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Best international practice, or punitive and dysfunctional? A critical look at regimes in Irish prisons

Dr Kevin Warner, UCD and UCC, (kevinwarner47@gmail.com)

Perhaps my title is a little provocative. But I, in turn, felt a little provoked when I saw that both the Director General and Minister for Justice referred to the new prison just built in Cork as meeting “ best international standards”. That is far from the case.

What I plan to speak about today is what I see as an overall deterioration in Irish prison regimes – which were never that good to start with - in the past couple of decades. By ‘regimes’ I mean, following Whitaker, “the physical conditions under which prisoners are held in custody and the way they are treated” (p.60). The concept includes what Liebling calls a prison’s ‘moral performance’, as well as standards of good practice (especially international standards). Regimes can be assessed in relation to their ‘care/custody balance’, and whether they reflect a penal-welfarist or punitive approach.

While there have been some improvements in some aspects in recent years, I think that overall conditions and treatment have worsened when looked at, say, over a 20 year period. Our prisons have become very large – the Midlands Prison now holds well over 800 men – and this feature in particular renders many of our prisons dysfunctional, reflected in segregation, increased confinement to particular parts of prisons and reductions in access to services.

A dominant story in criminology is that, towards the end of the 20th Century, there developed a ‘culture of control’, as Garland describes it, or, as Pratt and colleagues put it, a ‘new punitiveness’. Looking at the whole criminal justice system, Garland, speaks of the emergence of new ways of thinking and acting about crime. He refers to the “language of condemnation and punishment” re-entering public discourse, a shift in focus in criminological thought from helping to controlling, the stereotyping and demonising those in prison, and so forth. So, we get slogans such as ‘zero tolerance’, ‘get tough on crime’, ‘prison works’, ‘austere prisons’, and so on; men and women held in prison are now spoken of much more as ‘offenders’.

Garland’s analysis primarily examined the US and Britain, and there is disagreement as to how far it applies elsewhere. Analysis in Ireland has tended to see Garland’s theories “as not

applicable to contemporary Ireland”, to quote Mary Rogan. Kilcommins and colleagues speak of his analysis applying “in dilute and distinctive hybrid form”; that makes sense, but the questions then are ‘how dilute?’, ‘how is the hybrid composed?’ They also said (but in 2004) that there had been “no shift towards penal austerity”. I believe I can show that there has now been a significant shift.

Claire Hamilton, in a more recent book, takes a very wide overview of the criminal justice system in several countries, and finds both punitive and contrary tendencies in each of them. For example, in relation to Ireland, she highlights good progress in the area of juvenile justice (i.e. those under 18), especially following the Children’s Act of 2001. However, she is (rightly in my view) very critical of prison conditions, referring to a “general poverty of the daily regime... [a] lack of meaningful activity... violence... [and] penal policy and practice being worryingly out of line with international standards”. The late Paul O’Mahony has also written insightfully about these matters over many years.

My own view is that there has been a marked increase in punitiveness and severity in Irish penal policy and practice since the mid-1990s or so. The prison population more than doubled (before dropping a bit recently). The way people in prison are perceived in public discourse has worsened (something I have written about). But my focus here will be on regimes, on the way we do imprisonment, and how that has significantly worsened over that period.

To me, the climax in penal severity thinking can be seen in the plans to build Thornton Hall , a prison for 2,200 – plans that thankfully never came to pass (a silver lining of the recession). While Mary Rogan has written “it cannot be said a punitive agenda was behind the decision to establish Thornton Hall”, I cannot see it as otherwise – in its enormous scale, in the severe confinement and restrictions envisaged for the regime, in the doubling-up in cells that was planned for the great majority of the men and women to be held there. It is significant that, in planning Thornton Hall, Irish authorities drew on extensive advice and help from a private US correctional company (Jacobs) and the British Home Office – and brushed aside suggestions that they might learn from new prisons then being planned in Denmark and Norway (East Jutland and Halden respectively).

While Thornton Hall never materialised as such, the *warehousing approach* which lay at its heart has profoundly affected the Irish prison system, with cell blocks for hundreds being inserted in each case into Castlerea, Wheatfield and Midlands prisons, with little or no

proper regime facilities or services added. The norm became closed prisons, severely-confining ones at that, with high lock-up times and doubling-up in cells (in breach of the European Prison Rules). This approach has continued in the new prison which opened in Cork earlier this year, and over 90% of the men are obliged to share cells there. (Much is made of the ending of slopping-out that this facility has brought about. However, men there must still shit “in the presence of others” – hardly the claimed ‘normalisation’, or ‘best international practice’.)

Coming back to Garland, it is important to be clear that what he describes is not some total change, but very much a significant *change in emphasis* in the new crime control field. He notes that the change is complex and often contradictory, “and that new practices and mentalities co-exist with the residues and continuations of older arrangements” (2001, p.167). So, even the model he puts forward is a hybrid. It is the shift in emphasis that we need to look at, the balance between the ‘penal’ and the ‘welfarism’, between ‘care’ and ‘control’:

The penal mode, as well as becoming more prominent, has become more punitive, more expressive, more security-minded... The welfare mode, as well as becoming more muted, has become more conditional, more offence-centred, more risk-conscious. (p.175)

Those on probation or leaving prison

are less likely to be represented in official discourse as socially deprived citizens in need of support. They are depicted instead as culpable, undeserving and somewhat dangerous individuals who must be carefully controlled for the protection of the public... Rather than clients in need of support they are seen as risks who must be managed. (p.175)

It seems to me a bit like climate change: there is an overall change of direction, a significant heating-up, but that does not mean we don’t get some counter trends at times, especially in the short term. Climate change is also complex and contradictory, as Garland says of change in the crime control field. So, I think it is valid to speak of ‘penal climate change’ in Ireland: not an absolute or even consistent change, but still a serious and significant overall trend when looked at over several decades. There are, of course, penal climate change deniers, but I believe the evidence of an overall and severe worsening of regimes is overwhelming.

Looking at a period from, say, 1995, I think we can lay ten ‘charges’ relating to regimes against the Irish penal system (and, as they say, other charges may follow):

1. Cell-sharing, with all its damaging consequences, was about 28% in 1995, but 47% in 2015 (although it did rise to 60% in 2011).
2. The prison population rose from about 2,050 in 1995 to about 3,800 in 2015 (although it went to approximately 4,600 in 2011 and the all-party Joint Oireachtas Committee in 2013 want it to be reduced to 2,850). This increase and a reduction in the number of prisons – we have 13 now compared to 17 at the turn of the century - has meant we now have much larger prisons in general. As a consequence, regimes in the larger prisons are deeply segregated and far more restrictive, and services per person in prison are reduced. For example, those in the new E and G wings in Midlands Prison can access the main Education Unit on only one-and-a-half days each week.
3. There is a smaller proportion in open prisons (only about 5% of the total prison population), following the closure of Shanganagh Castle and the expansion of closed prisons. In the mid-1980s, the proportion in open prison in Ireland was about 12%. In Denmark today, serving a sentence in an open prison is the norm; the country has 938 closed prison places and 1,316 open prison places (excluding pre-trial prisoners).
4. Although the lot of those under 18 (or at least 17) has improved markedly following the Children's Act of 2001 and the removal of this age-group from the prison system, the situation of young men between 18 and 21 has worsened very dramatically. Previously seen as a distinct group with particular needs, classified as 'juveniles' and generally assigned to designated juvenile places of detention (Shanganagh Castle, Fort Mitchel and St. Patrick's Institution), they are now treated as adults and incarcerated in closed adult prisons, often in very inappropriate regimes. (A Jesuit Centre report that has come out in recent weeks addresses this issue very well; indeed, the report considers those over 18 and *up to 24 years*, in line with what we know of delayed maturation and international good practice in this area. The report looks for four distinct and appropriate institutions for this age group with no more than 90 held in each).
5. Education has for long been the largest 'purposeful activity' available in Irish prisons. However, access per prisoner has been markedly reduced in many of the larger prisons, due to overcrowding, segregation and other factors. Access to third level education is now only at one-third of the level it was at up to 2008 and for many years prior to that (with 47 involved in 2015, compared to 141 in 2008). Involvement in Open University study has become very restricted, and the NCAD course in Portlaoise was terminated by the IPS in 2011.

6. In 2006, the Probation and Welfare Service was renamed the Probation Service, narrowing its function with those in prison to “challenging offender behaviour” and risk-assessment; they also limited the range of men and women in prison they aim to work with. This is a classic example of the change that Garland describes.
7. While there has been an increase in recent years in individual counselling in relation to addiction, the overwhelming effort of the IPS in relation to the drugs problem has gone into supply control, as opposed to approaching addiction as a public health issue and seeking to tackle demand. The creation and staffing of the Operational Support Group can be seen in this light, and illustrates the prioritisation of ‘custody’ over ‘care’.

While some important aspects of regimes in Irish prisons may not have worsened, they have long been, and remain, in a very poor state. These include:

8. Very poor preparation for release and post-release support for the great majority of those who are sent to prison.
9. Standard remission remains at 25%, in contrast to nearly all nearby countries where it generally ranges from 33% to 50%. This is the case despite many recommendations for its reduction, from the Whitaker Report in 1985 to the all-party Joint Oireachtas Committee on Penal Reform in 2013.
10. Family contact arrangements are, for the most part, quite dreadful – even Dickensian, as in some descriptions by the CPT. The Whitaker Report wanted “liberal visiting arrangements with minimum of supervision (especially of family visits) and maximum allowance of personal contact” (p.14). In many countries, private visits for substantial time “in well-equipped and pleasantly decorated facilities” (CPT report on Iceland, 2013, p.60) is the norm. Likewise, reasonable home-leave arrangements are standard practice in several countries. Ireland is a very far cry from having such supports.

It seems clear that ‘basic living conditions’ (to use the Whitaker phrase) in Irish prisons are poor, and have worsened generally over two decades or so, despite some relatively minor improvements here and there. We need to recognise this reality if we are to have any hope of significant progress.

In conclusion, I wish to refer briefly to two factors that underpin this situation: one related to policy thinking, the other to do with the physical structure of the prison estate with which we are now left. These two factors reinforce each other. Regressive thinking still constrains the way our prisons are run, especially in how those we imprison are perceived, in how imprisonment is understood, in the ignoring of the EPR and other Council of Europe Recommendations, and in the failure to rebalance 'care/custody' (despite the McAuley report of 1997) and to grasp the concept of 'dynamic security' despite the urgings of the CPT.

However, even were we to make breakthroughs in thinking, we would be left the problem of a very inappropriate prison estate, the greater part of which is made up of overlarge prisons, which John Lonergan has described as 'concrete jungles'. He describes Mountjoy and its adjoining prisons as "a mass of buildings all cramped on top of each other with no open space", and he notes how the same situation has developed in the Wheatfield/Cloverhill complex, and the Midlands/Portlaoise complex, where "the whole site is dominated by concrete buildings with very little open space... exercise yards are tiny and very claustrophobic" (2014, p.xviii). One could add that the new prison in Cork is little better in this regard. In Ireland to date, we have shown ourselves unable to develop appropriate, humane and helpful regimes in such settings, certainly for the numbers we put in them; and we have largely shied away in recent decades from developing open prisons, which have proven to be far less damaging to people, facilitate normalisation and re-integration, and cost little more than half (per prisoner place) of what closed prisons cost.

That all sounds rather bleak. Yet, there is some guidance for a way forward in two quite different official reports, which have been largely ignored by authorities. The Whitaker Report of 1985 was based on concepts such as "minimum use of custody, minimum use of security and normalisation of prison life". From such principles it set out very clear standards for 'basic living conditions' in prisons – we are further from meeting these today than we were when the report was written. A more recent report has also been ignored, despite having the backing of all political groups in the Oireachtas, the all-party *Report on Penal Reform* (2013). It is far less detailed and comprehensive than Whitaker, but it proposes similar ideas, especially in relation to reducing substantially the prison population. This begs a question: if our politicians have unanimously put forward such a progressive document, why has it not been progressed?

