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Regimes in Irish Prisons: 'Inhumane' and 'Degrading': An Analysis and the Outline of a Solution

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Abstract

Recent reports depict regimes in Irish prisons as 'inhumane', and as 'increasingly oppressive and destructive'. This deterioration in conditions is part of a larger 'punitive turn' that can be identified in the Irish prison system since the late 1990s, and that is also evident in a huge increase in the scale of incarceration and much greater demonisation of those held in prison. In 1985, the Whitaker Report set standards for 'basic living conditions' in prisons. The Whitaker standards mirror similar ones in the European Prison Rules. For example, both stipulate that an imprisoned person should normally have a single cell. When current regimes in Irish prisons are examined in the light of five key 'basic living conditions' set out in Whitaker, a picture of severe deterioration is evident. Nearly sixty per cent of all those in prisons must now share cells. Close to two-thirds are subject to highly inappropriate, undignified and often unhygienic sanitary arrangements. Lock-up times, deemed 'excessive' in Whitaker's day, have, in fact, worsened significantly. Access to structured activity such as education or work is now far more problematic. And contact with family is unreasonably restrictive. These deteriorating conditions reinforce each other. Likewise, the multiple factors behind the regression – such as overcrowding, segregation, prisons that are too large, and an overemphasis on 'security' – also compound each other. Rescuing the Irish prison system from the morass it is now in, and bringing it towards the kind of system the Whitaker Committee envisioned, is an enormous task. An outline of some of the changes required is suggested. These include a radical reduction in the numbers imprisoned, much greater use of open prisons and a renewed focus on balancing 'custody' with 'care'. Moreover, given the problems now endemic in Ireland's large closed prisons, major long-term adjustments in the prison estate need to be planned, so that we have a system of much smaller prisons. In particular, the foolhardy Thornton Hall Project should be abandoned.

Keywords: prison punitiveness; regimes; conditions

Introduction

Recent reports on Irish prisons, from a variety of sources, depict a gravely inadequate and deteriorating system. This is clear from reports of the Inspector of Prisons (2010, 2011) and prison chaplains (Irish Prison Chaplains, 2010), and the most recent report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, 2011). Terms such as 'inhuman', 'degrading', 'unsafe' and 'dysfunctional' are frequently used in these publications.

The CPT expressed "real concern as to the safe and humane treatment of prisoners" (p. 15). The chaplains say "conditions in many of our prisons are today an insult to the dignity of any human being", and they regard the prison environment as "increasingly oppressive and destructive"(p. 7). The Inspector of Prisons repeatedly stresses that sanitary arrangements in prisons like Mountjoy, Cork and Limerick amount to "inhumane and degrading treatment" (2010, paragraphs 9.2, 11.9 and 14.8).

There are several strands to the unacceptable conditions and treatment. All of these strands are important and reinforce the negative impact of each other. Overcrowding, high lock-up times, unhealthy and undignified sanitary arrangements, drug-taking, a lack of purposeful activities, and excessive restrictions universally applied (as in limiting contact with families) all combine to produce indefensible prison regimes.

One can view such conditions in the context of Garland's (2001) analysis of a 'culture of control', or Pratt et al.'s (2005) description of 'the new punitiveness'. In relation to prison systems, these texts can be summarised as identifying three main developments (see also Warner, 2009):

(1) Large increases in the scale of incarceration. (Ireland's prison population has gone from about 2,050 in 1995 to 4,500 in 2011).
(2) Significant increases in the 'depth' of imprisonment, as prisons become more restrictive.
(3) Deterioration in the perception or representation of the person held in prison, who is negatively stereotyped (see Warner, 2011).

These elements are interlinked. Clearly, crowding more and more people into prisons tends to reduce the space, facilities and access to activities that are available to individuals. Yet, high incarceration rates and worsened regimes also tend to go together because, since both reflect "a political will to get 'tough on crime', it is to be expected that toughness will be extended to the provision of more restrictive regimes" (Evans and Morgan, 1998, p. 325). Likewise, seeing the person in prison in demonised terms, and not regarding him or her as part of our society or community, reinforces tendencies towards both incarceration and harsh treatment.

This paper deals mainly with the second of these three elements of punitiveness. It focuses on the prison regime, defined in the Whitaker Report (1985) as "the physical conditions under which prisoners are held in custody and the way they are treated" (p. 60). The Whitaker Committee conducted an inquiry into Irish prisons and was severely critical of the penal system in general, and the Department of Justice's management of prisons in particular. They condemned "the triple depressants of overcrowding, idleness and squalor" (p. 90). Whitaker sought to reduce and constrain the numbers in prison, but also stipulated very clear and concrete standards in relation to holding people in prison. In large part, this paper examines the current regimes in Irish prisons in the light of these Whitaker standards.

The Whitaker standards
In setting out standards for "basic living conditions" in prisons, the Whitaker Report said these "should correspond broadly to those available to persons with an average disposable income" (p. 13). Along with other conditions, it said prisoners should have:

- "Normally (and always where a prisoner so desires) private sleeping accommodation in a single cell"
- "Ready access to toilet facilities at all times"
- "Much more out-of-cell time (at least 12 hours), the present lock-up time of 16 hours a day or more being excessive"
- "Flexible access to participation in ordered activity, such as education and work, to recreation facilities and to welfare services"
- "Liberal visiting arrangements with minimum of supervision (especially of family visits) and maximum allowance of personal contact" (pp.13-14).

These standards complement each other, with, for example, a high level of out-of-cell time necessary for full participation in activity such as work and education. Single cells, toilet facilities and privacy in relation to visits are based in part on regard for the dignity of the individual. The conditions may also be seen as giving recognition to the person in prison as a normal citizen, a concept also reflected in Whitaker's statement that "prisoners should be given the right to have grievances investigated by the Ombudsman" (p.16).

Whitaker's assertion that prisoners should have single cells came at a time when there was only a small degree of 'doubling-up' in the prison system. By 2011, nearly 60 per cent of all prisoners were obliged to share cells, generally for inordinately long lock-up times, and nearly always with inappropriate sanitary arrangements. Former governor of Mountjoy Prison, John Lonergan, makes the case for the importance of single accommodation so that those in prison have "their own space and above all personal safety", and he remarks that "people crack up when they don't have their own space" (Lonergan, 2010, p.153).

Complementary standards
Some of the 'basic conditions' set out in Whitaker are very clear and concrete, such as single cell accommodation and a minimum of 12 hours out of cells. They have, however, been ignored for the most part, especially in the past decade, as will be seen below. Yet, I would argue, they should remain (along with the European Prison Rules) a primary touchstone for assessing and developing regimes in Irish prisons – because of their clarity, because of the philosophy that underpins them, and because they have the official status of being set out by a government appointed committee given the task of inquiring into the prison system. This section will relate the Whitaker conditions to some other standards – ones that have, for the most part, been equally ignored.

A further reason for re-asserting the Whitaker standards is their congruence with the *European Prison Rules* (EPR) (Council of Europe, 2006) and other recommendations agreed through the Council of Europe.[i] The EPR represent a philosophy very much in tune with the thinking of Whitaker and, while sometimes less specific in their

recommendations, on basic issues they are often very clear. For example, in asserting that prisoners should have single cell accommodation:

> 18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.
> 18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each another.
> 18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

Other Council of Europe Recommendations, such as those on the treatment of long-term prisoners (2003) or education in prison (1990), strongly complement the approach of Whitaker. The EPR and associated recommendations represent a strong challenge to prison authorities in Ireland, and the prison system fails badly to meet many of these care standards.

Another official, if much briefer, framework of principles for penal policy that has been quietly forgotten is the Report of the Expert Group chaired by Dan McAuley in 1997, *Towards an Independent Prison Agency.* The idea of the prison system being run by an agency or authority independent of the Department of Justice has now been abandoned, but so also have some of the key functions the McAuley group set out for the prison service. The Irish Prison Service (IPS)[ii] can hardly claim "to treat those in custody with care, dignity and respect and ensure that they have access to facilities and services for the promotion of their physical, mental and moral well-being" (Report of the Expert Group, 1997, p.15) when, for example, hundreds are locked up for over 20 hours in the day, many for 23 hours in the day. Nor can the crucial principle of balancing 'care' and 'custody' in the management of prisons, as advocated by the McAuley group, be held to apply, for example, to visiting arrangements which will be described below. A range of other developments, which distance prison officers from prisoners, reflect a shift from the 'caring' to the 'custodial' functions in their role (see Jesuit Centre for Faith and Justice, 2012, pp. 68-72).

More recently, trenchant critiques of Irish prisons have come from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, 2011), the Inspector of Prisons and the Irish prison chaplains, as noted earlier. All are severely critical of the circumstances in particular prisons and the prison system as a whole. The CPT and chaplains clearly write from a penal policy perspective and a set of prison standards that are very close to those set out in both Whitaker and the EPR.

The reports of the current Inspector of Prisons, Judge Michael Reilly, are in many ways insightful and often very critical. He has been scathing on matters such as sanitation and other inadequate facilities, the severe confinement of 'protection' prisoners and the lack of proper access to services. He has wisely widened the concept of overcrowding to include insufficient purposeful activity or a lack of safety. His 2010 annual report (Inspector of Prisons, 2011) is critical of many issues, including the use of 'special cells' and the lack of proper procedures for prisoners' complaints (a point also made forcefully by the CPT).

In July 2010, the Inspector issued a substantial document, *The Irish Prison Population – an examination of duties and obligations owed to prisoners.* It is a thorough analysis of the prison system, with a chapter describing each of the country's 14 prisons, including the size of all cells. It makes recommendations in relation to each prison and in relation to the prison system as a whole, generally seeking to modify the effects of overcrowding in its widest sense. However, there are shortcomings in his perspective; he seems to lack the penological knowledge or insight found in Whitaker and Council of Europe documents, and among the prison chaplains. While he pleads for reducing the numbers in particular prisons and bringing them nearer to 'capacity', he fails to recognise that larger prisons of themselves generate problems which are not found in smaller institutions, such as segregation, inter-prisoner violence and poorer relationships generally. (The 1985 Whitaker Report's preference was for prisons no larger than 100).

In relation to key regime standards such as single cells, the size of cells and the extent of unlock time, he is often unclear and inconsistent[iii]. In particular, he sets the bar too low at times, although one must have some sympathy for him in this, faced as he is with quite appalling and deteriorating conditions, and seeking to be realistic as to where improvements can be achieved. Thus, he often speaks of the need for people to be out of cells 'for the greater part of the day' – but this appears to mean, not at least 12 hours as it did in the Whitaker Report, but something like the present norm of around seven hours. Unlike Whitaker and the EPR, he does not assert prisoners should have single cells. And, while he refers to a general principle in the EPR regarding cell conditions, he fails to recognise the specific standards in 18.5 to 18.7 quoted above. In departing from the single cell principle, he attempts to set minimum conditions for sharing, such as 11 square metres for two and 15 square meters for three. He states that the minimum size of a single cell should be 7 square metres.

The Whitaker 'basic conditions', key elements of which were summarised above, surely remain the minimum standards to which a civilised society, which aspires to a humane prison system, should adhere.

Current regimes in Irish prisons
It is sobering to examine conditions in Irish prisons today in the light of the standards the Whitaker Committee set out over 25 years ago. The five important elements noted above will be highlighted: the stipulation that prisoners have single cells, sanitary arrangements, out-of-cell time, access to structured activity, and the scope for contact with family.

'Sleeping accommodation in a single cell'
The Whitaker Report could say in 1985 that "single cell occupancy is the norm but there is some doubling-up at Cork and Arbour Hill prisons" (p. 249). So, it seems reasonable to assume the percentage of prisoners affected at that time would have been in single digits. Almost a decade later, a Department of Justice (1994) policy document sought to address what they saw as the problem of prisoners being 'doubled-up', and referred to the need for "300 additional places" to bring it to an end (p. 31). We may assume, therefore, that about 600 prisoners were affected, or about 28 per cent of the prison population at that time.[iv]

Moving on to 2010, we can see that matters degenerated much further in the meantime. A Dáil Question from Ciaran Lynch TD revealed that, in April 2010, 1,617 prisoners were 'doubled-up' and a further 775 were sharing cells with more than one other, thus showing that 2,392 (57%) from a total prison population of 4,164 did not have single cells.[v] A similar question in late 2011 revealed further deterioration: by then 2,567 from a population of 4,313 did not have single cells, almost 60 per cent.[vi]

It should be noted that most of the cells being shared were designed for just one person, and that this crowding is exacerbated, for the majority of prisoners, by inappropriate sanitary arrangements and excessive lock-up time . The worst prisons in terms of enforced cell sharing, as of December 2011, were Cork (91% of prisoners), Cloverhill (88%) and Limerick (74%). Requiring prisoners to share cells in this manner facilitates drug abuse, bullying and violence, especially when combined with other shortcomings in the prison system, such as high lock-up time.

'Ready access to toilet facilities at all times'
There has been considerable focus on 'slopping out' in Irish prisons, which affects 845 people: virtually all prisoners in Cork Prison, most in Mountjoy Prison and significant numbers in Limerick and Portlaoise Prisons.[vii] However, while this may be seen as the most unacceptable aspect of sanitation in Irish prisons today, the fact that, in addition, 1,885 other prisoners must use "normal toilet facilities in the presence of others" is also highly inappropriate and undignified. In total, then, 64 per cent of prisoners have sanitary arrangements that are inadequate and fail to meet basic standards. Even when one looks at the situation of the remaining 36 per cent (1,539 prisoners), "who are sole occupants of a cell that has a normal flush toilet installed or have access to a toilet facilities in private at all times", it should be realised that most of this group are required to use a toilet that is not separate from their living space (the typical cell in Arbour Hill, for example, being less than 7 square metres). Even with this apparently more favoured group, the situation is one which fails to correspond to normal basic living conditions.

Recent reports by both the CPT and the Inspector of Prisons convey well the reality of these appalling arrangements:

> The CPT has repeatedly stated that it considers the act of discharging human waste, and more particularly of defecating, in a chamber pot in the presence of one or more other persons, in a confined space used as a living area, to be degrading. It is degrading not only to the person using the chamber pot but also for the persons with whom he shares a cell.
> The other consequences of such a state of affairs – the hours spent in the presence of chamber pots containing one's own excreta and that of others and the subsequent _'slopping out' procedure_ – are scarcely less objectionable. The whole process is extremely humiliating for prisoners. Moreover, 'slopping out' is also debasing for the prison officers who have to supervise it. (CPT, 2011, p. 29, emphasis in original).

However, even when there are proper flush toilets, the indignity of having to perform toilet functions in the presence of others is still a feature of shared cells. In his

biography, Brian Keenan tells of being kidnapped in Beirut and held captive with John McCarthy, and he vividly describes the severe unpleasantness and embarrassment both endured when their guards failed to turn up *once* to allow them out of their cell to use a toilet (Keenan, 1992, pp. 113-4). Yet this in one form or another is the situation facing *most* prisoners in Ireland *every day*. The Inspector of Prisons offers insight into the inappropriateness of such situations when describing how two or three women in Limerick Prison share a cell (that is less than 9 square metres):

> I have stated that in-cell sanitation is not screened. The toilet is not covered. I have observed food trays and towels being used as toilet covers. When there is more than one prisoner in a cell a prisoner attending to her sanitary or washing requirements does so within feet and in full view of her fellow prisoner. The situation is far worse when there are three prisoners in a cell. (Inspector of Prisons, 2010, paragraph 11.24).

The various failures to ensure proper standards in Irish prisons reinforce each other. Thus, inadequate sanitation is compounded by cell sharing, high lock-up times, lack of purposeful activity and drug problems, as is illustrated by the following observations by the CPT in relation to Cork Prison:

> The poor conditions were exacerbated by the lack of in-cell sanitation. The situation was particularly bad in those cells being used to hold two or three prisoners on protection, as they could spend up to 23 hours locked up together in a cell. The air in a number of these cells was rank and humid. In one cell in C block, three prisoners on protection who were accommodated together did not possess a chamber pot and had to share a bottle for the purposes of urinating; if necessary, they defecated into a plastic bag. <u>In the CPT's view, apart from representing a health hazard, such treatment is degrading.</u> (CPT, 2011, p. 26, emphasis in original).

Cells in C block are 9.2 square metres. The CPT also report:

> The delegation came across a number of cases of prisoners at Cork Prison who had not been provided with any support as they underwent drug withdrawal and who were clearly suffering. In several cases, the prisoners in question were sharing a cell with one or two other persons which, given the symptoms of withdrawal (including vomiting and diarrhoea) and the lack of in-cell sanitation, made the process all the more unpleasant. (CPT, 2011, p. 43).

'At least 12 hours out-of-cell time'
At the time of the Whitaker Report, prisoners normally had eight hours out of their cells in the closed prisons. The Committee described such lock-up time as "excessive" and stipulated that prisoners should be unlocked for "at least 12 hours". In the intervening years, lock-up time has worsened for the majority of prisoners through 'erosion' of the prison day, so that seven hours is nearer the norm now in practice. Cramped cell-sharing and degrading toilet arrangements further exacerbate such confinement. Moreover, several hundred prisoners are unlocked for less than six hours in the day, and some 178 of these are locked up for 23 hours, on the grounds of 'protecting' them.[viii]

As well as increasing the 'detrimental effects' of imprisonment, high lock-up time reduces the opportunities for people in prison to engage in purposeful activities such as education, work or treatment – opportunities that are further reduced currently because of severe segregation in all of the nine largest prisons. In Norwegian and Danish prisons, the norm for sentenced prisoners, even in closed prisons, is to be out of their cells for 12 to 14.5 hours in the day (see Warner, 2009). As well as a full day in work and education, they will also engage in normal activities such as doing their own cooking and cleaning, and will eat together in a normal manner – all these things are exceptional in Irish prisons. Such 'self-management' is regarded as important in counteracting institutionalisation, which in turn can worsen the prospects of successful resettlement after release. Facilities to enable such self-management were incorporated in all wings in Wheatfield Prison when it was constructed in the 1980s – but never used!

'Access to… ordered activity such as education and work'
Whitaker saw work, education, probation and welfare, psychology and chaplaincy services as opportunities for 'personal development' among prisoners. The report proposed that:

> A personal development programme should be prepared by the professional services for every long-term prisoner, discussed and agreed with him/her, and reviewed periodically by the professional services. A prisoner's participation must be voluntary (Whitaker Report, 1985, p.13).

While facilities and staffing for many of these professional services have expanded greatly in the years since the Whitaker Report, they have not generally matched the more recent surges in the prison population. Significant constraints have now emerged which hamper access to education and work in particular, which are the most substantial activities within Irish prisons.

Activities such as education, work or sport are also widely recognised as invaluable in helping people who are trying to get off, or to stay off, drugs. Yet, these activities are quite limited today in many prisons, and large sections of the prison population have no access to education or work at all. In Mountjoy Prison, there is structured activity for less than half the prison population. Its former Governor remarks: "[The IPS] has no problem spending huge sums of money training sniffer dogs to search for drugs, but it appears never to strike the administrators that if prisoners were trained and doing meaningful work they might not need illicit drugs" (Lonergan, 2010, p.192) .

The high lock-up time curtails adequate access to all the services, but is most glaringly seen to restrict work and training, where a working day as in the community cannot be replicated when access is limited to two hours in the morning and two in the afternoon. The principle that all prisoners should have access to a comprehensive education programme, a concept supported by Whitaker and the Council of Europe, was effectively achieved for many years, but no longer pertains in many prisons. Those locked up for 23 hours a day, or for periods close to that level, clearly cannot avail of such education.

Access to most services is also reduced for many prisoners as a result of the severe segregation that is now a major feature of every one of the largest nine prisons. Only the two open prisons (Shelton Abbey and Loughan House), the Dóchas Centre, the Training Unit and Arbour Hill are not segregated; none of these ever holds much more than 150 prisoners. The segregation has a multiple aspect to it in some of the larger prisons, with sometimes as many as five or six different groups being kept entirely apart. Its implication for people in prison is that they are likely to have reduced access, and sometimes no access, to some services. Workshops and classrooms, or instructors and teachers, tend to be time-shared across the different groups, thus reducing provision for many.

For example, Wheatfield is split almost in half between 'protection' and 'non-protection' prisoners. In Portlaoise Prison, the largest group in C block is dealt with separately from paramilitary prisoners in E block, who in turn are divided into numerous different groups. In the Midlands Prison, A block is segregated, as is D block and other smaller sections in Limerick. In St. Patrick's Institution, Dublin prisoners are kept apart from non-Dublin, and there are other divisions also. Severe segregation also pertains in Castlerea, Cloverhill, Cork and Mountjoy Prisons. Such arrangements contribute to the impoverishment of regimes, negatively affecting thousands of prisoners. In addition, excessive security controls, applied universally to all prisoners, now further curtail what they can do within prisons – with limitations on access to Education Units, libraries, football pitches or workshops.

'Uncensored communication with family and 'liberal visiting arrangements'
The Whitaker Report stated that prisoners should have "freedom to write and receive letters without censorship" and to make telephone calls. They should also have "liberal visiting arrangements with minimum supervision (especially of family visits) and maximum allowance of personal contact" (p.14). The report does recognise there may be security reasons for restriction on occasions, but these should be the exception rather than the rule. If a Governor denies telephone contact or decides to censor mail, the Whitaker Committee say that such decisions should be recorded. Yet, today, the censorship of mail is universal in prisons, and phone contact is quite constrained. Prisoners are not permitted to communicate via e-mail.

The recent CPT report makes a telling comment in relation to visiting arrangements in Cork Prison, although the observation could clearly be made about other closed institutions also:

> The visiting arrangements in Cork Prison are totally unsuitable. Up to 12 prisoners were placed shoulder to shoulder on one side of a wide table running the length of the room communicating with two or three visitors each on the other side of the table. The table was fitted with glass partition (some 15cm high) and conversations were conducted with raised voices as visitors and prisoners competed to be heard; the resulting cacophony of sound can easily be imagined. Prisoners were forbidden to have any physical contact with their visitors, including with children. Those who defied the ban were subject to a disciplinary punishment. Such a systematic ban on physical contact between

prisoners and their families, in particular their children, is unreasonable, given the search procedures in place. (CPT, 2011, p. 53).

In their response to this criticism, the Irish authorities state: "the Irish Prison Service does not intend to amend the policy with regard to screened visits".[ix]

Underpinning such a response is an attitude in the IPS, which sees all prisoners as suspect. It is another example of applying restrictions on *all* prisoners arising out of concern about what *some* might do. And prison management often seem unable to look beyond physical control as a way of responding to a problem.

It is noticeable that the CPT, in addressing the issue of inter-prisoner violence, recommended that the IPS pursue 'dynamic security'. This is a widely used concept in Europe. It envisages security going beyond physical control, and relying to a considerable extent on such things as relationships, activity and treating prisoners as individuals. It envisages a balance between care and custody, as discussed earlier. Such a balance, of course, requires prisoners be out of cells and able to engage in activity most of the day. The CPT say:

> Addressing the phenomenon of inter-prisoner violence requires that prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. (CPT, 2011, p. 21).

In a lengthy response, the IPS lists a range of physical constraints (more segregation, cameras, dogs, nets, searches, etc.). They make no reference to the idea of 'dynamic security'.[x]

Factors underlying the deterioration of regimes
Overall, the Irish prison system has moved backwards rather than progressed since the Whitaker Report was issued in 1985. It has become less humane in general, and conditions are now worse for most prisoners. There have been positive developments, of course, such as the creation of the Dóchas Centre - but even that regime has recently been undermined by overcrowding and new restrictions. There are multiple factors behind the regression that has occurred, many (like the problems themselves) compounding each other. I will briefly mention five of the factors.

Overcrowding
In the wide sense the Inspector of Prisons gives the term, there is overcrowding when numbers rise to the point where accommodation *or* services and regimes *or* prisoner safety are compromised. Thus, the addition of cells in Wheatfield, Midlands and Castlerea, for example, without corresponding development of services and regimes, can be seen as adding to overcrowding.

The most glaring example of this 'warehousing' approach can be seen in Cloverhill. The walled site next to Wheatfield, on which the prison is now built, was originally intended

for 80 women – but was then deemed too far from the city centre for the women and their families. After being left vacant for some years, Nora Owen, Minister for Justice, decreed in the mid-1990s that 400 male remand prisoners should be held in the same space. Today, the prison holds about 450, with three men sharing most cells of 12 square metres. No work or education facilities were originally installed at Cloverhill, although a small Education Unit has since been inserted there.

Segregation

It needs to be kept in mind that it is not just increasing numbers in prison that have contributed to the lowering of standards, but the fact that the IPS feel obliged to operate a high degree of multiple segregation in all the larger prisons, as outlined above. This leads to restrictions in movement, higher lock-up times and lower access to services, all elements in the deterioration of regimes. A larger number of smaller prisons would obviate the need for such segregation.

Penal policy

Clearly, an expansion in incarceration does not happen by itself, and it is evident that thinking around penal policy became more punitive after the mid-1990s. Many of the features described by Garland (2001) and Pratt *et al.* (2005) can be identified in relation to imprisonment in Ireland, even if not to the extent to which they appear in the US and Britain. There has been get-tough-on-crime rhetoric and legislation, more are in prison, people in prison are seen more negatively, and the care/custody balance has been tipped even more firmly towards 'security' within prisons.

Individuals do matter

The economic, social and political forces that Garland and others describe as shaping the punitive developments are not, however, deterministic. Examining prison systems worldwide, Andrew Coyle (2002) recognises that individual leadership can also make a significant difference, for good or ill. We can see something of the positive side of that in Ireland in the contributions of Maire Geoghegan-Quinn, Dick Crowe, Frank Dunne and John Lonergan, all of whom improved prisons and the prison system in Ireland. Many more recent political and administrative leaders have had a negative influence.

An emphasis on closed rather than open prisons

Whereas some Nordic countries hold 35 per cent or more of their prison populations in open prisons, in Ireland that proportion has dropped steadily over the years to about 5 per cent currently.[xi] Open prisons avoid many of the detrimental effects and bad conditions of closed prisons; they also cost much less to run. A shift to having a far greater proportion in open prisons would vastly improve the prison system, adhere more closely to the Whitaker standards – and save money!

Seeking solutions[xii]

No doubt, salvaging the Irish prison system from the morass it is now in, and bringing it towards the kind of system the Whitaker Report outlined, would be an enormous task. Obviously, positive change would require political and administrative leadership that is courageous, and that is aware of, and committed to, adequate standards. The targets to be met are largely those prescribed by Whitaker, some updated, such as:

Reducing the prison population significantly
Countries typically reduce their prison populations through: developing a range of alternatives to custody, including ones that involve addiction treatment; shortening many sentences; allowing greater remission (of one-third rather than one-quarter, for example); operating a substantial scheme of structured early release. All of these ideas were proposed in the Whitaker Report. The enormous cost of imprisonment, which is now in the region of €80,000 per prison place per year when *all current expenditure* is included, needs to be continually reiterated to bring some realism to the debate.[xiii]

A political decision is required as to the level of incarceration deemed necessary, using the principle of prison 'as a last resort' in a serious way. The Whitaker Report proposed this level should be 1,760 (pp. 17-8), which would have given a rate of incarceration of about 50 per 100,000 relative to the population of the country at the time. Today, Ireland's rate of incarceration is close to 100 per 100,000 – higher now than all the Nordic countries, Germany, Netherlands, Switzerland, Slovenia and others – and there are 4,470 in prison.[xiv] Up to the mid-1990s, the rate of incarceration in Ireland was rarely higher than 60 per 100,000, and was usually equal to or lower than rates in Nordic countries. In Finland currently, the rate is 59 per 100,000, while it is 70 per 100,000 in Sweden, 73 per 100,000 in Norway and 74 per 100,000 in Denmark. If Ireland were to get back towards the rate of imprisonment it had up to 15 years ago, it might aim to have 3,000 (a rate of 66 per 100,000) in prison. That, for a start, would make conditions far more manageable.

Having one third of prisoners in open prisons
About five per cent of prisoners in Ireland are in open prisons. That could be raised to something like 30 to 35 per cent, the proportion in most of the Nordic countries. Thus, if the prison population was reduced to 3,000, about 1,000 of these could be in open institutions. Some of the open centres could be focused on addiction treatment. Some should be available for women prisoners, and some for young men under 21 – two groups for whom there is no open facility at present.

Adhering to a care/custody balance
A better care/custody balance in the operation of prisons was proposed in the McAuley Report (Report of the Expert Group, 1997), yet the imbalance has tilted even further since then towards a very heavy 'security' approach. Or, to put this point another way, there needs to be a development of 'dynamic security' as urged in the recent CPT (2011) report. Such approaches rely much more on prison staff interacting with, and relating to, prisoners, and are particularly appropriate in open prisons.

Reducing the size of prisons substantially
Whitaker put forward the view that prisons are best if they hold 100 or less (p. 62). Other commentators suggest different figures, but there is a large body of thinking which notes that, above a certain relatively low level, prisons become harder to manage and problems multiply. In Ireland at present, all nine of the largest prisons have severe segregation, with all the disadvantages and diseconomies this brings. This pattern seems inevitable once the size goes above about 150. Only the five smaller prisons, which are at or below this size, have no segregation. Clearly, adjustments to the prison estate, so

as to have more but much smaller prisons (and also more open prisons), would be a long-term project, but the targets need to be set and a start made on the path.

Abandoning the current Thornton Hall plans

Originally, the government's plans for a new prison at Thornton Hall were of massive proportions, utterly off the scale of anything in this country previously. The idea of having a closed prison for 2,200 men and women (and children) in a country as small as Ireland offends against all the above four targets. It is also clear, from the assumptions made in the planning to date, that the regime or regimes at Thornton Hall would be seriously out of line with the 'basic living standards' set by the Whitaker Report for Irish prisons. There is every indication that lock-up time would remain 'excessive', and possibly even worse than that which prevails in our prisons at present, given a much lower staffing ratio. It is very likely that destructive segregation would become endemic there too. Initial indications are that cell-sharing would be very high, and could apply to over 70 per cent of all prisoners in Thornton Hall.[xv]

Conclusion

As a consequence of financial constraints, the building of Thornton Hall Prison has been postponed for now, but the same thinking about prison regimes endures. A wing that will hold 300 men has recently been inserted into the Midlands Prison and will bring the numbers held there close to 1,000, yet no corresponding increase in structured activity was planned. This continues the 'warehousing' approach evident in other new prison constructions and extensions. Thus, most prisoners in Ireland are held in over-sized facilities, must share cells and be held in them for inordinately long periods every day. Plans for a new prison in Cork, and for replacements of A and B wings in Limerick Prison, clearly envisage a continuation of such severe and sub-standard regimes.

The Irish prison system is in a morass. While there are now some tentative signs of a levelling off or even a reduction in the number in prison, far more radical thinking is required, such as following the decarceration policy pursued in recent years by Finland. The Oireachtas Committee on Penal Reform specifically recommended adopting the Finnish approach (Houses of the Oireachtas, 2013). However, we need to face up to the problematic 'quality' as well as 'quantity' of imprisonment in Ireland, guided by standards set out in the Whitaker Report and by international bodies such as the Council of Europe.

Biographical Note

Kevin Warner was Co-ordinator of Education in the Irish prison system from 1979 to 2009, with an interlude as a Fulbright Scholar in California in 1995. In 2009, he concluded PhD research into Nordic penal policy and practice in the School of Applied Social Science at University College Dublin, where he is now an Adjunct Lecturer. He edited (with Eoin Carroll) *Re-Imagining Imprisonment in Europe: effects, failures and the future* (Dublin: Liffey Press, 2014).

Notes

[i] See Council of Europe, *Compendium of conventions, recommendations and resolutions relating to penitentiary questions*. Retrieved from:
http://www.coe.int/t/dghl/standardsetting/prisons/COMPENDIUM%20E%20Final%20E2010.pdf
[ii] The Irish Prison Service remains an integral section of the Department of Justice and Equality.

iii For example, *all* cells in Arbour Hill Prison are smaller than his recommended minimum size for the numbers he agrees they should hold, as are all cells in E Block in Portlaoise Prison. He accepts there can be three prisoners per 12 square metre cell in Cloverhill Prison, well below his 15 square metre minimum. He allows for 'doubling-up' in cells in C Block in Cork Prison that measure only 9.2 square metres and are without in-cell sanitation.

iv *The management of offenders* noted that the daily average prison population "fluctuates around 2,175" (p.27). 600 divided by this figure gives 27.59%.

v Written answer by the Minister for Justice and Law Reform, Dermot Ahern TD, to Ciaran Lynch TD on 20 April 2010. The figures given relate to 14 April 2010. Retrieved from: http://debates.oireachtas.ie/dail/2010/04/20/00351.asp

vi Written answer by the Minister for Justice and Equality, Alan Shatter TD, to Dail Question originally asked by Ciaran Lynch TD on 24 November 2011, and answered via correspondence on 20 December. The figures relate to 1 December 2011.

vii Information in this paragraph is from a written answer by the Minister for Justice and Equality, Alan Shatter TD, to a Dáil Question by Ciaran Lynch TD on 24 November 2011. The question was eventually answered in correspondence from the Minister to Deputy Lynch on 20 December and figures given relate to 21 November 2011, when there were 4,269 in prison.

viii Written answer by the Minister for Justice and Equality, Alan Shatter TD, to a Dáil Question by Ciaran Lynch TD on 24 November 2011. Retrieved from: http://debates.oireachtas.ie/dail/2011/11/24/00145.asp

ix Irish Government response to the CPT report, 2011, p. 61. Retrieved from: http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.htm)

x Irish Government response to the CPT report, 2011, pp. 25-27.

xi The Irish Prison Service's *Annual Report 2011* (IPS, 2012) gives daily average numbers in custody for the two open prisons, Loughan House and Shelton Abbey, as 102 and 122 respectively (pp. 15-16), a total of 224, while the daily average in custody for the whole prison system for the year was 4,390. Thus, just 5.10% of prisoners were in open prisons during the year.

xii For a similar, but more detailed, set of recommendations than those outlined here, see the policy paper of the Jesuit Centre for Faith and Justice (2012), which also provides a fuller analysis of the problems of Irish prisons.

xiii In its *Annual Report 2008* (Longford: IPS, 2009), p.46, the prison service made clear it was changing its method of calculating the cost of a prison place and now excludes significant current costs such as teachers' salaries, "building/equipment assets and small works", all of which were previously included. In then "restating" the 2007 figure (which had been given in the previous year's report), it was seen that the new system understates the previous method of calculation by about 14 per cent. Such modified figures, that exclude these costs, have been those used by IPS ever since.

xiv Source: World Prison Brief of the International Centre for Prison Studies, on 19 June 2012, http://www.prisonstudies.org/info/worldbrief/

xv For a fuller critique of the initial Thornton Hall plans, and elaboration of some of the points made here, see Kevin Warner, 'Thornton Hall locked in to gulag-type thinking', in *Irish Times*, 14 May 2011. In the summer of 2011, the Thornton Hall Review Group proposed building a prison for 700 initially, but the conditions envisaged would appear to be no better, with an even higher level of doubling up possible. For a critique of this Review Group's report, see Kevin Warner, 'An open policy for prisons would serve us all better', in *Irish Times,* 11 August 2011.

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