greater awareness of the vulnerability of children in state care in Ireland took on greater proportions with the publication in 2009 of the final report of the Commission to Inquire into Child Abuse[82] (The Ryan Commission), concluding that physical, emotional and sexual abuse was 'endemic' in Irish institutions, as was the neglect of children and the release of a higher number of deaths in 2010. Secondly, preparations for a national referendum on the place of children in Ireland's Constitution and the need to bolster their rights through the Thirty-First Amendment, proposed by the Taoiseach on 3 November 2006, began. For the former, information on a number of deaths of children in state care became public in 2010, with official data from the Health Service Executive (HSE) indicating a much higher number of children who had died while in state care since 2000 than previously thought. An independent Child

Death Review Group was established in 2010. Coinciding with this, two hundred and eleven children and young people living in the care of the state (or having experienced state care[83]) and nine children with severe disabilities participated in nationwide consultations about their experiences, resulting in a July 2011 report recording their experiences—*Listen to our voices! Hearing children and young people living in the care of the State*.[84] These and other child welfare events reached a national audience; according to an Ombudsman for Children's Office survey published in 2012, seventy-two per cent of Irish people believed that the state could do more to support children's rights.[85]

For the referendum, momentum was gathering on amending the Constitution to expressly recognise children as rights-holders, an idea that harked back at least to Justice Catherine McGuinness highlighting the need to amend family provisions in the Irish Constitution within the context of a major incest inquiry and recommending that 'a specific and overt declaration' of children's rights be incorporated.[86] The Report of the Kilkenny Incest Investigation of 1993, chaired by Justice McGuinness, stipulated:

> 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 parents than to the rights of children. We believe that the Constitution should contain a specific and overt declaration of the rights of born children. We, therefore, recommend that consideration be given by the Government to the amendment of Articles 41 and 42 of the Constitution so as to include a statement of the constitutional rights of children.[87]

Following on that, the need to make the best interests of children more explicit in the Constitution as per Article 3(1) of the CRC was reiterated by the Constitution Review Group in 1996, a body of experts consisting primarily of lawyers, with its recommendation that 'an express obligation to treat the best interests of the child as a paramount consideration in any actions relating to children' be incorporated into the Constitution.[88] This call for a best interests standard at constitutional level was bolstered by the UN Committee on the Rights of the Child in 1998 when it recommended that the state 'take all appropriate measures to accelerate the implementation of the recommendations of the Constitutional Review Group for the inclusion of all the principles and provisions of the Convention',[89] thus stepping up international pressure to strengthen protection of children's rights.

Work to reform the Constitution continued with an All-Party Oireachtas Committee on the Constitution[90] tasked with reviewing those articles pertaining to families. Many saw the wording of the proposals for reform expressed in the committee's *Tenth Progress Report: The Family* and in the Twenty-Eighth Constitutional Amendment Bill 2007, considerably diluted with respect to the wording of CRC Article 3(1).[91]

The first Ombudsman for Children, Emily Logan, corroborated this need for stronger wording. Calling for reinforcing the position of children's rights inherent in the Constitution during her first full year in the role (2005)[92] and continued efforts throughout her mandate, Logan did not support the proposal to amend the Irish Constitution with respect to child rights, the Twenty-eighth Amendment, in 2007, because in her opinion the wording 'did not go far enough in advancing certain fundamental children's rights':[93]

This is why, in addition to an express statement of children's rights, I pressed in particular for the inclusion in the Constitution of the two bedrock principles of children's rights: the obligation to consider the best interests of children when making decisions affecting them and the right for children to be heard across civil, public and judicial administration.[94]

In the introduction to the 2012 Annual Report of the Office of the Ombudsman for Children, the year in which the national referendum was held, Logan described the obstacles and challenges encountered during the amendment campaign, as well as the context that enabled the amendment to find expression:

It is impossible to isolate a single catalyst for the change that culminated in the publication by an Oireachtas Committee on the Constitutional Amendment on Children in 2010 of a proposal to amend the Constitution. It resulted from an amalgam of occurrences dating back years in Ireland's shameful history of mistreating children, as well as the fall of the legislative framework relating to statutory rape in 2006 as a result of the decision of the Supreme Court in the CC case. However, central to the shift in the public psyche about children, in my view, is the chronicling of

egregious breaches of the fundamental human rights of thousands of voiceless children in Ireland in a number of reports published over the last number of years.[95]

Table 5.2. Some key child welfare events in Ireland 1995 to 2012

YEAR	EVENT
1995	Kelly Fitzgerald Report [child abuse]
1995	Family Law Act
1998	CRC Concluding Observations: Ireland[96]
1997	Children Act
1999	Children Bill
1999	Commission to Inquire into Child Abuse (CICA, Laffoy)[97]
2000	Commission to Inquire into Child Abuse Act
2000	National Children's Strategy (2000-2010)
2001	Children Act, 2001
2002	Ombudsman for Children Act
2004	First Child Ombudsman (Emily Logan) assumes her post
2004	Child Development Initiative Report
2005	Office of the Minister for Children & Youth Affairs established
2005	State of the Nation's Children launched[98]
2006	State of the Nation's Children: Ireland 2006
2007	28th Constitutional Amendment Bill [child protection][99]
2008	State of the Nation's Children: Ireland 2008
2009	Ryan Report published [child abuse]
2010	Oireachtas Committee on the Constitutional Amendment on Children proposal to amend Constitution
2010	Child Death Review Group, consultation of children
2011	Department of Children &Youth Affairs established
2011	Children First: National Guidance for the Protection and Welfare of Children
2012	Child Rights Referendum to amend the Constitution
2012	31st Constitutional Amendment

Source: own compilation

The Thirty-first Amendment to the Constitution (Children) Bill was published in September 2012. In a speech announcing its publication, Minister of

Children and Youth Affairs Frances Fitzgerald worked to ensure a national mandate and drove home the need to protect all vulnerable children:

> We are asking the people to decide how our Constitution should treat children.
>
> We are asking the people to give a Constitutional mandate for the very best decisions to be made for our most vulnerable children.
>
> We are asking the people to change our Constitution:
>
> To protect children;
>
> To support families;
>
> To treat all children equally.[100]

The Bill subsequently was passed by both houses of the Oireachtas in October 2012 and approved by the people in a national Referendum held on 10 November of that year, albeit with a "thin" margin in favour—57.4 per cent of voters.[101] Turnout for the referendum was low (33.5 per cent of those eligible to vote), yet only three of the country's forty-three constituencies rejected the proposed amendment. The Thirty-first Amendment to the Constitution (Children) incorporated a new article into the Irish Constitution, Article 42A, whereby the state 'recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights'. With respect to the 'best interests

principle', the wording of Article 42A was even stronger than the CRC Article 3 ('the' primary consideration versus 'a' primary consideration) albeit the scope of relevance was much narrower than that of the CRC ['the' primary consideration in 'some areas of decision-making impacting the child', versus 'a' primary consideration 'in all actions concerning children'.][102] Children's rights in Ireland had moved closer to centre stage.

5.5. Critical mass: A 'best interests' broker comes to bat

Backtracking a bit, the appointment of Alan Shatter as Minister for Justice and Equality in 2011 brought a powerful spokesman and agent of reform into the political realm. '*My ambition is that, at the end of the Government's term in office, we will be seen as the most radical reformist government in the history of the State,*'[103] reads the preamble of a report he drafted on the work carried out during his first sixteen months in office.

An expert in Irish family law and a former member of the Health and Children Committee and the committee that considered the wording for a children's rights referendum proposed earlier, Shatter had been an active reformer for children's legislation, family planning and divorce prior to becoming Minister of Justice and Equality. During his preliminary period in office, he worked towards a radically reinforced system of child protection. Measures tabled in response to his publishing the Commission of Investigation Report into the Catholic Diocese of Cloyne, an inquiry into allegations of child sexual abuse [13 July 2011], included The Criminal Justice (Withholding Information on Crimes Against Children and Vulnerable Adults) Act 2012; the National Vetting Bureau Bill 2012 (statutory provision for vetting individuals who have access to children as part of their employment); and revised Children First National Guidelines. He also launched the first significant government response to the

issue of the treatment of the women and children who resided in the Magdalen Laundries, establishing an interdepartmental committee to identify state involvement with the laundries.[104]

Shatter also prioritised the Irish Human Rights and Equality Commission Bill 2012 to champion human rights issues more effectively, appointing a working group in October 2011. The Bill was to have a key role in, *inter alia*, 'encouraging State authorities to put respect for human rights and equality at the heart of their policies and practices'; and 'monitoring compliance with international and constitutional human rights standards'.[105] Shatter further reinforced this emphasis on international human rights by opening up the country to European Union and Council of Europe instruments, launching public advertisements in a first for qualified individuals to represent Ireland on the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Commission Against Racism and Intolerance (ECRI).

Under Shatter's watch, the prison and criminal justice system underwent major reform as well. Collaboration between the prison and probation systems was strengthened, prison modernisation efforts accelerated and construction of a new prison establishment in Cork began. The Criminal Justice (Community Service) (Amendment) Act 2011 required courts to make greater avail of community service alternatives to custody when weighing sentences of 12 months or less; and the Criminal Justice (Spent Convictions) Bill 2012 allowed for criminal record expungement for certain convictions to help foster reintegration into the workplace.

Shatter spearheaded a substantial reform agenda, including the Criminal Justice Act 2011:

I have already introduced a number of measures to encourage the use of non-custodial sanctions. Furthermore one of the recommendations of the Thornton Hall Review Group was the establishment of an all encompassing strategic review of penal policy which would incorporate an examination and analysis of all aspects of penal policy including prevention, sentencing policies, alternatives to custody, accommodation and regimes, support for reintegration and rehabilitation, the issue of female prisoners and 16 and 17 year olds within the system. I intend to establish a group to give effect to that recommendation.

— Minister for Justice and Equality Alan Shatter, response to two queries with respect to the minister's plans to introduce imprisonment as a last resort in legislation,[106]
22 November 2011, Vol. 747, No. 3

Shatter's appointment as Minister for Justice and Equality brought new recognition of the juridical status of children as rights-holders, as per the CRC, transcending the more conventional concept of child protection. Significantly, as Minister for Justice and Equality, he drove home the 'best interests' principle, one of four guiding principles of the CRC and a bedrock of child rights, particularly relevant to children with imprisoned parents during Dáil debates. His doing so built on the groundwork laid earlier by elite policy entrepreneurs such as Aengus Ó Snodaigh TD, as mentioned in the previous chapter, in 2004, who queried whether the justice minister at the time had '*plans to make changes that are in the best interests of prisoners' children*, or in view of obligations under the European Convention on Human Rights Act 2003 with regard to the right to family life.'[107]

Asked about his plans to promote family contact between women prisoners and their children during the Dáil Debate on 22 November 2011, Vol. 747, No. 3, Shatter responded:

> I am informed by the Irish Prison Service that every effort is made to allow women prisoners to fulfil their role as mothers having due regard to the best interests of the child. Contact therefore between women prisoners and their children is fostered, encouraged and facilitated where possible by the Prison Service.[108]

This represented a significant shift in discourse coming from a justice minister in reference to children affected by a parent's imprisonment, although it was somewhat less bold citing the best interests principle in reference to the imprisonment of *women* and imprisoned mothers. As maintained by Paul Murphy, formerly of the Irish Prison Service, in the previous chapter, imprisoned mothers maintaining contact with their children are 'more easily accepted, whereas with fathers there is more opposition to it'.[109]

Interestingly enough, in his response to queries about children with imprisoned parents[110] approximately six months later, in July 2012—four months prior to the launch of a seminal Irish Penal Reform Trust report on the rights and needs of children of the incarcerated in November 2012—Minister of Justice and Equality Shatter uses a utilitarian frame of reducing a parent's recidivism when family ties are maintained, and addresses parenthood with respect to both men and women prisoners:

> International research has found that good family ties can significantly reduce a prisoner's risk of re-offending. Every effort

is accordingly made by the Irish Prison Service to encourage and support prisoners in maintaining positive relationships with their families. As I have already stated, the Irish Prison Service facilitate a very significant number of visits by families to prisoners every year. Prisoners are also entitled to regular telephone and correspondence contact with their families.

The IPS also contributes funding to a number of projects, such as Dillons Cross in Cork and Bedford Row in Limerick, which provide supportive programmes to the families of prisoners in the community.

A range of parenting courses are also available to prisoners, primarily through the Education Units in prisons.

— Dáil Debate, 17 July 2012, Vol. 773, No. 1

Significantly, Shatter demonstrated greater recognition of the problem at hand, providing statistics on the estimated number of children impacted by parental incarceration in Ireland, however approximate these figures, diverging what had been until then a standard response that data was not collected on this specific group of children:

I have been advised that the Irish Prison Service does not specifically record details from prisoners regarding their number of children. It has been estimated, however, that approximately 200,000 adult family and friend visits to prisoners take place every year and about 80,000 children visit. Based on these estimates, and

the age profile of prisoners, the number of children who have a parent in custody is likely to be a substantial figure.

— Dáil Debate, 17 July 2012, Vol. 773, No. 1

Providing critical mass in the interim, the Jesuit Centre for Faith and Justice published a comprehensive report entitled *The Irish Prison System: Vision, Values, Reality*, in March 2012, detailing the impact a parent's imprisonment can have on children, and highlighting all three frames: F1 (child rights/welfare), F2 (poverty) and F3 (reducing recidivism).

As mentioned in the introduction to this chapter, policy processes are far from linear. As Zahariadis (2008) has claimed, drawing on Kingdon (1995) and earlier Cohen et al.'s garbage can model (1972), policy outputs are very much contingent upon 'a complex interaction between problems, solutions, and politics during fleeting open windows of opportunity'. Perhaps the open window analogy is not fully relevant in the case of acquis for children with imprisoned parents at this stage, in 2012, but the locks on the windows had definitely come unfastened during the early years of Shatter's term. He also injected new momentum not only with respect to Europeanisation but also in bringing together the child rights frame (best interests) and the criminal justice frame (child-parent contact with a parent in prison). In short, Shatter had helped shape a political landscape that was ripe for change in terms of awareness of children with imprisoned parents and of the need to remedy a problem. The publication of a seminal report on the rights and needs of this group of children threw the policy window wide open.

5.6. The IPRT report hits hard: full resonance for the rights-based frame

It was within this rights-enhanced context that the Irish Penal Reform Trust launched its groundbreaking report on the rights and needs of children with imprisoned parents, on 19 November 2012, the same month as the national referendum on amending the Constitution.

Alain Shatter's reference to every effort being made to 'allow women prisoners to fulfil their role as mothers having due regard to the best interests of the child', mentioned in the previous section, came just three days after the launch of the Irish Penal Reform Trust report. Just three weeks after its release, the report itself found full resonance among elite discourse, cited in a Written Answer by Minister Shatter, in response to a query by Brian Stanley TD as to when the Minister planned 'to increase the number of child-friendly visiting areas in prisons':

> I can further inform the Deputy that the Irish Prison Service is currently setting up a working group to consider a report recently published by the Irish Penal Reform Trust which contains a number of recommendations in relation to contact between prisoners and their families including family visits.
>
> —Dáil Debate, Written Answers, Prison Accommodation,
> 11 December 2012, Vol. 786, No. 1.

In short, in direct response to the Irish Penal Reform Trust report, entitled *Picking Up the Pieces: The Rights and Needs of Children and Families Affected by*

Imprisonment and authored by Michelle Martyn, a working group on the rights and needs of children with imprisoned parents was set up. The Director General of the Irish Prison Service, Michael Donnellan, was instrumental in this development. Chaired by Paul Murphy, Head of the Psychology Department at the Irish Prison Service, the working group consulted widely with community-based service agencies such as Barnardos, Child Development Initiative in Dublin, St Vincent de Paul, Bedford Row Family Project and the Prison Chaplaincy and established a series of recommendations. (The report was never published although the author has obtained a copy.) Following on the heels of this, the Prison Service established the Families and Imprisonment Group, led by a prison governor, Pat Dawson, and including representatives from the Child Development Initiative, Irish Prison Service, Probation Service and Child and Family Agency (Tusla), to further explore the issue and a family intervention type initiative was launched at Limerick Prison in tandem with the Bedford Row Family Project.

Dáil debates during the Prison Development Bill 2013 provided a good roundup of these developments. Minister of State at the Department of Justice and Equality, Deputy Kathleen Lynch, underscored how the Irish Prison Service acknowledged the importance for the incarcerated of 'maintaining and developing their relationships with their children and families'. She described how 'committed' the Irish Prison Service was in supporting the realisation of this objective, acknowledging the 'wide range of sensitivities and challenges, with an appropriate balance required between security provisions and conditions appropriate for family visits'. She highlighted the proposal for a new prison establishment planned for the city of Cork, and its aim to create a visiting facility revolving around a 'welcoming and comfortable' visits facility. She detailed how this policy shift came about:

Following publication of the Irish Penal Reform Trust report entitled Picking Up the Pieces: The Rights and Needs of Children and Families Affected by Imprisonment, the director general of the Irish Prison Service established a working group to advise on how best to implement the recommendations, in so far as practicable, across the prison estate. The working group has completed a detailed survey of existing visiting facilities and supports. The Irish Prison Service working group has also embarked on a short and targeted consultation process with various stakeholders, including relevant community representatives. It is envisaged that this consultation process will inform the group's approach to the detailed recommendations contained in the IPRT report. In addition, a specialist architect has been engaged to undertake a review of the visiting facilities in the 12 closed prisons in the State with a view to bringing forward a set of proposals for improvement of the visiting facilities at each location.

— Dáil Debate, 27 June 2013, Vol. 808, No. 3

5.7. Consolidating acquis for children of the incarcerated: a national policy framework is established

A series of significant developments to institutionalise the protection of children and their rights and well-being in Ireland took place. The Child and Family Agency, or Tusla, was established in January 2014 under the Child and Family Agency Act 2013, with a clear focus on child protection, family support and children's services. It was the most comprehensive reform of child protection, early intervention to enhance children's well-being and outcomes, and family support services ever introduced. Frances Fitzgerald hailed the development, claiming it would allow Ireland to 'pull together and give single coherent direction to all of the strands of service for our families most in need in a way that has never happened in this country before; including prevention and early intervention programmes, both universal and targeted, as well as family support services, the nationwide network of 106 family resource centres and education welfare services.[111] The Children First Bill 2014 drove this home, providing key child protection measures and making the reporting of concerns over child protection to the Child and Family Agency mandatory.

But most significantly for children affected by the imprisonment of a parent, in 2014 the Government established *Better Outcomes, Brighter Futures (BOBF)*, a cross-sectoral national policy framework for children and young people 2014-2020, with national and local structures to provide impetus and to monitor implementation, and to provide opportunities for the participation of children and young people. In a seminal development, the national policy framework included Government recognition of the specific challenges that children with imprisoned parents can face as well as Government commitment to ensuring

'adequate access by children to an imprisoned parent, in a child-friendly setting' [Commitment 3.22]. See. Table 5.3.
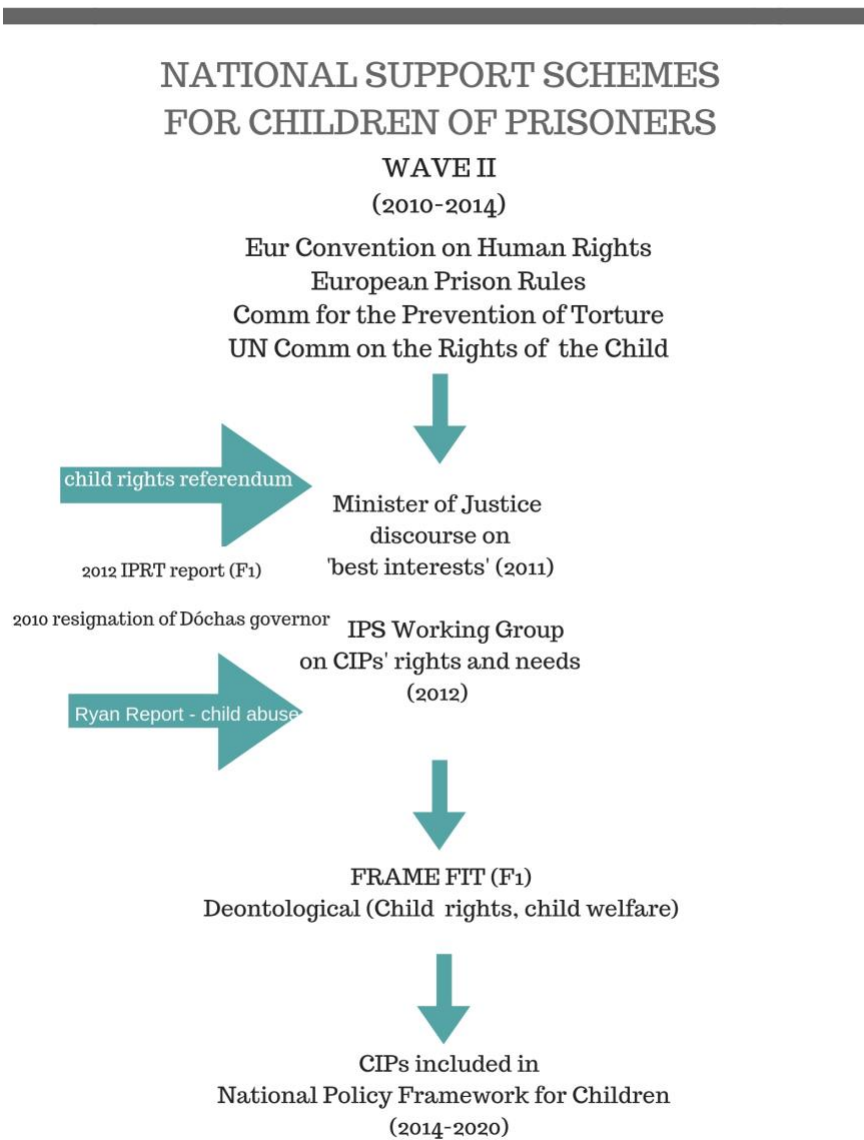
Table 5.3. Government commitment to children with imprisoned parents *(*Commitment 3.22, *Better Outcomes, Brighter Futures*, a national policy framework for children, 2014)

Commitments (bold tick indicates lead Government department or agency)	DCYA	DES	DH	DJE	DSP	DECLG	DPER	DJEI	DCENR	DF	DTTS	DAFM	DAHG	HSE	Tusla	Local Gov	AGS	Others	All
3.18 Develop a National Framework for Anti-Bullying, taking a community-wide approach to tackling bullying from childhood through to adulthood.	✔																		✓
3.19 Continue to promote best practice by social media providers with respect to privacy controls and reporting mechanisms for abuse/bullying so as to better protect children online.				✓					✔										
3.20 Tackle youth crime and divert children and young people from crime and anti-social behaviour through engaging with young people in the community and other proven effective interventions, with a view to changing short- and long-term behaviour patterns of youth offending. Use a coherent range of community and criminal sanctions to reduce offending.	✓			✔													✓	✓	
3.21 Build and open a new National Children Detention Facility and end the practice of accommodating 17-year-old boys in adult prison facilities. Complete the reforms of the Children Detention Schools, monitor outcomes for children in and post-detention, and ensure a robust independent inspection, complaints and investigation system operates within the Children Detention Schools.	✔																		
3.22 Ensure adequate access by children to an imprisoned parent, in a child-friendly setting.				✔															

* Acronyms used: **DCYA**: Department of Children and Youth Affairs; **DES**: Department of Education and Skills; **DH**: Department of Health; **DJE**: Department of Justice and Equality; **DSP**: Department of Social Protection; **DECLG**: Department of the Environment, Community and Local Government; **DPER**: Department of Public Expenditure and Reform; **DGEI**: Department of Jobs, Enterprise and Innovation; **DCENR**: Department of Communications, Energy and Natural Resources; **DF**: Department of Finance; **DTTS**: Department of Transport, Tourism and Sport; **DAFM**: Department of Agriculture, Food and the Marine; **DAHG**: Department of Arts, Heritage and Gaeltacht; **HSE**; Tusla; **AGS**: An Garda Síochána.

Thus, this second wave of policies beginning in 2010 was successfully grounded in national acquis in 2014 by means of a dominant deontological child-specific frame [child rights, child welfare, with the poverty frame subsumed within]. As seen, this fit within a broader development of recognition of children's rights within the Irish state, notably with the child rights referendum and amendment to the Irish Constitution, which served as a galvanising focus event, as did the various reports on child abuse that surfaced regularly over the years. A 2014 Strategic Review Group on Penal Policy, which included the heads of the Irish prison and probation services, among others, referred several times to the 'best interests of the child'—a crux of the 2012 referendum—in highlighting the need to maintain contact between children and an imprisoned parent. Some Strategic Review Group (SRG) members cited the 2012 campaign and referendum as having a strong bearing on the language used in the SRG report.[112] The Dóchas Centre governor's resignation also galvanised awareness, as did the 2012 Irish Penal Reform Trust report on the children of the incarcerated, raising their profile in tandem with other child rights and child welfare players like the Child Rights Alliance, the Child Development Initiative, Bedford Row Family Project and Fiona Donson and Aisling Parkes at Saint Nicholas Trust /University College Cork. See Figure 5.2.

Figure 5.2. National support schemes for children of the incarcerated (Wave II)

NATIONAL SUPPORT SCHEMES
FOR CHILDREN OF PRISONERS
WAVE II
(2010-2014)

Eur Convention on Human Rights
European Prison Rules
Comm for the Prevention of Torture
UN Comm on the Rights of the Child

child rights referendum

Minister of Justice
discourse on
'best interests' (2011)

2012 IPRT report (F1)

2010 resignation of Dóchas governor

IPS Working Group
on CIPs' rights and needs
(2012)

Ryan Report - child abuse

FRAME FIT (F1)
Deontological (Child rights, child welfare)

CIPs included in
National Policy Framework for Children
(2014-2020)

Source: own compilation

The next step was implementation and looking at how policy strategies, frameworks, reports and recommendations 'unfold on the ground'. It would require a major shift in thinking and approach on the part of the Irish Prison Service, one of the biggest barriers if not the biggest being the preoccupation with security, relegating the rights of children to quality prison visits as 'very much secondary'.[113] The power and bureaucratic grip of the Prison Officers Association trade union, with its high number of prison officers proportionally, also served as an inhibitor on reform and change.[114] It was only apt then that the international conference organised by University College Cork in December 2014 was entitled 'Changing Mindsets, Changing Minds: Conference on the Rights of the Children of Offenders'.

6. CHAPTER SIX: Discussion and analysis

## 6.1. An overview: the beauty of discourse, with a few caveats

This chapter sets out to discuss policy advocacy, frame entrepreneurship and the internal cogs and gears of social structures and policy processes that led to the resulting acquis for children of the incarcerated over the course of this study's timeframe—fleeting during the first phase, more sustainable in the latter. It provides an overview of Ireland's 'background ideational abilities and foreground discursive abilities' that produced a dynamic, agent-centric approach to change (Schmidt 2010), agents, in this case, being key Dáil deputies and civil servants. It does so, as we have seen, by examining discourse that emerges—based on ideas expressed in the public realm—and transforms into rules-based systems and categories, as both Radulova (2011:35) and Lynggaard (2007: 294) highlight. The beauty of discourse is its transparency, the journey itself enlightening—we know who said what and when with respect to children and parental incarceration; can examine how a paradigm shift took place, what led to the issue at hand being tabled, which 'grievance mobilization' as per Snow and Benford was carried out, the 2012 Irish Penal Reform Trust report being pivotal; how the issue was represented and given legitimacy or framed, as per Radulova; and milestone transformations or instances when Kingdon's 'windows of opportunity' offered a context ripe for change—with children of the incarcerated ultimately going from 'victims of circumstance' to 'rights-holders'.

This chapter zeroes in on frames and how they functioned throughout the study. Problems help us move forward and find the solution; frames guide and steer these processes, helping ill-defined issues such as parental

imprisonment take shape and be perceived with greater clarity. Dynamic framing processes provide 'guideposts' for knowing, analysing, persuading and acting—factoring in the unexpected, the serendipitous, chance elements and other less rational forms of decision-making to create what Kingdon refers to as the 'policy primeval soup' (1993:43), or in this case, a primeval soup of frames. We have seen how Wave I (1997-2003) provided a strategic, if short-lived, model for frame fit, problematising children with imprisoned parents, identifying their needs and capitalising on the resonance-rich utilitarian issue frame (F3) that construes the child as a means for reducing recidivism, to foster policies that addressed the poverty/victim frame (F2) while incorporating the deontological child-specific frame (F1). Wave II built on this strategic model, riding F3's steady momentum to keep a pivotal foot in the door and, buoyed by focus events, Europeanisation and the vigour of certain endogenous policy entrepreneurs, allowing F1 to unfold. As F1 found greater currency during the study's later phase, it gradually prevailed over and bridged with—'the linking of two or more ideologically congruent but structurally unconnected frames' (Benford and Snow 2000: 624)— the F2 poverty frame or lens, heretofore the focus of exogenous issue entrepreneurs within reform organisations, the community and voluntary sector, academics and thinktanks. This frame bridging represents one of Snow's key strategic frame alignment processes crucial for recruiting resource providers (Snow et al., 1986: 467). Lending purchase to F2 were government preparations for devising and submitting a national action plan against poverty and social exclusion to the European Commission by June 2001, bringing it out into the public sphere, with consultations with the community and voluntary sector as well as independent advisory bodies like the Combat Poverty Agency (the 2002 Dublin Institute of Technology research on children and parental incarceration they funded was the focus of a policy seminar organised by Society of St Vincent de Paul, a longstanding advocate for social justice in

Ireland). Consultations with young people experiencing or at risk of poverty and social exclusion were also carried out, the focus of a 2002 report that aimed to promote child participation in policymaking processes.[115] These F2 focus events, combined with the steady resonance of the F3 policy frame of family ties reducing recidivism (see Figure 6.1.), provided a fertile contextual landscape for the CONNECT project to be operating as a constructive way forward, as seen in Chapter Four. F3's steady presence would endure throughout both phases of the study, finding additional purchase in Dáil discourse during phase two with the citing of international research that reveals how strengthened family relationships are crucial to the successful reintegration of prisoners on release, inquiring of the justice minister about how he would deal with this 'in the context of denial of visits due to prison discipline, which is against human rights standards'.[116] This demonstrates a case in point with respect to Kingdon's emphasis on how conditions become problems when held up in comparison to other countries (Kingdon 1995: 198). Instead of F3 competing with F1, it now seems to provide a basis for the increased resonance of the latter, as we see in the following figure, with respect to the Irish prison estate.

Figure 6.1. References to F3 policy frame over the study timeframe

Role of prisoners' families in fostering resettlement: Dáil discourse 1994-2013
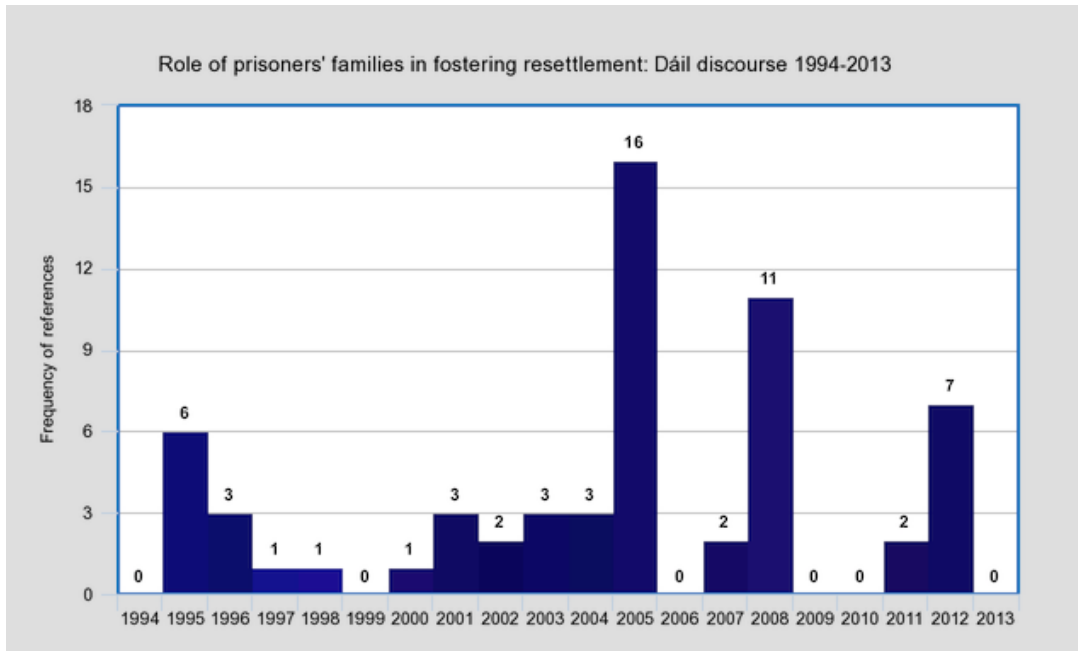
Source: own compilation. Graph refers to the Irish Prison Estate.

6.2. Merging discursive silos: shifting categories, new perspectives

The metaphor of "silos" is frequently used to describe the various economic, political, social, cultural and other sectors involved in policymaking that act in isolation and function in parallel to one another, instead of opting for multi-sectoral, cross-agency approaches to problem-solving. This metaphor is selected to illustrate the policymaking landscape for children with imprisoned parents, in that at least two major sectors—criminal justice issues and child rights/welfare issues—were functioning in parallel for years. Crucial to enhancing frame resonance for child rights during both waves in the study was the breaking down and merging of these parallel discursive silos sectioning off criminal justice issues from those related to child rights and needs (see Figure

6.2.). Throughout much of both waves, criminal justice discourse and policies did not incorporate a child rights perspective; government policies for children did not address the rights and needs of children affected by a parent's imprisonment. The result was a significant policy gap. The two silos intersected for a brief timespan during Wave I, however fleeting, through the implementation of the CONNECT project and its hitching on the child rights (F1) frame as part of project implementation; and through the efforts of certain policy entrepreneurs who continuously drove home rights-based policies for prisoners and their children. The latter were riding the momentum of the Northern Ireland Peace Process discourse that twinned child rights and criminal justice issues and injected rights-based perspectives for prisoners and their families into the discourse relevant to the Irish prison estate, albeit in reference to politically motivated prisoners.

Figure 6.2. Promoting policies by merging discursive silos
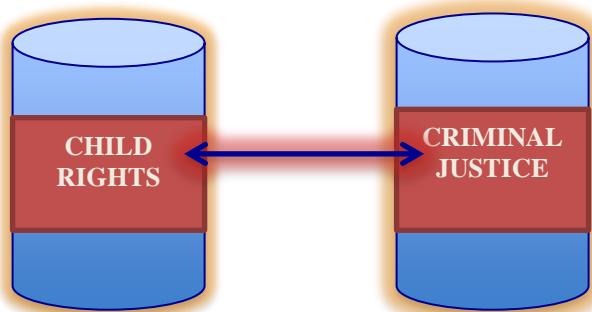
But it took a succession of powerholders to break down the two silos and allow the rights and needs of children with a parent in prison to find greater expression within criminal justice discursive and policymaking spheres. The parcours of many of these powerholders twinned criminal justice perspectives with child-related expertise, including Michael Donnellan: director general of the Irish Prison Service in 2011 who established IPS working groups on family ties, former director of youth detention schools in Dublin; Alan Shatter: prior to his term as Minister of Justice and Equality, a member of the Parliamentary Health and Children Committee and the Special Committee that examined the wording for a Children's Rights referendum, sponsored the Judicial Separation and Family Law Reform Act, 1989; and Frances Fitzgerald: Minister of Children, then Minister of Justice and Equality.

Figure 6.3. Dáil discourse: child rights and criminal justice silos merged
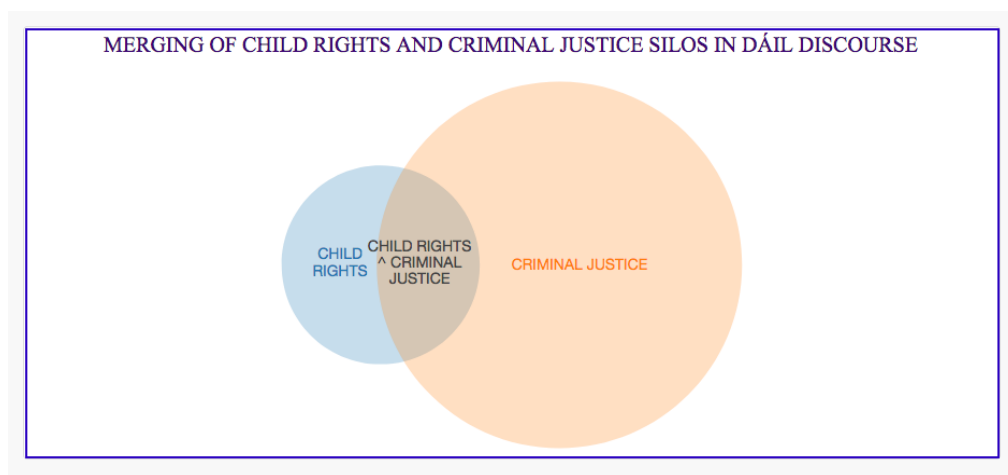
Both silos were influenced by top-down-sideways Europeanisation and by, as per Radaelli (2003: 30), the 'formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms' that were incorporated into domestic discourse, as were relevant powerholders. Top-down influences included such conventions, bodies and instruments as the CRC, the European Convention of Human Rights Act, the UN Committee Against Torture, the Committee on the Prevention of Torture, the EU Charter of Fundamental Rights and various EU funding streams, among others. As demonstrated, lateral Europeanisation had a bearing on both criminal justice and child-related policies—with the 1998 Good Friday Agreement, but also the 2008 Corston Report, various EU member state research, practices and policies, and European and international social movement organisations and advocacy coalitions, including the network Children of Prisoners Europe, founded in 2000. What resulted over time was a convergence of these two domains and the merging of heretofore discrete issues (child rights/needs v. criminal justice) into a common discursive space. Adverse or negative conditions affecting children with imprisoned parents were classified not only as criminal justice problems but also as problems linked to child protection and child rights, with the right to contact with the imprisoned parent being an imperative when in children's best interests. The categories employed when referring to parental incarceration in Dáil discourse shifted, with the child rights/needs category enriching the criminal justice category in which children of prisoners were generally either absent (overshadowed by juvenile justice issues), subsumed into the "family" category or instrumentalised as a factor in promoting a prisoner's resettlement. These kinds of category shifts, as Kingdon highlights, can enhance an issue's chances of rising higher up policy agendas (Kingdon 1995:198), and in this specific case, by providing a second alternative frame to work with (child rights). Such policy frames can compete, as seen in earlier chapters, yet through changes in the discursive architecture

and in frame alignment processes as conceptualised by Snow et al. (1986), can be connected by means of a 'new, overarching one' (van Hulst & Yanow 2009), which was what transpired during the second wave of policies. This shift in category and perspective, making the child rights frame gradually more conspicuous and bridging or coupling it with the child victim/poverty frame into an overarching child rights/child welfare frame, humanised children with imprisoned parents and rendered them more visible, not as a means to reduce a parent's recidivism, but as rights-holders with agency and deserving of protection, as all children were. This represented a key step in laying the groundwork for one of Schön and Rein's 'metacultural frames'—an overarching culturally shared system of belief, in this case, the nation-wide belief that strong child protection systems were urgently needed for all vulnerable children, including children of the incarcerated. Metacultural frames with respect to children had shifted, and the power of persuasion of the child rights/child well-being frame was reinforced, corroborating Snow and Soule's argument that those frames with greater resonance with the existing culture are more likely to be met with success (Snow and Soule 2010: 222). The frequency of overall references to children of the incarcerated gradually increased over the timeframe of the study. See Figure 6.4.

Figure 6.4. Dáil discourse references to children with imprisoned parents – child-specific (1994-2013)
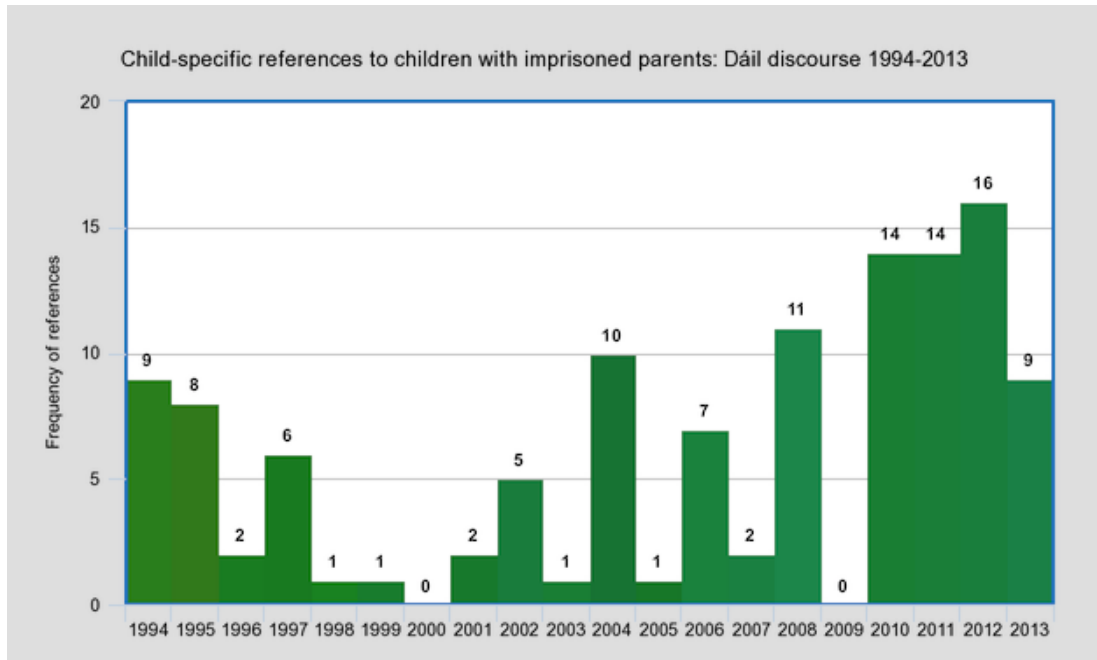
Source: own compilation. Graph refers to the Irish Prison Estate.

Broadening frames out to encompass the category "family" instead, including children but not specific to them, results in the following:

Figure 6.5. Dáil discourse references to prisoners' families (1994-2013)
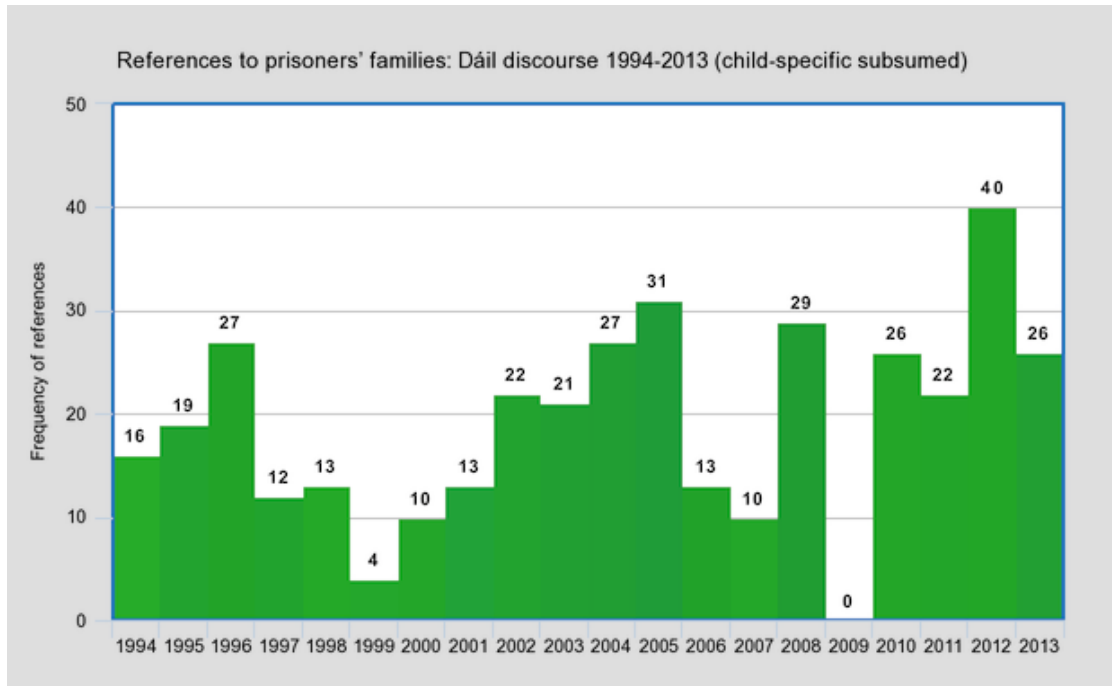
Source: own compilation. Graph refers to the Irish Prison Estate.

6.3. Zeroing in on frames

Examining the evolution of frames more closely demonstrates how the child rights frame (F1) gradually grew more powerful, bridging with and subsuming the child victim/poverty frame (F2) to form an overarching child rights/child welfare frame. As seen in the two diagrammes below, the child victim/poverty frame was much more prevalent during the early years of the study for both child-specific and family-related frames for children with imprisoned parents (CIPs) (Fig. 6.6 and 6.7), although F2 retains a steadier presence with the latter than it does with respect to child-specific frames (Fig. 6.8 and 6.9). Even when the child rights frame (F1) was evoked in Dáil discourse with respect to family contact during the study's first phase, it frequently took on a more protective

or logistical cast, referring to the availability of 'child-minding' facilities during prison visits, for example.

Figure 6.6. Child-specific frames for children with imprisoned parents in Dáil discourse 1994-2003: F2 compared to F1
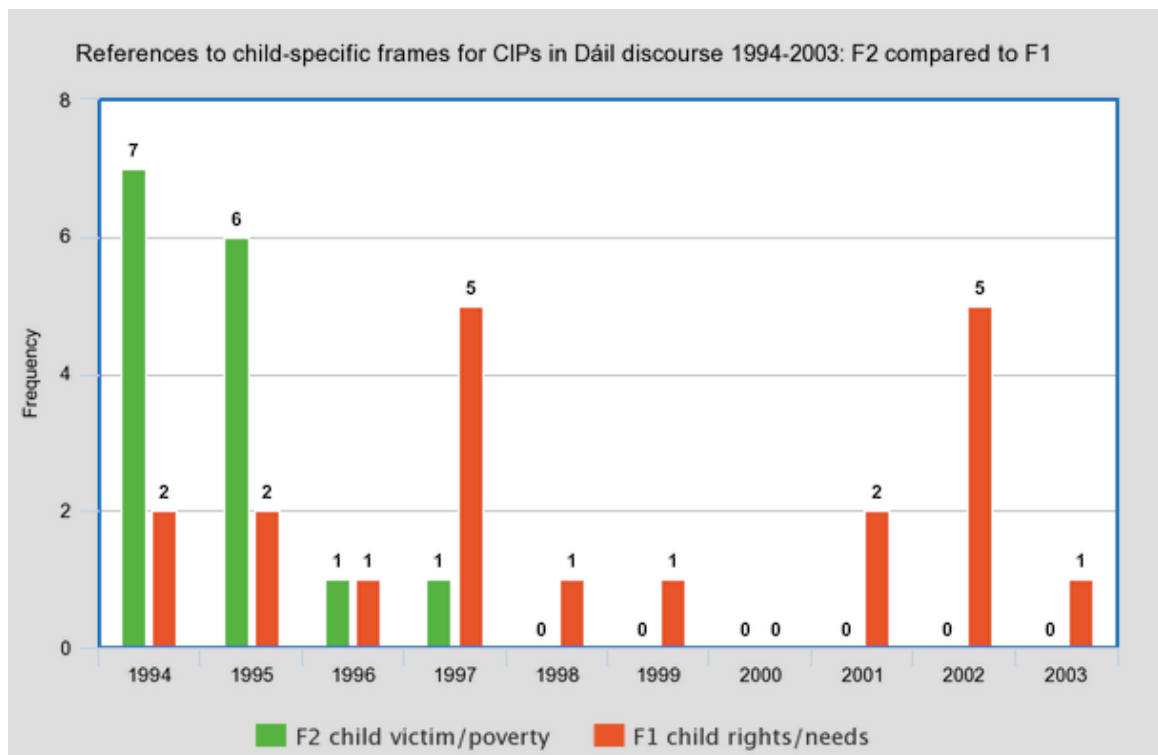
Source: own compilation. Graph refers to the Irish Prison Estate.

Figure 6.7. Family-related policy frames for CIPs in Dáil discourse 1994-2003 (child-specific subsumed): F2, F1
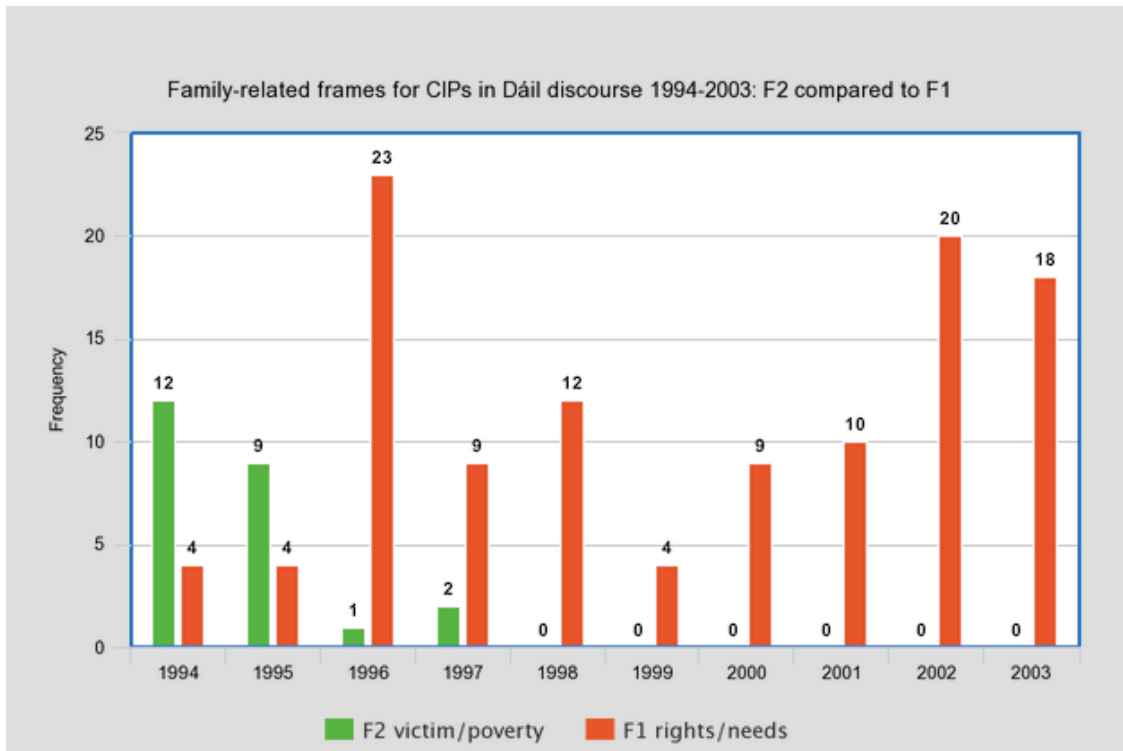
Source: own compilation. Graph refers to the Irish Prison Estate.

Child rights frames (F1) peak significantly in 2002, for both child-specific and family-related policy frames. This was the year in which the National Economic and Social Forum report underscored the positive role that family ties played in fostering prisoner reintegration; the Dublin Institute of Technology research on children with imprisoned parents mentioned previously (commissioned by a joint project of the Society of St Vincent de Paul charity and the Society of Friends and funded by the Combat Poverty Agency) twinned the poverty frame with the child rights frame (the eighty-nine-page research report incorporated thirty-nine references to "rights"); the Ombudsman for Children Act 2002 was passed; and the consultations with children to foster child participation in policymaking processes were published, as mentioned above. This momentum came in the wake of the 2001 evaluation report of

CONNECT entitled *Story of a Success, Irish Prisons, CONNECT 1998–2000*, with a planned extension of the project from Mountjoy Prison to five additional prisons in the Irish prison estate. CONNECT, in particular, the Options pilot programme (1998-2000) and its support for child-parent contact through parenting courses, may have fostered some resonance in the F1 frame. But references to children were still subsumed into those referring to the family at the time (five child-specific F1 frames in 2002 in contrast to twenty family-related ones), most likely because the impact of recently established child rights instruments and agencies such as the 2000 National Children's Strategy, grounded in the CRC, and the 2001 National Children's Office was not yet being felt. This began to change during the second phase of the study timeframe (see Figure 6.8.).

Figure 6.8. Child-specific policy frames for CIPs in Dáil discourse 2004-2013: F2, F1
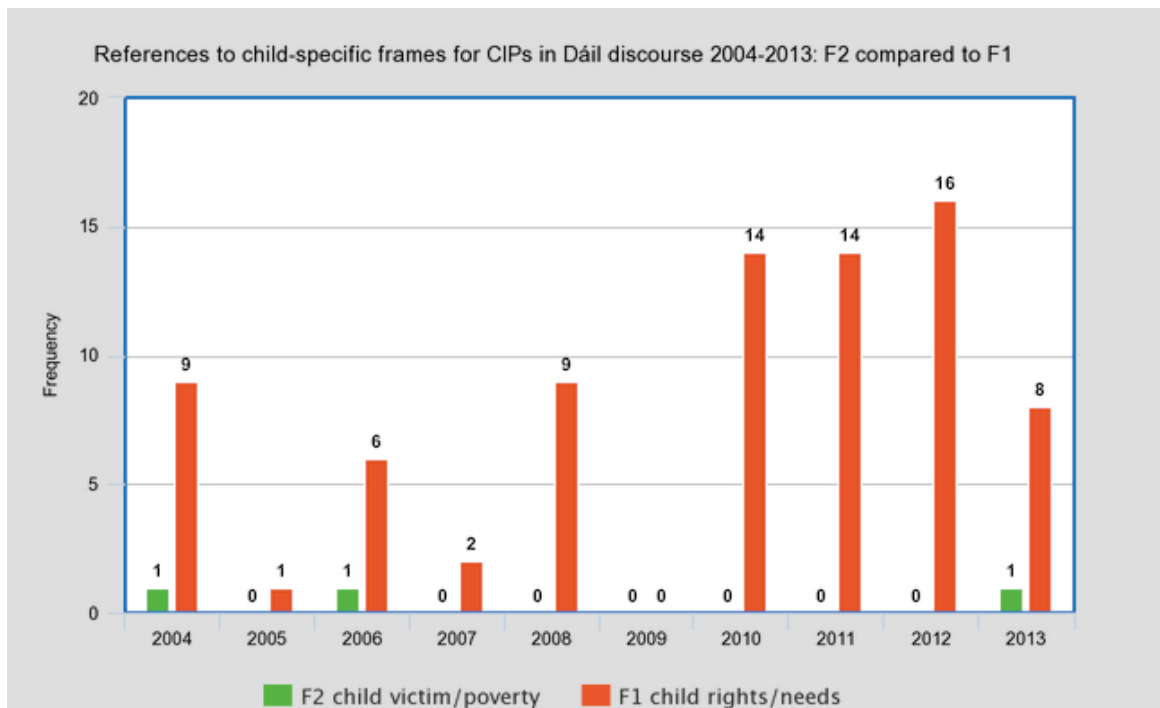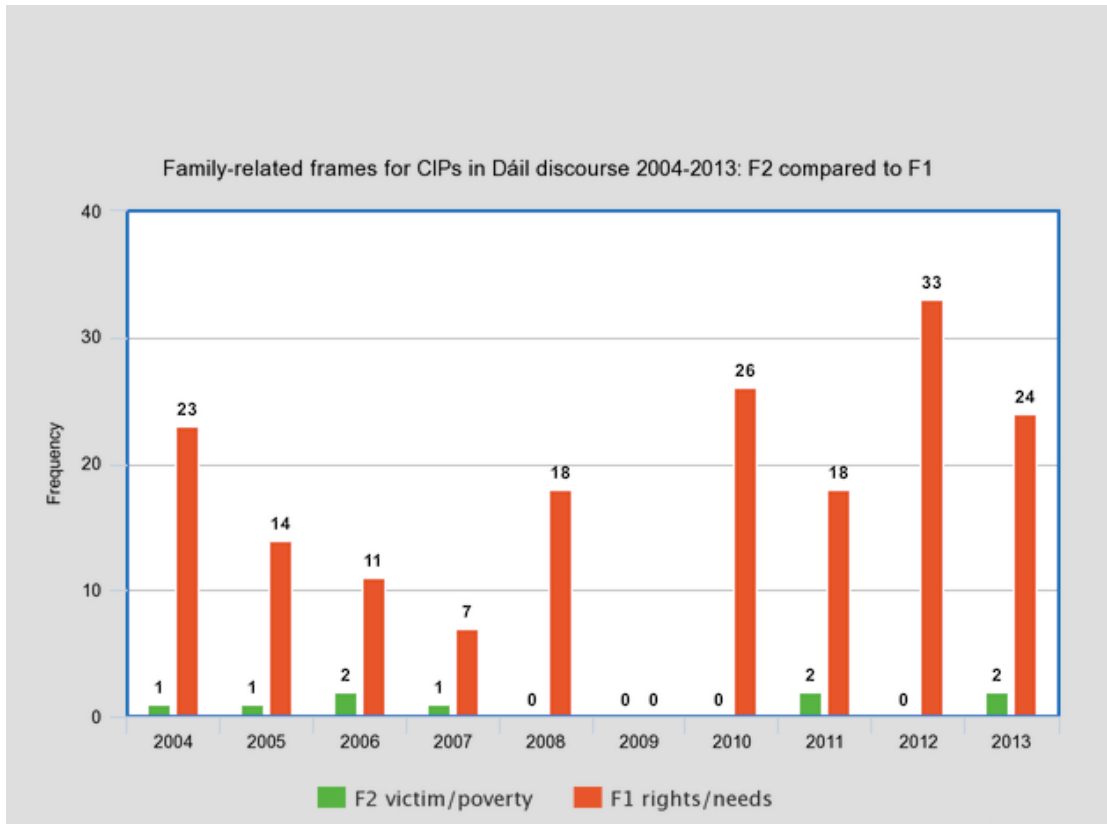

Source: own compilation. Graph refers to the Irish Prison Estate.

6.4. Bridging frames in children's best interests: going for critical mass

The first specific reference to the "best interests" of children with imprisoned parents during the study's timeframe was in 2004, as part of a discussion on prison visiting centres and government plans to make changes 'in the best interests of prisoners' children' [1].[117] Deputy Ó Snodaigh drew on a heavy Europeanisation angle—the European Convention of Human Rights Act 2003 and its enshrining of the right to family life—in his appeal. Interestingly enough, Dáil debates over foreign nationals held in Irish prisons and their 'right to family life' a fortnight prior to this mention enriched rights-based discourse, perhaps with respect to the rights of children with an imprisoned parent to family life, as did the appointment of the first Children's Ombudsman in December 2003 and her assuming her post in 2004. Of course, correlation does not imply causality. The prisons building programme and proposed plans to transfer Mountjoy Prison to a more remote setting did have a bearing on rights-based issues for children and families of prisoners, at least in terms of frequency of these, given the additional hurdles involved in maintaining family contact at greater distances. These developments added momentum to the child rights frame as it grew more powerful, culminating in 2012 with preparations for the child rights referendum, the actual November referendum itself and the Irish Penal Reform Trust report launched that same month. This time, with respect to the latter, correlation did suggest causality, borne out by discursive interactions in the Dáil following the report's release, as seen in Chapter Five. Child rights frames peak dramatically in 2010, for both child-specific and family-related frames for children of the incarcerated [see Fig. 6.8. and 6.9.]. Yet in contrast to the early phase, child-specific F1 frames now outnumber family-related ones for 2010 [fourteen for children, twelve for families], as they did in 2011, confirming that child-specific frames relative to

discussions about parental incarceration were gaining some ground in Dáil discourse, as was F1 over F2.

Figure 6.9. Family-related policy frames for CIPs 2004-2013 (child-specific subsumed): F2, F1

Source: own compilation. Graph refers to the Irish Prison Estate.

In addition to the Dóchas Centre governor's resignation in May, which drew attention to women prisoners and their children, 2010 saw a critical mass of publications in academia and mainstream press on children with imprisoned parents and the impact of parental incarceration. A *Sunday Tribune* article [16 May 2010][118] quoted Governor John Lonergan of Mountjoy condemning proposed plans to build Thornton Hall for the increased difficulties in families of prisoners accessing the planned establishment and for the lack of

consultation with families on the proposed move. *The Irish Times* [18 May 2010][119] highlighted how a greater number of children were being forced to cope with 'the stigma and loneliness of a parent in jail', describing them as 'invisible victims of crime and the penal system', emphasising the key role family contact plays in promoting resettlement for prisoners and in helping reduce reoffending, and urging that more 'child centred visits' be available in Ireland. A September 2010 article in the same *Irish Probation Journal* entitled *Secondary Effects of Imprisonment: the new direction of prison research* raised issues specific to the children and families of prisoners, and significantly 'What impact does imprisonment have on children with a parent in prison?'[120]

6.5. Shaming and agenda-setting: when 'important' values hold sway

The year 2010 also saw the creation in Ireland of an independent Child Death Review Group following the revelation that year of a higher number of deaths of children in state care since 2000 than originally thought. The establishment of the group came in the wake of the publication of the 2009 final report of the Commission to Inquire into Child Abuse (The Ryan Commission),[121] concluding that physical, emotional and sexual abuse were 'endemic' in Irish institutions, as seen in previous chapters. It also coincided with consultations with some two hundred and ten children who had experienced state care to gain better insight into individual experiences, documented in a report in July 2011.[122] These revelations of systemic child abuse and the need to redress conditions for all children provided a key shaming effect that helped galvanise

public awareness on the imperative to remedy a pressing problem, seen as another key factor in agenda-setting. As Kingdon has highlighted: 'Conditions come to be defined as problems, and have a better chance of rising on the agenda, when we come to believe that we should do something to change them' (1995:198). This critical mass brought issues specific to children, including children with imprisoned parents, and the need for greater protection much more central in the national psyche. Just as the double standard of treatment of politically motivated prisoners in comparison to that of 'ordinary prisoners' during the Troubles was flagged during the first wave of policies and the need for a greater rights-based approach across the Irish prison estate, the pressing need for greater child protection also served as a shaming effect during the second wave of policies with respect to how the Irish Republic was treating its children. This included all children, and the call for ramped up support for them was another key factor in transmuting conditions specific to children of the incarcerated into a problem and enhancing resonance of these conditions that violated 'important values' (Kingdon 1995: 198). If we hark back to Princen's complementary interest-generating approaches to agenda-setting and drawing policymakers' attention to a cause, as described earlier in this study, the need for greater protection of children's welfare as an agenda-setting strategy represents Princen's 'big words' strategy (Princen 2011: 933)—overarching normative values with a moral dimension integral to the state's purpose or identity; the 'small steps' being, for example, the establishment of child-friendly visits conditions for meeting the imprisoned parent. The higher profile 'big steps' opened up pathways for these kinds of incremental developments. Significantly, as children of the incarcerated and family contact represented a more difficult issue during the first half of the study timeframe, John Lonergan opted for a 'behind-the-scenes' approach—touting the F3 reoffending/rehabilitation frame and using subterfuge to

introduce the less persuasive 'parent and child contact' frame, thus pre-empting opposition to it.

6.6. Single fathers gain recognition: expanding the rights-based framework

As mentioned in Chapter Five, single fathers faced certain challenges in maintaining ties to their children during the earlier years of the study's timeframe. It was thus not only the status of children as rights-holders with agency and policies related to them that evolved over the timeframe of the study but also the notion of fatherhood itself, and most significantly single fatherhood. Children, and specifically those with imprisoned parents, had to be placed higher up on policy agendas, but fathers had to be as well, the latter having been 'disenfranchised' if children were born out of wedlock. Some saw a 'Roman Catholic bias' (Rush 2009: 12) in Article 41[123] of the Irish Constitution, and both Articles 41 and 42[124] 'heavily influenced by Roman Catholic teaching and papal encyclicals' [Constitutional Review Group 1996]. As mentioned, in *The State (Nicolaou) v An Bord Uchtála [1966] IR 567*, the Irish Courts reaffirmed that outside the aegis of marriage, Articles 41 and 42 do not recognise family life and that biological fathers were neither members of the family nor parents. As mentioned, O'Mahoney's 1997 sociological and criminological study of the Mountjoy prison population that profiled marital status found that a mere 8.3 per cent of male prisoners were married, with O'Mahoney concluding that 'as a group these prisoners are far less likely to be

married than the general male population of a similar age'. Prisoners who were single fathers, therefore, could face double stigmatisation.

In the mid-1990s, coinciding with the early years of this study's timeframe, efforts were made to broaden the notion of family and strengthen the legitimacy of fathers as single parents in their own right, with a voice in matters concerning their offspring. In *Keegan v Ireland (1994),[125]* the European Court of Human Rights underscored that the notion of "family" was not relegated solely to the domain of marriage,[126] drawing on Article 8 of the European Convention of Human Rights[10],[127] while Ireland's Constitutional Review Group highlighted the absence of natural rights of fathers of children born outside marriage in their report published in 1996. Although a 2007 Supreme Court decision affirmed the marriage-based definition of the family,[128] in a High Court ruling that same year, AF v. SF [2007] 4 IR 326, Justice Henry Abbott stated that 'the constitutional principles regarding the guarantees for marriage and the marital family are to be tempered by the need to ensure that non-marital children are nurtured without diminishing the guarantees for marriage and the marital family'.

The Children and Family Relationships Act 2015 later strengthened the rights of unmarried fathers significantly, providing some automatic guardianship rights under certain conditions.[129] We, therefore, can posit that given the high percentages of unmarried fathers in prison in Ireland, the evolution of single fathers' rights with respect to their children also influenced the relevant discursive architecture within the Dáil.

6.7. From 'fits and starts' to stop-and-go: bedevilling advocacy and reform

The 'fits and starts' nature of prison reform in Ireland dates back well before the onset of the current study. Even as early as the 1960s there was a greater focus on prisons being places not only for the punishment of prisoners but also for providing support to foster their rehabilitation—even discussions of housing prisoners together with their families on farms in Ireland. As seen in earlier chapters, rehabilitation, articulated as an official objective of the prison service with the Prisons Act 1970, was pursued throughout that decade despite growing problems with prison overcrowding, substance abuse and limited funding. It then dwindled as an Irish prison service priority during the 1980s and was subsequently reframed as a concept in 1994 with the push to develop Positive Sentence Management as per the Department of Justice policy document *The Management of Offenders: A Five Year Plan*. In reality, there was less emphasis in the 1990s on treating prisoners and more on warehousing them, as detailed in Chapter Five, and attempts at rehabilitation were branded by many as being 'soft on crime'.

This kind of stop-and-go context can prove difficult for advocacy. Policy windows overall, as prime opportunities to push agendas and proposals, are few and far between. As Kingdon emphasises:

> Predictable or unpredictable open windows are small and scarce. Opportunities come, but they also pass. Windows do not stay open long. If a chance is missed, another must be awaited (1995: 204).

The chance of missed opportunities grows exponential within the stop-and-go context of parental incarceration in Ireland, with issues relevant to children with imprisoned parents constantly fading in and out of view. How to explain that not a single reference to children or families of prisoners was recorded in Dáil discourse in 2009 when twenty-nine were recorded the previous year and twenty-six the following?

This intriguing question requires a closer look at the 'messy' internal dynamics of policymaking in Ireland as well as at the historical processes underpinning these dynamics. As explored in Chapter Four, prison policy in Ireland traditionally has been highly pragmatic, not based on any overarching ideology and therefore exhibiting 'a number of contradictory elements', both progressive and those more resistant to innovation, as Rogan has explained:

> The penal ideology of Ireland is ill-defined and changeable. Neither punitive nor more liberal sentiments are deeply embedded. The sensibilities which make up Irish conceptions of prison policy have somewhat shallow roots, giving rise to a form of prison policy which incorporates sometimes conflicting penal approaches and objectives.
>
> —Rogan, 2011b: 33

Discourse in the 1990s centred largely around building prisons and prison space, less around the purpose of prison and the need for rehabilitation and treatment. (Ironically, the economic crisis after the demise of the Celtic Tiger paved the way for innovation, given the lack of available funds for building new establishments). With respect to the origins of penal policy in Ireland, Kilcommins et al. (2004) see penal-welfarism and the impetus for reform flourishing more in the institutions developed in parallel to the prison system, managed by religious organisations or state-run, and designed to hold

individuals deemed truant or requiring scrutiny with respect to society's established codes—Magdalen asylums, industrial and reformatory schools, mental hospitals, the borstal, union workhouses—than within the Irish prison estate establishments themselves. Others see any change and reform implemented to protect children such as the establishment of a children's minister or children's ombudsman as 'reactive'—not part of a 'proactive culture that truly values children' and although they are positive developments, would not 'have seeped down or across the prison system in any real way'.[130] Hence the reliance on key champion figures to jump-start initiatives, resulting in 'how things can just get stuck and drift along, nobody actually steering anything'.[131]

Looking again at the successes and failures of framing efforts, the CONNECT project, and specifically, the Options programme, coupled the deontological child rights (F1) frame with both the utilitarian resettlement (F3) and poverty reduction (F2) frames. This had a positive impact on changes in policy, in line with Snow and Benford's theories on framing (Snow and Benford 2000), promoting the development of policies for children with a parent in prison, at least for a limited period of time. Yet in truth, it is difficult to speak about genuine "frame-fit" in Wave I policies for children, and more appropriate to speak of "mock frame-fit", given that it was not actually a coupling of the steady F3 frame with F1, but rather a "hitching on" of the latter, with its effect diluted by the overshadowing F2 victim issue frame. Put another way, the deontological child rights frame found expression once endogenous entrepreneurs, as per Edler and James's (2015) expanded concept of policy entrepreneur to encompass policy actors in elite organisations playing a major role in agenda-setting from within, had capitalised on a political window of opportunity using the more persuasive or resonant utilitarian frame that construed maintaining family contact as a means to reduce recidivism and

public spending. Which makes the notion of "frame-fit" in this specific context that much more of a "mock".

Fig. 6.10. Wave I policy processes for CIPs and Kingdon's multiple streams
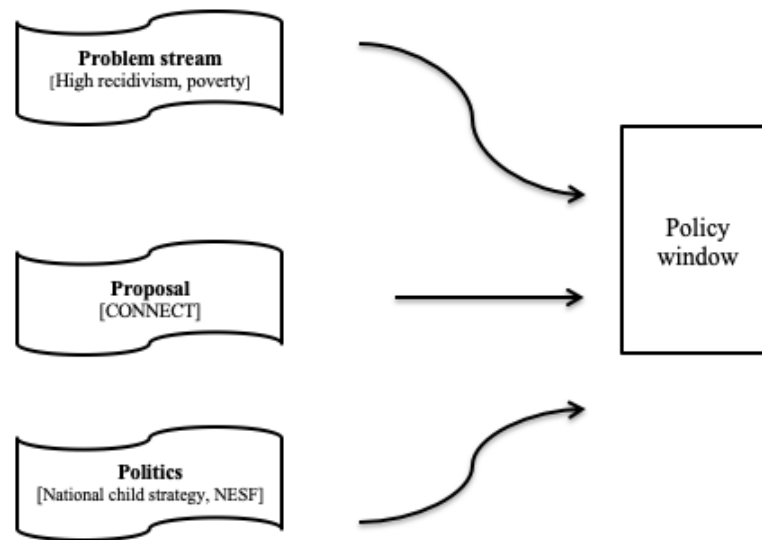
Source: own compilation

6.8. Bringing down barriers: solutions 'en passant'

Despite the vision of endogenous actors—the impetus for child-friendly policies (CONNECT) came from motivated individuals from the Irish Prison Service itself[132] — and lateral Europeanisation influencing rights-based Dáil discourse, phase one efforts to ground policies for children of prisoners and root F1 frames within the criminal justice context were stymied in part by four key factors: *competing frames*, *intractable problems* (children victim of poverty); *antagonistic national mood*, prone to equate rehabilitation or 'positive sentence management' as language shifted, with being soft on crime; and *structural barriers* to reform within the Irish prison estate (logistical barriers of overcrowded Victorian-style prisons, the exorbitant cost of

incarcerating an individual, parallel institutions diluting a focus of penal-welfarism in prison establishments, and resistance to change and innovation on family ties by the Prison Officers' Association, or POA).[133] F1 frames gained sway over time yet faded in and out of view, as did Wave I policies for children with imprisoned parents (1997-2003). Significantly, children's best interests within the criminal justice context when a parent was in prison were highlighted in 2004, as we have seen, but the effect was fleeting and the frame failed to find resonance. The child welfare sector and relevant issues did not sufficiently intersect with a still-parallel criminal justice sector; the rights of children affected by a parent's imprisonment had not yet found purchase.

This would change during the second phase. Policies continued to be driven by individual ministers and civil servants and found expression in the Dáil. Let's examine the factors that served as barriers in the study's first phase: *competing frames; intractable problems (child poverty); antagonistic national mood (equating treatment and support for prisoners with being soft on crime); structural barriers (prison overcrowding, exorbitant costs, POA resistance)*. What we find during the second phase is an intriguing interplay of several of these factors:

Structural barriers would remain a constant during both phases, with a major emphasis on prison building to ease overcrowding and continued efforts to reduce costs. *Frames continued to compete but F1 slowly but surely was gaining traction*, gradually overshadowing the F2 child victim frame and thus easing the intractability that characterised the first phase. Lifting children out of poverty and enhancing their standards of living requires long-term systemic change. Respecting rights and offering support to children and parents in prison provided a solution ostensibly easier within reach, offering greater

'technical feasibility', one of Kingdon's golden criteria which help single out certain ideas over others—whereby 'order is developed from chaos, pattern from randomness'. Grievances no longer outweighed potential solutions. And lastly, a shift in national mood benefited children overall, with widespread 'public acceptability' (another golden criterion of Kingdon) of urgent action to protect vulnerable children, help meet their needs, hear their voices and better respect and safeguard their rights.

Significantly the child rights/welfare and criminal justice sectors intertwined with greater frequency during the latter phase, with child rights finding a richer resonance in public discourse. This time, when Justice Minister Alan Shatter mentioned the best interests of children with a parent in prison in 2011, the political terrain was more fertile and it took hold, finding full expression in the often-cited title of the 2012 Irish Penal Reform Trust report on the right and needs of children and families. This was bolstered by the momentum of the child rights referendum on the Thirty-first Amendment to the Constitution of Ireland, the wording of which was even stronger than that of the CRC (Article 3) in terms of the child's best interests, although, as we have seen, the scope was much narrower.[134] The stop-and-go nature of relevant discourse on the rights and needs of children and families of prisoners persisted—to wit, the absence of references to children or families affected by a family member's imprisonment in 2009, as mentioned—yet references subsequently found greater frequency during the years that ensued, strengthened by Europeanisation and spotlights thrown on the persistent dark recesses and structural barriers by the Council of Europe Committee for the Prevention of Torture, the UN Committee Against Torture and other bodies. As we know, the deontological child welfare frame found greater resonance during Wave II, with Kingdon's 'problem, policy proposal

and political receptivity' streams coming together, further galvanised by widespread public consensus on the urgency to take action to protect vulnerable children. Acquis then unfolded: the establishment of a national policy framework recognising children with imprisoned parents highlights the need to ensure adequate access to an imprisoned parent and commits to improving prison visits conditions for them;[135] and a prison service strategy with the stated intention of introducing child-friendly visit conditions across the Irish prison estate. In addition, steps to implement these policies, however limited in duration and scope, have been taken: after the Irish Prison Service commissioned the Child Development Initiative, in collaboration with the Parents Plus Charity, to design and deliver a support programme for imprisoned fathers and their families in 2013, for example, a pilot intervention and evaluation of the scheme were carried out. Interestingly enough, Child Development Initiative drew on John Lonergan's strategy of getting a foot in the door by means of the utilitarian frame [preventing transgenerational offending], then introducing the primary focus of the deontological frame [child well-being].

In addition to the greater public awareness of children's rights and of the need for child protection, significant changes in prison and probation personnel took place, and the Probation Service's approach to looking more at the individual as a whole began to hold more considerable sway within the Prison Service.[136] Probation Service Director Vivian Geiran would be voted to represent Ireland on the Council for Penological Co-operation (PC-CP), a working group operating under the European Committee on Crime Problems (CDPC) of the Council of Europe, one of the functions of which is to review and monitor probation and prison systems and rules in Europe. His participation in the working group, one could posit, provided a Europeanisation effect of downloading human rights norms into the Irish context. Meanwhile,

organisations in Ireland and across Europe[137] were promoting policies and meaningful action on behalf of children of the incarcerated. It was significant that the head of the Irish Prison Service Working Group on Family Contact, Paul Murphy, joined in the activities of these international networks after the group's launch. Murphy described his involvement with the transnational advocacy coalitions as 'an eye-opener'[138]— as the Working Group examined the operations and processes for children visiting Irish prisons, with parents forbidden to touch their children or forced to stand during visits at some establishments.

6.9. Opening onto the future: adaptability to other contexts

The emergence of this new policy agenda for children with imprisoned parents provides insight into how the issue of parental incarceration evolved in Ireland according to classic NGO/ social movement processes linked to public awareness-raising, advocacy and 'core framing tasks' (Snow and Benford 1988) and the interactive discursive processes that result. Collective action frames generated by Ireland's social movement arena, reform organisations, thinktanks, academia and other 'exogenous' actors played a key role in setting policy wheels in motion, mobilising and transforming grievances into injustices as part of these classic agenda-setting processes, considered to be crucial in that they determine which issues are tabled for decision-making (Princen 2007). Yet the critical role of Dáil deputies as 'endogenous' policy entrepreneurs for children with a parent in prison, particularly independent TDs during the first phase of the study, has been demonstrated as being critical. They steered attention to the rights and concerns of prisoners' families, worked in tandem with the voluntary/community sector and reform organisations, drawing on the seminal reports, recommendations and findings

they produced, identifying policy windows of opportunity to raise the issue's visibility and setting the agenda 'from within'. This is in line with Kingdon's theories on the role of 'visible clusters' of actors in policymaking processes, with certain Dáil deputies ensuring that the topic remained on the government agenda and moving it up whenever possible (Kingdon, 1995: 199). Yet these policymaking processes highlighted some conditions very specific to the Irish context with respect to prison policy and reform in terms of the sheer impact of these individuals. As Rogan explains:

> The Irish experience also points us to a very particular dynamic in the policymaking process that reform groups might do well to remember. The history of Irish prison policy tells us that individual Ministers and civil servants can have enormous and long-lasting influence on the future direction of the penal system. Recognising the power of individuals and the importance of personality is essential to ensure that policy ideas are translated into practice.
>
> —Rogan 2012: 29

Despite what Rogan sees as this typically Irish angle to policymaking in that country, the multidimensional, dynamic agenda-setting framework used in the study in which both exogenous collective action frames and endogenous elite policy entrepreneur frames are in play is fluid and flexible and can be adapted to different contexts when working for reform. It showcases a greater number of strategic agenda-setting options and entry points both at a given moment in time and over time, from reducing poverty, lowering recidivism and decreasing public spending to protecting children and highlighting their rights,

incorporating psychological, social, economic and legal strands—finding the piece of the puzzle that fits [frame-fit], at a moment in time opportune for decisions and action to be taken and policy solutions recognised. The flip side of this is, however, that just as this complex topic provides different possibilities for venue shopping (Baumgartner and Jones 1991), it also provides opportunities for multiple venues, and relevant issues to misfire, be diluted or go astray. Following the 2002 Society of St Vincent de Paul policy seminar on the impact of parental incarceration on children mentioned above, for example, the Combat Poverty Agency presented on child poverty to the Oireachtas Joint Committee on Family, Social and Community Affairs, not to the Joint Committee on Health and Children, nor to the Joint Committee on Justice, Equality, Defense and Women's Rights. Was this the most strategic venue for the issue of parental imprisonment's impact on children to find resonance? Most likely not.

The knowledge gained in this study about the origin of policies for children of the incarcerated, how relevant policy solutions are formulated, and how to develop a strategic agenda-setting approach with a focus on policy entrepreneurship can be useful for advocacy coalitions and reform organisations acting on behalf of children with parents in prison. Knowing how to identify the various frames is a first step towards more effective advocacy on behalf of any cause, and is particularly useful in demobilising potential opposition when advocacy involves more difficult causes such as parental incarceration. The key lies in identifying frames that have maximum resonance and are thus most persuasive with decision-makers and with the national mood. When advocating for reform specifically for children of the incarcerated, the strategy of hitching the deontological frame (promoting child-parent contact and reducing poverty for children) to the utilitarian frame

(maintaining family contact as a means for reducing recidivism) in phase one resulted in what is referred to as a win-win 'dynamic security' paradigm. According to this paradigm, based on the premise of enhancing communication and understanding of prisoners and their needs while evaluating the risks they may pose, the child 'wins' through reduced child poverty and enhanced contact with the imprisoned parents when in their best interests. Prisons/society in turn 'win' by securing a calmer prison atmosphere, greater well-being among the prison population and, as demonstrated by several studies, albeit rather limited ones in terms of methodology, a reduced rate of recidivism among some prisoners who maintain contact with children and families (e.g., Carlson & Cervera, 1992; Acevedo & Bakken, 2001; Bales & Mears, 2008; Holt & Miller, 1972). In this way, social movement organisations and advocacy bodies can draw on the experience of both waves of policies presented in the study, construed as one strategy on a continuum. An initial phase opens a 'policy door' to the issue of children who have a parent in prison by emphasising the benefits to society of promoting family contact (utilitarian frame: less recidivism, safer communities, lower public spending). A subsequent phase brings political power and a human rights dimension more in line, introducing a deontological child rights frame by capitalising on a Europeanisation effect and heightened public awareness of the need for child rights/welfare protection specific to a given context. A primary concern for advocacy and policymaking for children with imprisoned parents is to ensure, once the issue has gained entry onto policy agendas, that the deontological child rights frame remains front and centre throughout the policymaking process while ensuring that effective implementation of policies translates into practice and the policy itself is embedded.

6.10. Conclusion: progress, advancement and a reality check

That the developments highlighted in this and other chapters represented positive steps forward in enhancing the visibility and recognition of children with a parent in prison in Ireland, as a group in their own right facing specific challenges and needs, is unequivocal. This included state commitment to ensure children access to their imprisoned parent in a child-friendly setting.

As we have seen, evidence for this lay in the establishment of a national policy framework that acknowledges children with imprisoned parents, highlights the need to ensure adequate access to an imprisoned parent and commits to improving prison visits conditions for them (*Better Outcomes, Brighter Futures, 2014-2020*); and a prison service strategy with the stated intention of introducing child-friendly visit conditions across the Irish prison estate. In addition, steps to implement these policies, however limited in duration and scope, were subsequently taken: after the Irish Prison Service commissioned the Child Development Initiative, in collaboration with the Parents Plus Charity, to design and deliver a support programme for imprisoned fathers and their families in 2013, for example, a pilot intervention and evaluation of the scheme were carried out. The study has demonstrated the significant role that the 2012 Irish Penal Reform Trust report played as a catalyst in advancing these developments. Not only did Ireland have a government ministry devoted solely to children and their rights—a relatively rare phenomenon in countries worldwide (Peters, 2012: 12)— but for the first time in the history of the Irish state, a sole state agency for child and family services (Tusla, 2014) was established.

Did these positive steps for children with imprisoned parents represent significant change? Were the steps taken by the prison service and progress subsequently made for the purposes of truly safeguarding and protecting

these children? Or was the impetus the need to avoid reprimand from external bodies, to conform to rules and regulations and avoid opprobrium, to alleviate shame? Some felt it was the latter,[139] at times even those instrumental in spearheading changes for children, maintaining that steps to enact prison policy were 'reactionary' as opposed to a proactive culture that 'truly values children' and the developments described as having failed to 'seep down or across the prison system' in any meaningful way.[140]

Others minimise the impact of the Irish Penal Reform Trust report on actual policy and practice,[141] as well as the role of strategic actors in the Dáil and the effect of raising the rights and concerns of children with imprisoned parents higher up policy agendas.[142]

Was there truly cross-fertilisation of the awareness of a need for enhanced support and respect for family rights for 'ordinary prisoners' incarcerated in the Irish prison estate, to redress the perceived double standard of greater recognition of these rights for politically motivated prisoners in Northern Ireland and England? Some have expressed skepticism over this.[143]

What's more, the realities of certain structural challenges within the Irish prison estate at the time presented challenges with respect to implementing change. A 2013 report found that 504 prisoners (12.3 per cent) were housed in cells lacking sanitary facilities ('slopping out'); and 1,606 (39.3 per cent) were obliged to use the toilet in the presence of another prisoner,[144] conditions that had been repeatedly condemned in certain prisons by the European Committee for the Prevention of Torture (CPT) since 1993. An October 2013 study revealed an average recidivism rate of 62.3 per cent within three years of release;[145] twenty-six children were incarcerated in Saint Patrick's Institution in February 2013, in breach of international human rights law;[146]

and all visits at Cloverhill Prison at the time took place behind glass partitions, contravening the European Convention of Human Rights.

What's clear is that action needs to go beyond the implementation of acquis. To effect significant change for children of the incarcerated requires not only monitoring and evaluation but also a holistic cross-sectoral approach to respecting rights and implementing national policies. Yet the national policy framework for children and young people 2014–2020 delegated action to be taken on behalf of children with imprisoned parents to the Department of Justice and Equality.

The Irish Penal Reform Trust did have constructive direct engagement with the Department of Children and Youth Affairs in 2013 with respect to the inclusion of children of the incarcerated as an identified vulnerable group in the 2014–2020 national policy framework. Working from a holistic and cross-sectoral perspective, the Irish Penal Reform Trust raised specific recommendations in the report with relevant agencies, including the Department of Education, the Minister for Justice and Equality, the Garda Commissioner and the Courts Services. In 2014, the government set up implementation and accountability structures under the 2014–2020 national framework; the structures include the participation of children and young people, as well as civil society actors.

7. CHAPTER SEVEN: Conclusions

7.1. Conclusions and lessons learned

This book sprang from a desire to explore advocacy and policymaking processes for children of the incarcerated and thus better understand the origins of the significant policy gap found in national political systems in many EU member states concerning this group. Looking at this from a more constructive perspective, the study set out to better grasp what drives change and reform on behalf of this group of children and which factors help propel or inhibit this change. It wanted to try to make some sense out of the messy dynamics of policymaking for a 'pariah' issue that journeys across sectors and through a wealth of policy spheres, taking on different meanings and falling subject to a variety of interpretations. As this book demonstrates, frames provide the golden thread: they are what harness the issue of parental imprisonment, represent and legitimise it, open up new venues in which it can thrive and move higher up policy agendas, assess the openness and flexibility of political opportunities. The formal coding and empirical analysis of different frames within a given discursive architecture have enabled the measurement of phenomena impacting policy processes for children of the incarcerated, including fundamental rights culture, priorities in penal reform, the core values of elected representatives and by definition the people of a nation. This measurement and analysis of frames has provided critical insight into the puzzle of how, in a neo-liberal country such as Ireland,[147] it is not utilitarian frames that have been the most persuasive in sparking reform for children of the incarcerated, but deontological ones. It has also enhanced understanding of how a country with a dualistic legal system, posited as a potential hurdle to implementation of international rights instruments like the CRC in their not automatically becoming part of Irish law, somehow accelerated the

recognition of child rights. Its constitutional text has been described as 'an evolving narrative that is transformed in tandem with shifts in the construction of Irish identity' (Hanafin et al. 1999: 73). Van Bueren sees the constitutional courts in countries in the process of transformation as seeming 'more open to newer approaches and ideas' (Van Bueren 2003: 27). Could Ireland's receptiveness to Europeanisation and framing integration, as documented in this study, have somehow been a positive factor in the development of a constitutional culture of children's rights?

In the case study of Ireland, frame analysis has allowed the identification of precise moments in time when the discursive architecture began to shift as did the political terrain in response. A clear example is when references to the child's "best interests" phrase, a concept greatly associated with the CRC, first emerged in the Dáil with respect to children with imprisoned parents, with children as rights-bearers gradually superseding child victim frames. Another is when "restorative justice" and "human dignity" began to hold sway in criminal justice narratives. In exploring framing dynamics in this way, the study has permitted the systematic comparison of advocacy narratives by SMOs and policy brokers; and the successes and failures of different frames in modifying the political landscape for children with imprisoned parents. The study does not claim to have deconstructed and examined all of the complexities and intricacies of Ireland's social welfare, economic and criminal justice systems that influence prison policy and acquis for children with imprisoned parents. But it does trace some of the mechanisms involved in advancing the rights and meeting the needs of these children, and gives an overview of the social and political landscape in which these mechanisms came to light.

This study has revealed that at least three domains are involved in influencing outcomes for children of the incarcerated. Child rights culture, as illustrated by the example above, is an indication of the degree to which universal rights discourse impacts national sovereignty, decision-making and how children's rights to family contact when separated from a parent in prison are transposed into acquis. Historical processes, rich in human interactions and underpinning the broader cultural environment in which the issue of parental incarceration is nested, inevitably influence how relevant policy processes develop and are played out. Europeanisation, or rather framing integration encompassing international norms and human rights instruments, bears a significant influence on policies for children affected by a parent's imprisonment in Ireland—be it 'bottom-top-sideways-down' or via Radaelli's 'institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms'. Europeanisation has an impact on both child rights culture and historical processes. Yet as Levy and Sznaider suggest, 'rather than presupposing that globalization, or a universal rights discourse are necessarily leading to the demise of sovereignty, we suggest that an increasingly de-nationalized understanding of legitimacy is contributing to a reconfiguration of sovereignty itself' (Levy and Sznaider 2006: 659).

7.2. Innovation and impact on social movement organisations

This study is innovative in that it helps fill two gaps. Firstly, with respect to the literature on framing: McCammon et al. (2007: 730) cite Snow and Benford's 2000 literature review (Snow and Benford 2000: 632) to highlight the limited number of studies they found that 'systematically compare the political impacts of different types of frames in order to discern which frames are more

persuasive and thus more effective in attaining movement political goals'. It therefore enriches the existing literature on framing and the examination of the impact of various frames on a systematic basis. Secondly, the study innovates in its deconstruction and analysis of constitutive, normative, cognitive and policy substructures of government and social movement organisation action and discourse relevant to children of the incarcerated, using a frame-critical lens. At the same time, it looks at how the issue of children of the incarcerated has been defined and problematised within a specific context, examining developments using Kingdon's multiple streams framework, and the impact this has on the broader discussion surrounding the issue. It thus fills an empirical gap with respect to studying children of the incarcerated and may be the first of its kind on this topic using this specific focus and frame-critical approach. Eoin Carroll's seminal study of policy processes underpinning the construction of the Dóchas Centre, the largest women's prison in Ireland, draws on Kingdon's multiple streams framework in tracing its origin but relies less on a frame-analytical lens, and children are only implicit through the focus on imprisoned women, not all of whom are mothers. The present dissertation goes further in terms of innovation in its holistic scope. It not only pinpoints the emergence and development over time of awareness and acquis for children of the incarcerated thanks to advocacy and policy brokering via frames, but also maps the broader cultural constellation in which these processes unfold. This constellation includes supranational instruments and transformational human rights tools sparking change on the national level; lateral influences, focus events, champion actors, national mood and more. These all impact the effect of framing on policies. This study empirically investigates their role and demonstrates how interactive processes play out, while positing plausible causal relationships. In this way, the study goes beyond what Benford calls 'the frame name game' (Snow et al. 2014: 30) and attempts to 'disentangle causality' (McCammon, in Snow et al.

2014: 33) rather than to settle for *descriptions* of frames and discursive interactions.

In placing primary emphasis on process, providing a dynamic set of tools and strategies for future advocacy, the current study also helps fill a gap with respect to framing research. As Hewitt and Fitzgerald (Snow et al. 2014: 37) point out:

> The need for greater attention to process also stands out as an area ripe for growth. It is still the case that a significant portion of framing research examines frames as the artifacts of framing processes while devoting comparatively little attention to uncovering the process itself.

In this way, this research is very much future focused, offering advocacy-relevant insights that can serve advocacy coalitions and social movement organisations, particularly those acting on behalf of children of the incarcerated, by presenting a methodology for better understanding the origin of policies for this group of children and how relevant policy solutions are formulated. Social movement organisations for children of the incarcerated can gain insight into agenda-setting strategies explored during this research and into those specific frames which are the most persuasive and how they can be used. As demonstrated, an initial advocacy phase opens a "policy door" to the issue of children with imprisoned parents by emphasising the benefits to society of promoting family contact (utilitarian frame: less recidivism, lower public spending, less poverty); while a subsequent phase brings political power and a human rights dimension more in line, ultimately introducing a

deontological child rights frame. Hitching the deontological frame to the more persuasive utilitarian frame helps make for more efficient advocacy for children of the incarcerated. In short, this research enriches the idea of framing with a purpose as part of advocacy and policy brokering. As Hewitt and Fitzgerald maintain: 'Perhaps one of the greatest strengths of the framing perspective is the degree to which scholars are able to utilize its tools toward movement-relevant research, or research that directly supports movements and their goals' (in Snow et al. 2014: 38, citing Ryan 2005).

Advocacy that is being carried out on behalf of other groups of children who are in situations of vulnerability and often marginalised can also be informed by this research. Civil society organisations can advocate more effectively for children with greater impact by influencing the language that accompanies advocacy and promotes policies on their behalf. As we have seen, language and communication can help mould and forge the social reality around us, subjecting individuals to forms of power while offering opportunities for individual agency and action. Through awareness-raising and training, their own as well as that of other stakeholders, advocacy coalitions can work to refine how language about children is framed so that they are depicted (and seen) as having agency, not as victims or subjects of others' actions. This can help shift the groundwork, enhancing resonance among stakeholders of the need to: a) strengthen child rights; b) reinforce adults' positive duties to establish protective political and social systems that foster children's inclusion, citizenship and agency; and c) support public policy initiatives that help provide the means with which children can be a part of these political and social systems. In short, grievance does not outweigh positive solutions.

With respect to children separated from an imprisoned parent, policy processes relevant to this group of children have received little attention in academic literature. Most available literature traditionally has focused on the problematisation of children with imprisoned parents, highlighting the repercussions of parental incarceration on children, and the concomitant stigma, financial difficulties, developmental obstacles and heightened risk of transgenerational crime (Murray et al., 2009); to be remedied by evidence-based support initiatives as per their rights to well-being and family contact. Recent literature takes a less reductionist approach, emphasising factors that promote resilience and better outcomes for children affected by parental incarceration (Adalist-Estrin 2018; Luther, 2015; Coping 2012, Poehlmann and Eddy 2013; Poehlmann et al. 2010), such as support of schools, parent support programmes, etc. There is a paucity of literature on outcomes for this group of children, most likely linked to a deficit of available empirical data and the challenges in establishing baseline measures. Likewise, studies on policy outcomes are lacking, with some exceptions (Kruttschnitt 2011, for example).

It is not surprising then that there is a paucity of literature on the role of policy frames for this group of children. This research helps fill this void by contributing to the academic literature on how policy frames for children with imprisoned parents are constructed, interpreted and received by policy elites, and how their "level of fit" with elite discourse explains and influences the success of policy outcomes for them. It also innovates in demonstrating, through discourse analysis, the multi-dimensionality of Europeanisation with its top-down and lateral movement in influencing policy change with respect to both child rights and penological processes on the national level. Finally, it innovates in revealing how the merging of child-rights and penal-related "silos" is a condition sine qua non for effecting policy change for children of the

incarcerated, and in highlighting strategic mechanisms that enhance advocacy for this group of children from a child rights perspective.

7.3. Limitations and future avenues for research

The choice of Ireland as the case study to be examined in this research could result in a relatively lower degree of reproducibility of the model presented here in this study, for three reasons. Firstly, the Republic of Ireland is a very newly formed state in comparison to many EU member states with longstanding traditions and institutions. As established previously, it inherited legal and penal traditions and systems from Great Britain, requiring a period of time for a sense of ownership in governance to develop. This most likely contributed to the relatively late establishment of key institutions in Irish society and updated prison legislation. As mentioned in earlier chapters, newer constitutions can be more accommodating in terms of enshrining children's rights, and international child rights discourse is seen to have 'empowered' advocacy efforts to strengthen child rights in the Irish Constitution (Collins 2018: 1). Secondly, some see the Republic of Ireland as being the 'exception' with respect to other European Union member states, and therefore a less representative example of how a member state functions, responds and complies with EU norms, values and legislation. As Rogan explains:

> One other phrase that I've come to love—I don't know what the origin is—is that Ireland is the country of the footnote. Apparently some political scientist was reading a text, and it was saying 'In Europe, [...] democracies tend to work like this, governments like

> this, and then—footnote, footnote, footnote—except in Ireland, except in Ireland, except in Ireland.'[148]

What's more, whereas European Union treaties are approved by national governments in many EU member states, for example, a norm crystallised in Ireland that a referendum would be part of the decision-making process for new EU treaties. They are required for modifying the Irish Constitution,[149] giving citizens a voice on whether or not a given law is implemented. Whether or not this has an impact on children of the incarcerated remains to be seen, but it does set Ireland apart from many other EU member states in the involvement of the general population, which are used to having their say with respect to treaties, conventions and legislation emanating from Brussels.

A possible avenue for future research could be to look at the degree to which the child's right to contact with a parent who is imprisoned in another EU member state is being used as a criterion for transfer within the aegis of Council Framework Decision 2008/909/JHA of 27 November 2008. The focus of this directive is applying the principle of mutual recognition to decisions in criminal matters resulting in custodial sentences/measures involving deprivation of liberty, with the aim of fostering a prisoner's social rehabilitation. Future research could compare Ireland's implementation of this with that of other EU member states. Also relevant is Council Framework Decision 2008/947/JHA of 27 November 2008 on applying the principle of mutual recognition to judicial/probation decisions with an eye to the supervision of probation measures and alternative sanctions. Another avenue for research would be to expand the current research and carry out a comparative analysis of EU-15 member states using a frame analytical approach, with regression-based analysis of frames and their impact on policy

processes, and interviews with a wider variety of SMOs, activists, prison personnel and policy experts.

It is encouraging that children with imprisoned parents are made explicit in a November 2019 European Parliament resolution on children's rights on the occasion of the 30th anniversary of the CRC, strengthening their rights. Efforts currently are being carried out at the time of this writing to map and analyse the existing EU legal, policy and financial framework on child rights and the political context in order to pinpoint gaps and highlight what is needed to put children's rights high on the political agenda of the European Union. Whether or not a new Child Rights Agenda Framework currently being elaborated will bolster acquis for children who have a parent in prison remains to be seen, as does the EU's stated commitment to protect child rights as part of the revised European Consensus on Development. The latter, adopted in June 2017 by the Commission, the EEAS, the Council of Ministers and the Parliament, calls on the Commission to present a strategy to support and protect all children without exception, including a designated budget and a 'child marker' with respect to the Commission's budgets to allow EU investment in children to be identified, measured and monitored.

8. CHAPTER EIGHT: Epilogue and valorisation addendum

This epilogue and valorisation addendum aim to highlight the possible repercussions and impact this dissertation can have on social movement organisations, reform bodies and society in general, while tracing pathways for future advocacy. The study has explored how policy channels and frame-reflective advocacy can be used most efficiently to effect change and to promote meaningful action on behalf of children. As mentioned, the work carried out as part of this study has contributed to framing processes that have a purpose.

The context for advocacy for children with imprisoned parents differs from country to country and may be contingent upon such factors as differences in judicial and legal culture, human rights culture, levels of social trust/social cohesion, cultural traditions of charitable work (faith-based, secular, state-funded, etc.) or the relative impact of international and European discourse and monitoring. It has been demonstrated, for example, that moderate penal policies have their origins in a consensual and corporatist political culture, in high levels of social trust and in a strong welfare state, and conversely, that more punitive policies are present in countries where these features are less evident (Lappi-Seppälä 2011). These factors have a bearing on policies and acquis for children who have a parent in prison.

The frame-analytical lens used in this study can be adapted readily to a variety of given contexts, enhancing understanding of the cross-sectoral spheres involved in advocacy and policymaking processes for children affected by

parental incarceration, and thus provides a model for a more fully integrated policy advocacy approach. This holds true not only for children of the incarcerated but could ultimately benefit advocacy carried out on behalf of other groups of marginalised children in situations of vulnerability, promoting the development, implementation, monitoring and evaluation of policies and services that respect their rights and protect their well-being.

Analysis of policymaking systems for marginalised children in EU member states from a framing perspective has not been carried out to date. As we have seen, due to its complex network of relevant cross-sectoral agencies involved in decision-making, the issue of children affected by parental incarceration is one offering an abundance of potential "access points" for agenda-setting. We could assume that this multiplicity may, in the end, act as a deterrent for policy outcomes in that it gives rise to competing or contending frames, diluting their impact. Reframing or frame realignment may be required to harmonise advocacy efforts by civil society organisations. The study also enhances understanding of causal effects of issue framing on decision-making within complex policymaking environments, an arena less well understood, according to Daviter (2011), than causal effects of framing on individual decision-making.

Valorisation of the study began halfway through the research. The study has placed great emphasis on exploring how the various social movement and policy framing and agenda-setting theories and analytical tools underpinning the research can be used in real-time. To this end, during the course of the research, the author has been involved in working with forty-five member organisations and individuals of a pan-European network as part of an action grant 2014–2017 to raise awareness on strategic framing, try to align frames, refine messages and maximise frame resonance in communicating positive

solutions for children affected by parental incarceration. The overall aim has been to strengthen the impact of advocacy of individual members within their national context (some twenty countries across Europe) and to bolster the impact of this pan-European body collectively. The first step was to inventory frames (utilitarian, deontological, mixed) used by network members with respect to children who have a parent in prison. The next step was to organise two transnational workshops with leading frame analysis experts, referred by framing scholar Dvora Yanow. The first workshop, entitled *Introduction to Framing as a Tool in Policy Analysis*, sought to raise intra-network awareness on the importance of issue framing as a strategic tool in their advocacy work; the second, *Framing and Story-telling*, focused on the role of narrative storytelling to enhance the resonance and impact of messages about children with imprisoned parents.

The author has been observing the "trickle-down" effect among network members of the framing workshops, most recently with Bedford Row Family Project in Ireland, which has highlighted a greater focus on more child-protective language and framing as a primary objective in their advocacy. In addition, the Children's Ombudsman's Office in Croatia is working with stakeholders to raise their awareness on the importance of emphasising the deontological "rights-holder frame" for children, avoiding the passive "victim frame" that brings the issue into Kingdon's 'intractable issue' realm. The Expertisecentrum in the Netherlands is also working on fine-tuning framing and the language used to refer to this group of children. What is key is avoiding any further stigmatisation of children, beyond that which they frequently have to contend with having a parent in prison—Goffman's 'spoiled identity' (Goffman 1963: 130). The network plans to organise additional pan-European workshops on framing as a policy tool. One workshop will be with network members (which include members of prison services in Catalonia, Cyprus,

Slovenia, Northern Ireland), exploring further how the complex and challenging issue of children of the incarcerated might best be communicated, with a particular focus on the ways in which individual member organisations that are part of larger advocacy coalitions might be identifying, representing and giving legitimacy to the issue of children who have a parent in prison. An overall question to explore is whether some individual network members may be targeting different agendas, and if the use of contending frames could be somehow diluting the impact of collective advocacy. Discussions can revolve around whether these competing frames might be 'reframed' or 'bridged' to intensify impact. A second workshop would bring in likeminded child welfare and child rights NGOs and civil society organisations who could ultimately benefit from the learning, thus mainstreaming it. The pan-European advocacy coalition is active in lobbying the European Union in tandem with the Brussels-based Child Rights Action Group, an informal consortium of NGOs working to promote the EU Strategy on Child Rights on behalf of children in vulnerable situations. One of the workshops mentioned would involve children and young people, and their voices, experiences and advice could further inform messages and advocacy work, thus integrating a child safeguarding mechanism into framing processes while fine-tuning the messages conveyed. Another strand of the pan-European advocacy coalition's work is participating in an expert group on children with imprisoned parents (2019–2021), organised by EuroPris, a Brussels-based umbrella NGO comprised of EU member state prison services. Through its participation in the expert group, the pan-European coalition has introduced this new learning and awareness on framing into sessions with prison services across Europe, on the role and importance of language in shaping the reality of children of the incarcerated, and of construing them as rights-bearers with agency who can be involved in decisions impacting their lives. In short, framing and agenda-

setting theories have been integrated into the advocacy coalition's programmatic and operational activities, and will be integral to networking with stakeholders; communication via social media and the development of future projects. Emphasis on framing and agenda-setting is included in all reporting to the European Union, thus heightening its visibility and enhancing its importance and relevance in other EU-funded projects. When asked for a testimonial on what the European Union can do for children in future, as part of preparations for the EU Forum on Child Rights 2020, the author responded that the EU could focus more on how language about children in vulnerable situations is formulated and be made more protective, with specific attention to referring to these children as rights-holders who have agency, not as passive victims, subjected to their lot.

9. CHAPTER NINE: References

9.1. List of interviews

Dr Mary Rogan — September 17, 2015, Dublin.

Paul Murphy —   September 15, 2015, Dublin.

John Lonergan — September 16, 2015, Dublin, further follow-up exchanges by e-mail.

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9.3. Endnotes

[1] Dating from the 1950s when it was 'relatively quickly agreed that the ECHR would be the authoritative source for the new European Political Community's human rights system, and the provisions of the European Convention on Human Rights (ECHR) were incorporated by Article 3 of the EPC Treaty as an integral part of that Treaty.' (Craig 2011: 486). As amended by the Treaty of Lisbon, Article 6(3) TEU provides that 'Fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.'

[2] Stipulated in the EU Agenda for the Rights of the Child, adopted by the European Commission [COM(2011)60].

[3] The EU began to focus on child rights when the Commission published a Communication entitled *Towards an EU Strategy on the Rights of the Child* (COM(367) Final 2006), outlining proposals for the development of an EU children's rights strategy. See for example, Stalford and Drywood 2009.

[4] TEU, Art. 3.3 and 3.5. Consolidated Version of the Treaty of the European Union, *Official Journal of the European Union,* 30.3.2010 C 83/15.

[5] The European Charter of Fundamental Rights of the European Union (2000) mainstreams children's rights and mirrors the CRC in many respects. It recognises children as autonomous rights holders (Art 24), in line with Article 12 of the CRC regarding children's right to be heard in matters that concern them, in accordance with their age and maturity. Article 24 of the Charter also makes the child's best interests paramount for public authorities and private institutions, in line with CRC Article 9.

[6] ERA Forum, December 2013, Volume 14, Issue 4, pp 543-556. The way forward: the implementation of the EU Agenda for the rights of the child, Margaret Tuite. Reference to the "Charter" is the Charter of Fundamental Rights of the EU.

[7] For example, an effective equation for a consensual (corporatist) political context could be: $F1+F2+F3 =$ action; versus a majoritarian political context: $F3 + F2 + F1$.

[8] See for example The "Economic study of Integrated Family Support Programme" by the New Economics Foundation. http://www.prisonadvice.org.uk/our-services/sup-children-fams/ifss

[9] Example of rationalist cost-benefit frame found in Ireland (Bedford Row website): A study of the Integrated Family Support Programme in the UK found that for every £1 invested in facilitating the family relationship when a person goes to prison, the taxpayer can save £11.41 in the long term.

[10] Example of rationalist cost-benefit frame found in the Netherlands (University Utrecht study): "Betere Start" parent training to prevent criminal careers in children with imprisoned mothers. Argument: Reduced cost of running apartments for mothers outside prison (-€16 million).

[11] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0327.

[12] DC\856353EN.doc PE458.209v01-00 /EUROPEAN PARLIAMENT 14.2.2011 /WRITTEN DECLARATION pursuant to Rule 123 of the Rules of Procedure on infringement of the fundamental rights of detainees in the European Union.

[13] COM/2011/0327 final */ Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention.

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[14] The Irish Prison Service was not established until 1999; the first criminology institute was founded in 2000; and a Parole Board established in 2001. The first Inspector of Prisons was named in 2002 but wasn't placed on a statutory footing until 2007.

[15] Efforts were made to surmount the lack of data in 2000 when the Irish Prison Service began phasing in the Prisoner Records Information System. This computerised system assigns a unique identifier (PRIS number) to each prisoner and allows for the recording of some demographic information and criminal background history.

[16] Keenan, Marie, reviewing *Children's Rights and Child Protection: Critical Times, Critical Issues in Ireland*, Manchester: Manchester University Press, 2012. 256 pp. £65.00 (hbk). ISBN 9780719086274

[17] IPRT (2017), *Progress in the Penal System: a framework for penal reform*.

[18] Family Links, consisting of formal and informal supports for imprisoned fathers, was implemented in Limerick Prison from October 2014 to March 2016, and an evaluation by Bedford Row Family Project subsequently carried out. See *"Family Links" Evaluation Report* (2017), Bradshaw, D. & Muldoon, O.T., Dublin: Childhood Development Initiative (CDI).

[19] Seanad Éireann Debate, 14 December 1999: The Taoiseach: While the focus in recent weeks has been on the implementation of the constitutional and institutional aspects of the Agreement, considerable progress has been made on the implementation of other provisions and aspects of the Agreement. In this jurisdiction in the area of human rights legislation the Second Stage of the human rights Bill is now well advanced. When enacted we will have some of the most advanced human rights legislation in Europe. The Human Rights Commission which it will establish will have a wide-ranging jurisdiction in the area of human rights and fundamental freedoms and will participate in the joint committee of representatives drawn from the Human Rights Commissions in both jurisdictions.

[20] See, for example, *Children with Imprisoned Parents: European Perspectives on Good Practice* (2006, updated 2014), Eurochips, Paris.

[21] Describing frames as mechanisms for making sense of events and phenomena, allowing individuals to locate and [. . .] label them, Goffman (1974: 21) suggests that these frames are not necessarily constructed as new entities but exist within an individual's broader cultural sphere and the situation-specific meanings at hand (in this case, the issue of parental incarceration and how it is identified, labelled and given meaning) embedded within (Snow 2007: 385). In the case of children of prisoners as an issue, the words "child" and "prison" articulated conjointly were most frequently associated with children in detention or infants living with their imprisoned mothers. Meaning, therefore, had to be produced, frames had to be constructed and much preliminary work remained to be done by signifying agents both within the social movement arena and elite institutions. The role of the political opposition within the Dáil in highlighting, criticising and assisting the government was remarkable.

[22] The Ryan Commission, an independent statutory inquiry operating from 23 May 2000 to 20 May 2009, was tasked with reporting on the causes, nature, circumstances and extent of abuse on children in institutions from 1936 to the present. Twenty-two institutions were examined in detail, institutions being defined by the Commission as including schools, industrial schools, reformatory schools, orphanages, hospitals, children's homes and all other places where children were taken into care by people outside their families.

[23] Publication of the Whitaker Report (1985), the most detailed analysis of Irish prisons to date. The inquiry committee maintained that imprisonment offered only temporary protection of the public at great cost, little in terms of rehabilitation, incarcerating too many for short periods of time for minor offences, e.g., debt, resulting in overcrowding and unwarranted expense. Key recommendations included community service for lesser crimes and the use of prison as a last resort.

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24 The precursor to *Brighter Futures, Better Outcomes*—the National Children's Strategy 2000–2010, *Our Children, Our Lives*—contained no reference to children with imprisoned parents. At the time, the issue of youth justice was a primary focus. The Children Act 2001, which was founded on the principle that custody for children was a last resort, raised the age of criminal responsibility from seven to twelve and introduced a range of innovative measures to provide a statutory framework for the youth justice system in accordance with best international practice.

25 The reference to children with imprisoned parents was included as a result of a recommendation of the Children's Rights Alliance, who sought input from children's rights academics working in this area**.** Mountjoy Prison governor John Lonergan, for example, subverted these processes, sidestepping agenda setting and policy debates and going straight to implementation of policy by means of the EU Integra Programme, incorporating parenting courses into an EU-funded project called CONNECT.

26 The Sunday Independent, 4 June 1964, cited in Rogan Prison Policy in Ireland: Politics, Penal-Welfarism and Political Imprisonment, p. 111.

27 The Irish Society of Criminology was founded by a group of academics in 1971 to examine criminal justice issues and penal developments in Ireland and to foster research. It was looked upon with some suspicion by the department of justice.

28 https://www.iprt.ie/prison-facts-2/ (accessed 23.21.19).

29 National Economic and Social Forum report *Reintegration of Prisoners*, 2002.

30 Concerning criminal law and sentencing, the European Union has no general competence vis à vis domestic policy, except when these issues cross national borders. In the latter, the EU ensures mutual recognition of decisions when they cross member state borders, in line with the EU's core objectives. Theses issues include judicial decisions in criminal justice matters.

31 Example of utilitarian cost-benefit frame found in Ireland (Bedford Row Family Project website https://www.bedfordrow.ie): A study of the Integrated Family Support Programme in the UK found that for every £1 invested in facilitating the family relationship when a person goes to prison, the taxpayer can save £11.41 in the long term. Accessed 19 July 2016.

32 As detailed in Crime and Poverty: Submission to the National Crime Forum, Combat Poverty, 1998, p. 11.

33 That same year, voluntary/community organisations were striving to humanise the prison setting for prisoners and their families, with such events as Restorative Justice Week (also known as Prisoners' Week), organised by prison chaplains, Pax Christi, Amnesty International, Society of St Vincent de Paul, Irish Commission for Prisoners Overseas and others. Prisoners' Week had a holistic focus, embracing victims, prisoners, prison officers, their families and the community, with an emphasis on healing. There was a move to establish a three-year project to raise greater awareness of the issue.

34 https://www.irishtimes.com/opinion/combat-poverty-agency-1.933904, accessed 27 August 2019.

35 Fathers who participated in the Options programme at Mountjoy could take part in a parenting morning once every three months, when the prison auditorium was turned into a play area. Fathers could spend two hours with their children here. It was open to every parent who had taken part in the Options programme.

36 Source: Prison Service Annual Report 2001.

37 According to former Mountjoy prison governor John Lonergan (personal e-mail exchange, 17 August 2018): 'There was a lot of disagreement between the heads of the professional services and the Director

General of the Irish Prison Service during 2002. This was 2 years into the National Development Plan. This gathered steam when the project was due to be rolled out in Wheatfield and the first scoping report carried out by the National Training and Development Institute was due to be published. The heads of Teaching, Probation and Psychology all opposed the publication of the report and after long discussions and negotiations, agreement could not be reached and this was the beginning of the end of CONNECT. In addition, IPS seriously reduced the funding for the NTDI to the extent that they withdrew because they were not in a position to continue to support the project at the level that they felt was credible. IPS wanted them to be just an overseer of the project rather than an integral participant. As a result NTDI withdrew their involvement. In 2003 the IPS withdrew staffing for the Options program in Mountjoy. Incidentally the Options program continued to be staffed in the Dóchas Centre (women's prison) for a number of years afterwards. The money allocated in the National Development Plan for CONNECT was used by the IPS for other purposes, most of it to cover staff overtime in the prison service. The Probation Service also diverted the 11 million it was allocated to other projects and it never fully supported the CONNECT project.'

[38] Dáil Éireann Debate, 20 October 2004: O'Snodaigh query, wanting to know more about: . . .the reason the Government has reneged on its promise made in 2000 to expand the successful CONNECT prisoner rehabilitation project piloted in Mountjoy Prison into all prisons by 2006 with a budget of €58 million, when a 2001 review of the pilot found that participants were ten times less likely to re-offend on release than other prisoners; the further reason most of the €58 million allocated for CONNECT was officially withdrawn; and his plans for the future roll-out of this project, including budgetary allocations for 2005 and the timescale.

[39] Article 41 of the Irish Constitution of 1937 highlights how: *The State recognises the Family as the natural primary and fundamental unit group of society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.* Article 41.3.1 maintains that "*the State pledges to itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.*" In *The State (Nicolaou) v An Bord Uchtála [1966] IR 567*, the Irish Courts reaffirmed that outside the aegeis of marriage, Articles 41 and 42 do not recognise family life, and that biological fathers were neither members of the family nor parents.

[40] The Good Friday Agreement, signed in April 1998, was ratified in referenda in both North and South on May 22, 1998.

[41] The Transfer of Sentenced Persons Bill (Amendment) 1997 [Seanad]: Second Stage

[42] Other questions - Deputy McDaid maintains Irish prisoners are held on up to 23-hour lockups, in breach of Rules 43 and 64 of the European Prison Rules...Dáil Debate, 19 March 1997.

[43] Written Answer –Prisoner Transfers, Dep. O'Donoghue, query by Ms. Shortall,, 26 May 1998, Dáil Debate.

[44] O'Donoghue (Minister for Justice, Equality and Law Reform), query by M Perry with respect to prison transfers and review of current prison establishment on the basis of humanitarian grounds. Perry is champion in tabling the question and bringing humanitarian concerns into the domestic context, no longer solely the remit of Irish prisoners in the UK.

[45] The purpose of the EU Integra Programme was to assist individuals from unemployment back into the workplace, with a particular emphasis on socially disadvantaged communities.

[46] Dáil Debate, 4 March 1997.

[47] Organisations involved in the initiative were: Barnardos, Children's Rights Alliance, National Youth Council of Ireland, Focus Ireland, People with Disabilities in Ireland, Pavee Point and The Society of St Vincent de Paul.

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[48] Commissioned by the Mountjoy Visitors Centre Management Committee, run by Society of St Vincent de Paul, whose main mission is to eliminate the causes of poverty, and Society of Friends- Quakers. Funded by the Combat Poverty Agency and the Society of St Vincent de Paul 2002.

[49] Aengus Ó Snodaigh TD, Dáil Debate, 16 May 2003.

[50] Source: *Irish Prison Service Annual Report 2001*.

[51] *Irish Prison Service Annual Report 2006*, p. 64.

[52] Its conclusion: "if imprisonment punishes, and often harms, the prisoner and his family, it punishes the taxpayer also" (response annual cost of £29,000 to incarcerate one person).

[53] O'Mahony, P. (1997), *Mountjoy Prisoners: A Sociological and Criminological Profile*, Dublin: Department of Justice.

[54] CSO (2005), EU Survey on Income and Living Conditions 2004.

[55] Excerpted from essay by Frances Byrne, Executive Director of Lone Parents, in *The Whitaker Report 20 Years On*, 2007.

[56] See Breen, J., *The Ripple Effects of Imprisonment on Prisoners' Families*, Working Notes, Issue 57, April 2008.

[57] Irish Prison Chaplains, Annual Report 2006/07, Dublin, 2007, p. 8.

[58] Breen, *op. cit*, citing Joseph Murray and David Farrington, Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency through the Lifecourse, *Journal of Child Psychology and Psychiatry*, 46, 2005, pp. 1269–1278.

[59] Breen, *op. cit*., p. 23.

[60] *Voices of Families Affected by Imprisonment*, Bedford Row Family Project, 2008.

[61] The Irish Prison Service Annual Report 2006 states that committals under sentence of less than three months represented 39% of the total number committed under sentence in both 2005 and 2006; eight out of ten individuals sentenced received terms under 12 months, and nearly 86% were sentenced for non-violent offences. See also Mairéad Seymour, *Alternatives to Custody in Ireland*, Dublin: Business in the Community, 2006.

[62] This trend continued throughout the 2000s. More than 13,500 were committed to prison in 2008 (Irish Prison Service, 2009) compared with 11,934 in 2007 (IPS, 2008). Martynowicz and Quigley found that nearly 80 per cent of committals were for sentences under 12 months, and 60 per cent under six months (Martynowicz and Quigley, 2010).

[63] See for example Dáil Debate on the Prison Building Programme at Thornton Hall, 27 May 2008. Ian O'Donnell, Scribani Conference.

[64] Carroll, E. (2011) Pulling a Rabbit out of a Hat, where do Policies come from? An

Examination of the Criminal Justice Policy Processes behind the Building of the Dóchas
Centre (Ireland's Largest Women's Prison), Dublin Institute of Technology.

[65] Deputy Charles Flanagan, Dáil Éireann Debate, Tuesday, 27 May 2008, Vol. 655, No. 3.

[66] Baroness Jean Corston, 'Women in Prison: The Corston Report', Working Notes, Issue 58, July 2008.

[67] Irish Prison Service Annual Report 2006, p. 64.

[68] Senator Ivana Bacik, Joint Committee on Justice, Equality, Defence and Women's Rights Debate;
17 June 2008.

[69] https://www.irishtimes.com/news/mcmahon-says-resignation-forced-1.856996. Accessed 9 July 2019.

[70] http://www.iprt.ie/contents/1646. Accessed 9 July 2019.

[71] Dáil Debate, 16 December 2010; Vol. 725, No. 3.

[72] Implementation of a Child Development Initiative ten-year strategy to improve the well-being and
education of children in Tallaght West, a disadvantaged area of Dublin, began in 2007.

[73] See for example https://academic.oup.com/ejil/article/19/4/655/349356

[74] See for example https://academic.oup.com/ejil/article/19/4/655/349356, and Breen, op. cit.

[75] Irish Prison Service Annual Report 2012, pp. 2–3.

[76] https://www.irishtimes.com/news/60-of-prisoners-likely-to-reoffend-says-report-1.669222.

[77] IPRT contribution.

[78] Commissioned by the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of
Ireland.

[79] Spent conviction: a conviction which can be ignored after a specified amount of time.

[80] Written with the Irish Council for Civil Liberties.

[81] IPRT, in conjunction with the Irish Council for Civil Liberties, submitted on 21 April 2011 the *Joint
Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against
Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

[82] Ryan, S. (2009). Commission to inquire into child abuse report (Volumes I - V). Dublin: Stationery Office.

[83] Children in State care live in a range of accommodation types, including children's homes; foster care;
high support units and special care units, as well as juvenile detention centres.

[84] https://www.drugsandalcohol.ie/15654/1/DOC_listen_to_our_voices_full_report.pdf. Accessed 9 July
2019.

[85] https://archive.crin.org/en/library/publications/irelands-ombudsman-childrens-annual-2012-report-released-today.html. Accessed 9 July 2019.

[86] Kilkenny Incest Inquiry – see https://www.oireachtas.ie/en/debates/debate/dail/1993-05-25/22/. Various reports and studies had been put forth in favor of amending constitutional articles relevant to children's rights since 1937. See for example Aoife Nolan (2007) The Battle(s) over Children's Rights in the Irish Constitution, Irish Political Studies, 22:4, 495-516, DOI: 10.1080/07907180701699240

[87] Kilkenny Incest Investigation: Report presented to Mr. Brendan Howlin, TD, Minister for Health by South Eastern Health Board. The Stationary Office, Dublin, May 1993, p. 96.

[88] Report of the Constitutional Review Group, Stationery Office, Dublin, 1996, p. 337: 'The Review Group considers that, notwithstanding the above legislative provisions [and Re JH], it is desirable to put into the Constitution an express obligation to treat the best interests of the child as a paramount consideration in any actions relating to children.'

[89] UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Ireland*, 4 February 1998, CRC/C/15/Add.85, available at: https://www.refworld.org/docid/3ae6aec924.html [accessed 11 July 2019]

[90] Amendments to the Irish Constitution must come as proposals by the Houses of the Oireachtas.

[91] See for example Kilkelly & O'Mahony, "The Proposed Children's Rights Amendment: Running to Stand Still?" [2007] 2 *Irish Journal of Family Law* 19).

[92] Annual Report of the Ombudsman for Children 2012, p. 5.

[93] Annual Report of the Ombudsman for Children 2012, p. 6.

[94] Annual Report of the Ombudsman for Children 2012, p. 6.

[95] Annual Report of the Ombudsman for Children 2012, p. 6.

[96] CRC Committee, Concluding Observations: Ireland (1998) UN Doc. CRC/C/15/Add.85

[97] Chaired by Mary Laffoy from 2000-2003; and Sean Ryan from 2003-2009.

[98] A ten-year strategy by the childhood development initiative in West Tallaght to ameliorate children's health, learning and safety and to enhance their experience of community belonging.

[99] The bill lapsed with the dissolution of Dáil Éireann, 29 April 2007.

[100] https://www.finegael.ie/speech-by-minister-frances-fitzgerald-at-the-publication-of-the-wording-of-the-childrens-referendum/. Accessed 9 July 2019.

[101] Fionnan Sheehan, 'Children's Referendum passed by thin margin of 58pc to 42pc', *The Irish Independent*, 3 December 2012; Harry McGee 'Why the referendum was closer than predicted', Irish Times, November 13, 2012.

[102] Full text Art. 3 CRC: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

[103] Alan Shatter, TD, Minister for Justice, Equality and Defence, reports on work done during first 16 months of Government. 26 July 2012.

[104] Chaired by Senator Martin McAleese.

[105] Alan Shatter, *op cit*.

[106] Thus placing a legal requirement on judges to first consider and rule out all other options before imposing a prison sentence; and on whether he will commission a review of sentencing practices, which currently sees high numbers of women receive custodial sentences for less serious and non-violent crimes.

[107] Dáil Éireann Debate on Prison Visiting Committees, 21 October 2004.

[108] In answering the query, Alan Shatter continued to highlight the benefits of 'prison visits involving children' that 'allow for physical contact between the mother and her children', maintain he was 'assured that every effort is made to allow others as much flexibility as possible on visits with their children' and that 'women prisoners, are also facilitated, where appropriate, with temporary release to attend significant milestones in their children's lives, eg first communion.'

[109] Paul Murphy, former Head of Psychological Services at the Irish Prison Service and chair of a working group on the rights and needs of children with a parent in prison, interview 15 September 2015.

[110] Question by Deputy Jonathan O'Brien, who queried the Minister for Justice and Equality on the number of children who have a parent in prison; the policies within the prison service that are in place to facilitate the child parent relationship; if parenting courses are available in every prison; and the number of prisoners who avail of these courses in each prison. [34868/12]

[111] https://merrionstreet.ie/en/category-index/society/child-protection/an-taoiseach-and-minister-for-children-and-youth-affairs-officially-launch-irelands-new-child-and-family-agency.html. Accessed 3 July 2019.

[112] Interview with Mary Rogan, member of the Strategic Review Group (September 2015), Dublin.

[113] Interview with Paul Murphy, September 15, 2015, Dublin.

[114] Interview with Paul Murphy, September 15, 2015, Dublin.

[115] *Hearing Young Voices: Consulting children and young people, including those experiencing poverty or other forms of social exclusion, in relation to public-policy development in Ireland. Key Issues for Consideration*. K. McAuley and M. Brattman. Open Your Eyes to Child Poverty Initiative. Children's Rights Alliance. Republic of Ireland Limited and National Youth Council of Ireland 2002.

[116] 11/12/2012 Inquiry by Deputy Brian Stanley to the Minister for Justice and Equality.

[117] Dáil Éireann Debate, October 2004, when Aengus Ó Snodaigh TD queried Justice Minister McDowell, with respect to Prison Visiting Committees, on whether he had 'plans to make changes that are in the best interests of prisoners' children, or in view of obligations under the European Convention on Human Rights Act 2003 with regard to the right to family life.'

[118] See https://www.iprt.ie/latest-news/sunday-tribune-governor-lonergan-criticizes-thornton-hall-plans/ Accessed 16 April 2019.

[119] https://www.irishtimes.com/life-and-style/health-family/parents-behind-bars-1.666770. Accessed 17 February 2019.

[120] Breen, J., 2010. Secondary effects of imprisonment: The new direction of prison research. *Irish probation journal*, 7, pp. 46-64.

[121] Ryan, S.M.J., 2009. Report-Commission to Inquire into Child Abuse, vol. 1.

[122] *Listen to our voices! Hearing children and young people living in the care of the State*. McEvoy, O., & Smith, M. D. (2011). Government Publications, Dublin.

[123] Article 41 of the Irish Constitution of 1937 highlights how: *The State recognises the Family as the natural primary and fundamental unit group of society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.* Article 41.3.1 maintains that "*the State pledges to itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.*"

[124] Constitution of Ireland, Article 42: The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

[125] *Keegan v. Ireland*, 16/1993/411/490, Council of Europe: European Court of Human Rights, 26 May 1994, available at: https://www.refworld.org/cases,ECHR,3ae6b6ff8.html. Accessed 24 August 2019.

[126] In its deliberations, the European Court of Human Rights recalled that: 'the notion of the "family" in this provision [Article 8] is not confined solely to marriage-based relationships and may encompass other de facto "family" ties where the parties are living together outside of marriage' (see, *inter alia*, the Johnston and Others v. Ireland judgment of 18 December 1986, Series A no. 112, p. 25, para. 55).

[127] Article 8 stipulates that "Everyone has the rights to respect for their private and family life."

[128] N & Anor v HSE & Others [2006] 4 IR 374, known as the Baby Ann adoption case.

[129] These included living with the child's mother for twelve months, including a minimum three-month co-habitation period following the offspring's birth.

[130] Personal exchange, Paul Murphy, 15 September 2015, Dublin.

[131] Personal exchange, Mary Rogan, 17 September 2015, Dublin.

[132] The coordinator of work and training at the Irish Prison Service, Martin Hickey, suggested submitting a bid for EU funding from the Integra Project, the aim of which was to lend support to individuals (with an eye to those from socially disadvantaged areas) moving out of unemployment into the workplace. CONNECT's Options programme involved prisoners developing Individual Planned Programmes to define short-term goals. Governor John Lonergan described Options' work on parenting as "particularly extraordinary", including day-long child-parent visits once every 14-week course implemented by external

parenting organisations. Lonergan, John. *The Governor: The life and times of the man who ran Mountjoy*, Penguin Ireland, Dublin: 2010.

[133] Paul Murphy, personal exchange, 15 September 2015, Dublin.

[134] According to UNCRC Article 3, the child's best interests shall be 'a' primary consideration whereas in the Thirty-First Amendment they shall be 'the' primary consideration. In terms of scope, Article 42A.4.1 reads: Provision shall be made by law that in the resolution of all proceedings - i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.

[135] *Better Outcomes, Brighter Futures, 2014-2020*

[136] Interview with Mary Rogan, 17 September 2015, Dublin.

[137] The COPE network and Quaker United Nations Office, for example.

[138] Interview with Paul Murphy, 15 September 2015, Dublin.

[139] Interview with Paul Murphy, 15 September 2015, Dublin.

[140] Interview with Paul Murphy, 15 September 2015, Dublin.

[141] Aisling Parkes, University College Cork, personal exchange, August 2018: 'It had some impact but not sure it had a major impact in practice. It raised awareness of the issue.'

[142] Fiona Donson, University College Cork, personal exchange, August 2018: 'My sense is that there are a few examples of questions but they would not be heavily prioritised and that it is primarily independent TDs who raise this. It's also not clear what traction they have had in terms of policy as there is in fact little policy.'

[143] For example, Fiona Donson, University College Cork, personal exchange, August 2018: 'There is value in reflecting on the role of political prisoners/political violence and the way families/ children of prisoners was an acceptable 'political issue' because of this. I'm not fully convinced though that there is real cross fertilisation from political prisoners and their families into 'ordinary prisoners/ families' and the services and engagement with them.'

[144] Irish Penal Reform Trust annual report 2013, p. 3.

[145] Irish Prison Service & Central Statistics Office Recidivism Study 2013 finds a recidivism rate of 62.3% within three years following release; the most common offence for reconviction was public order offences. (30 May 2013)

[146] Irish Penal Reform Trust Annual Report 2013.

[147] See, for example, *Placing Neoliberalism: The Rise and Fall of Ireland's Celtic Tiger*, Kitchin et al.

[148] Interview with Mary Rogan, 17 September 2015, Dublin.

[149] See, for example, Hodson, D., & Maher, I. (2018). *The Transformation of EU Treaty Making*. Cambridge, UK: Cambridge University Press.