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Justice?

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penal policy

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Driving penal reform

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the **Howard League** for **Penal Reform**

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Abstract

For organisations and individuals involved in penal reform, influencing policy can be frustrating, slow and enigmatic. Models of penal change can provide guidance regarding the drivers of and influences on penal policy, and analysing the policy process can offer both theoretical insights and practical lessons for penal reform groups. This paper seeks to add to the growing literature on policymaking by exploring the example of the Republic of Ireland, which is in the process of changing its penal policy from one which prioritised penal expansion to one which advocates a decarceration strategy. The particular experience of Ireland since 2011 indicates a number of learning points for penal reformers, including the importance of grasping the opportunity presented by a change of government, establishing links with all parties, and, in some cases, providing a research function for politicians in order to create the best chance of having policy positions included in political commitments. The paper also explores the influence of international and domestic mechanisms for the protection of human rights on penal change, as well as the actions of senior prison officials. The case of Ireland shows that policies emphasising penal expansionism can be reversed through a combination of a favourable, or at least distracted, political culture, energetic individuals, and NGOs willing to work constructively with policymakers.

Introduction

As all organisations and individuals involved in penal reform are fully aware, influencing policy can be frustrating, slow and enigmatic. Models of penal change can, however, provide guidance as to what can act as drivers of penal policy, and, perhaps most importantly, hope that penal reform is possible.

Lappi-Sepällä's analysis (2012) of the political and administrative changes which led to a reduction in the prison population of Finland has often been pointed to as a model of penal reform. While the transformation he outlines is remarkable, other, perhaps more modest examples of penal reform are also taking place. This paper explores the example of Ireland[1], which is in the process of changing its penal policy, from one which prioritised penal expansion and seemed powerless to control burgeoning prison numbers, to one which is now advocating a decarceration strategy. There is much about Irish prison policy which remains regressive, but there has been a demonstrable shift in official policy towards a reduction in the use of imprisonment, an increased emphasis on decent conditions and some efforts to improve accountability.

Understanding the policymaking process
Policymaking is a subject of increasing attention by criminological scholars, with comparative and national studies becoming more common (Jones and Newburn, 2005, 2013). Loader's study (2006) of the attitudes and dispositions of senior civil servants in the Home Office during the hey-day of penal-welfarism is a rare and insightful glimpse into the world of the senior policymaker. Loader and Sparks (2004) have also called for more investigation into the reasons why 'evidence' does not find its way into criminal justice policy, arguing that the process must be more closely studied. Stevens (2011) has unearthed an account of policymaking processes which use evidence haphazardly and which can operate to silence questions of social justice. Annison (2013) speaks of the Westminster tradition in criminal justice policy change, while Snacken (2011) notes the influence of the European Court of Human Rights and the possibility of it acting as a restraint to increasing punitiveness. In the Irish context, Rogan (2010, 2011) has written about the influence of individual ministers and civil servants, and their particular personalities and agendas, which have included being seen as progressive, liberal or 'European'.

Major problems remain in Ireland's prison system and in the country's mechanisms for policymaking, but the changing policymaking landscape in Ireland offers some hope for penal reformers. Ireland is also a useful case-study given its historical cultural and legal

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[1] This paper will describe the situation in the Republic or South of Ireland.

links with the United Kingdom. This article seeks to add to the growing literature on policymaking, noting Tonry's exhortation (2009) to understand more about how national policies emerge.

The Irish prison population in historical and contemporary perspective
From independence in 1922 until the 1960s, Ireland's prison population was fairly steady, though increases did occur at times of political upheaval in Irish history, for example during the civil war which broke out following the Treaty with Britain leading to independence. Penal policy has also been influenced by the long shadow of the outbreak of the 'Troubles' (or conflict) in the north, which affected the criminal justice system generally (Kilcommins and Vaughan, 2007; Rogan, 2011b).

With a small prison population, limited finances, and a political culture not given to radicalism or reform, it is perhaps unsurprising that for long periods, particularly until the 1960s, the Irish prison system was in stasis, which others have also described as 'calcification' (Kilcommins et al., 2004). This period gave way to one of increasing prison rates from the 1970s onwards. The Irish prison population, and imprisonment rate, has, until last year, been consistently growing.

The current Irish prison system
There are currently 4,065 prisoners in Ireland, a rate of about 94 prisoners per 100,000 population. This rate has increased from 62 per 100,000 population in 1992. Perhaps most striking has been the rapidity of the growth of the Irish prison population during the 2000s, particularly during the second half of the decade. For the first time in decades, however, the Irish prison population recorded a decrease in 2012 (Irish Prison Service, 2013a).

The current Irish prison population is characterised by a high number of prisoners with short sentences. An unusually high number of women are sent to prison each year, but most are sent for very short periods for non-violent offences. Women represent about 5.5 per cent of the average daily prison population, but account for around 17 per cent of all committals. This latter figure is largely driven by committals for the non-payment of court-ordered fines. Thirteen per cent of all prisoners are on remand awaiting their trial, or sentence. About half of prisoners are serving sentences of between three and ten years (Irish Prison Service, 2013a).

Seventy-five per cent of Irish prisoners come from areas of 'serious deprivation' as measured by Irish poverty indicators (O'Donnell et al., 2008). Recidivism rates are difficult to obtain, but a recent publication by the Irish Prison Service found that 62 per cent of those released from prison had been reconvicted within three years, 41 per cent had reoffended within six months of release (Irish Prison Service, 2013b) and 82 per cent of those who go to prison are Irish nationals.

Ireland's prison system has been the subject of significant and sustained criticism from domestic human rights monitoring bodies such as the Inspector of Prisons, an independent body as guaranteed by statute. The Irish prison system continues to be overcrowded. Ten of Ireland's fourteen prisons are operating at 95 per cent or more of their bed capacity. No prisons are privately run.

Slopping out remains a feature of the penal estate. Plans are underway to close down Cork prison, where almost all prisoners are slopping out, and build a new prison in its place, while at Mountjoy, the final wing where this practice occurred has recently closed. Ireland does not have an ombudsman for prisoners, but it does have an inspector for prisons, whose office is on a statutory footing.

Influences on Irish prison policy
The Irish prison system has been heavily influenced by the historical legacy of British rule in Ireland. As well as the physical legacy left behind by the British administration, Ireland also inherited the Probation Act, introduced in 1907. Ireland had a late and brief flirtation with penal-welfarism, expanding the probation service in the 1960s and 1970s, and creating policy which emphasised rehabilitation as the aim of the prison system (Rogan, 2011a; Kilcommins et al., 2004). The development of this policy was in part motivated by a young, ambitious Minister for Justice in the 1960s who wanted to be part of a European identity or the European 'penal imaginary' described by Girling (2005).

During the late 1990s and into the 2000s, Ireland's prison policy arrived at a point of crisis, with seemingly out of control prison numbers, severe overcrowding and poor conditions in many prisons. The response of the government to this pressure, until now, had been to advocate and promise more prison building, and at least 1,500 prison spaces were added in the past 15 years, with plans, now shelved, to build a prison which could hold 2,200 prisoners (Rogan, 2011b).

Ireland's political and cultural landscape
In terms of typologies of welfare and other indicators, Ireland has traditionally proven difficult to categorise (Carey, 2007; Fanning, 2003). Ireland's welfare state is often described as a 'hybrid', or even a 'mongrel'. Politics in Ireland is pragmatic, often reactionary, driven to a large extent by local concerns, and very often without a strategic direction (Coakley and Gallagher, 2009). This style is partly because since the 1970s Ireland has been governed by coalition governments, with parties of centre right and centre left, and sometimes further left, managing to hammer out a programme for government.

The formation of prison policy in Ireland has also been characterised by the fact that individual ministers and indeed senior civil servants have left huge legacies (for good

and ill) on the Irish prison system (Rogan, 2012). Furthermore, Ireland has not, to any great extent, shown evidence of commitment to particular penal ideologies and there is little resistance apparent from within the civil service to changes in direction.

All change? Ireland moves to a 'decarceration strategy'

Ireland seems to be having something of a decarceration 'moment', which has its origins in a change of government in 2011 and the realisation that financially the upward trajectory of the Irish prison population was unsustainable. At the time, Ireland was undergoing the early stages of the fallout from the economic crash and there seemed to be a kind of paralysis across government, with little in the way of penal innovation of any kind.

A new government

The two parties which formed the new Government were Fine Gael, a centre right party historically considered tough on law and order, and Labour, a centre left party. Fine Gael's manifesto stated that it would revisit plans to build the proposed 2,200 cell prison, but also included some tough statements about ending automatic remission (Fine Gael, 2011). Labour was the only party to publish a policy position dedicated to penal reform; this advocated a reduction in the use of imprisonment (The Labour Party, 2011). Perhaps amazingly, the party then in Government, Fianna Fáil, with a track record of talking tough about prison policy in its previous manifestos, did not have a single thing to say about prison.

The programme for government laid out the blueprint for the plans of Labour and Fine Gael in power (Government of Ireland, 2011). It contained a commitment to increase the use of non-custodial options, a desire to reduce the prison population, and promises to review the need for in-cell sanitation. The general election took place in March 2011 and since then there have been several concrete changes in Irish prison policy. Changes in practice have followed, but, of equal importance, there are indications that the way in which penal policy is formed in Ireland is also changing.

An emphasis on community sanctions

The law has been amended to require judges to consider community service as an alternative to sentences of up to 12 months' imprisonment via the Criminal Justice (Community Service) (Amendment) Act 2011. A 'community return' programme has been introduced where prisoners serving sentences of more than one and up to eight years can be released into community-service type work. About 120 such prisoners are serving their sentences in the community on this scheme on any given day. Both of these initiatives have been designed specifically to reduce the prison population and alleviate overcrowding. Prison numbers have fallen generally, and, while overcrowding remains a cause of deep concern – particularly in prisons for women – some prisons with historically very high and dangerous levels of overcrowding have seen numbers

fall. One of these prisons, Mountjoy, has also been subject to a programme of refurbishment, whereby slopping out has recently been eliminated. This follows unfulfilled commitments to end this degrading practice for decades. Cork prison, a place operating at 113 per cent of official bed capacity, and in which slopping out continues, is to be replaced with a new prison.[2]
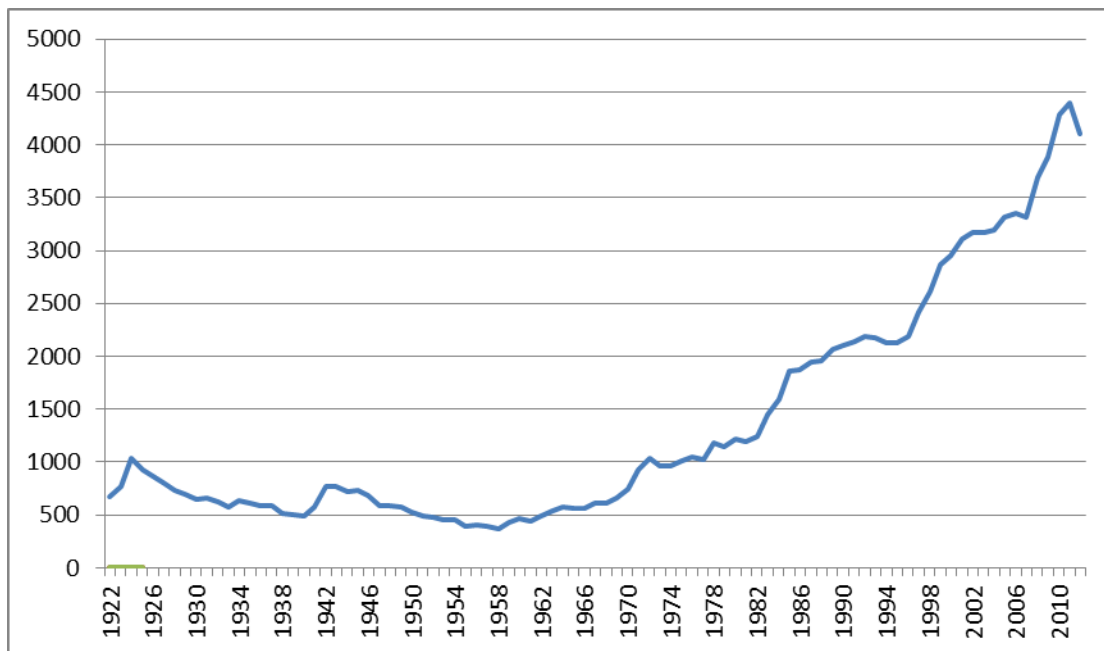
Figure 1: Irish average daily prison population 1922–2013
(Data obtained from Annual Reports of the Irish Prison Service, Department of Justice Prison Statistics and Reports of the General Prisons Board).

Reviewing mandatory sentencing, youth justice, and accountability structures
The government has also commenced a review of the use of presumptive and mandatory minimum sentences. Underlying this review is the recognition that such sentences, introduced for certain drug offences in a time of political competition concerning crime in 1999, have acted to increase the prison population, with little discernible impact on crime.

In 2012 the government also announced important reforms in the area of youth justice. Following a highly critical report by the Inspector of Prisons, and collaboration with the Department of Children and Youth Affairs, the detention of 16 and 17- year-old boys in St. Patrick's Institution, an outdated prison with very poor regimes and relationships, was ended.

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[2] Though it is of concern that this prison will involve cell-sharing.

Though much remains to be done, there has also been progress on the structures for securing accountability for decisions and incidents in prison. In 2012, the remit of the Inspector of Prisons was extended to allow that office to investigate the deaths of prisoners in custody and on temporary release. A further step that has been taken is increased oversight by the Inspector of certain serious complaints made by prisoners.

Changing the way penal policy is formed
The formation of penal policy in Ireland is also undergoing change. Should this be maintained, it is likely that strengthening the policymaking process will be the most important legacy of this policy window.

Shortly after coming into office, the current government established the Thornton Hall review group to examine the previous government's plans to build a large prison. That group was made up of a former judge of the Supreme Court and former president of the Law Reform Commission, the then director general of the Irish Prison Service, the then special adviser to the Minister for Justice and Equality and an experienced chartered accountant. The group's secretary came from the Irish Prison Service. The review group received written and oral presentations from a variety of actors, including penal reform groups. It recommended that the much-criticised prison at Cork be replaced as a matter of urgency and that a system for earned temporary release should be coupled with a requirement to engage in supervised community service. Both of these recommendations have been implemented.

Furthermore, the review group recommended that an 'all-encompassing strategic review of penal policy should be carried out,' which should address prevention, sentencing policies, alternatives to custody, accommodation and regimes, reintegration, the imprisonment of women and the place of 16- and 17- year-olds within the system. It also recommended that the government set up an inter-departmental group to examine the issue of people with mental illnesses coming into the criminal justice system and acknowledged that prison building would not address overcrowding.

The establishment of the Thornton Hall review group was an important milestone in the history of penal policy. Importantly, the review was drawn up by penal and political 'insiders' (the head of the Irish Prison Service and special adviser to the minister), a respected former senior judge, and an individual with no obvious pre-existing 'liberal biases' and a strong profile in the hard-headed issues of financial accounting (in the form of the chairperson). It is also significant that the group was established early in the tenure of the new government, and was established to examine a policy of the former government. That policy had become toxic in the fallout of Ireland's economic crisis. A new government was able to roll back from it without an embarrassing political climb-down. The model of review chosen was undoubtedly elite-driven. Though submissions were welcomed from all quarters, the key decision-makers involved experienced public

servants. The form of review taken, involving a degree of independence from the Minister (though not too much) also provided political cover for the decision not to build Thornton Hall prison.

As a result of the Thornton Hall review, two strategic review groups were established. The strategic review group on penal policy was formed in 2012. Following the model of blending penal and political insiders with others with an interest in the penal system, the members of this review group comprised the directors of the Irish Prison Service and Probation Service, senior civil servants in the Department of Justice and Equality and the Irish Prison Service, a senior member of the Garda Síochána (police force), a senior judge with considerable experience in criminal law and sentencing, a consultant psychiatrist engaged in prison work, a former special adviser to the minister, a senior counsel (the Irish equivalent of a queen's counsel) and figures in the NGO community dealing with the right of victims and survivors of sexual crime, as well as the Irish Penal Reform Trust.[3] This group is chaired by a human resources specialist and former member of the Prisons Authority Interim Board. Announcing the establishment of the group, the minister stated his belief that the review would 'map a way forward for the ongoing reform of that system and the future development of penal policy' (Department of Justice and Equality, 2012).

Again, the model chosen involved consultation and an invitation to all individuals and groups to make submissions, which have been forthcoming from various pressure groups and academics. There are interesting parallels here with a previous committee set up to review penal policy in Ireland in 1962. That group, which was drawn from within the civil service only, was established by a minister with a similar zeal for reform, who understood the need for civil service 'buy-in' for proposed reforms (Rogan, 2011a, 2011b). Similarities can be seen in this regard with *Scotland's Choice*, the report of the Scottish Prisons Commission (2008).

The strategic review group of penal policy has yet to report, and it remains to be seen whether its recommendations will be implemented. Scholars of penal policymaking may well find how groups such as this (including that responsible for *Scotland's Choice)*, work and influence policy (or not) interesting subjects of analysis.

The second group was established jointly by the Departments of Justice and Equality, and Health. It has also yet to report, but is tasked with examining *inter alia* how to divert those suffering from a mental illness or mental disorder away from the criminal justice system.

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[3] The author was appointed to this group in 2014.

This increased effort at strategic planning among Irish penal policymakers is also evident within the Irish prison service and the probation service. Working more closely than had been the case for some time, these organisations have produced two joint strategies, one a joint strategic plan for 2013–2015 (Irish Prison Service and Probation Service 2013), and a joint *Female Strategy – An Effective Response to Women who Offend* (Irish Prison Service and Probation Service 2014). These strategies emphasise multi-agency working in the areas of young people, women, and release from custody. For the first time, these agencies have also committed to improving the publication of their data. The Irish Prison Service has also developed its first strategic plan. Published in 2012, it seeks to align prison capacity with the guidelines laid down by the Inspector of Prisons, to give effect to the principles of normalisation, progression and reintegration, and to 'radically improve' conditions in older prisons (Irish Prison Service, 2012: 27).

In October 2011, just over six months since the change of Government, the Joint Oireachtas (parliamentary) Committee on Justice, Equality and Defence established a sub-committee on penal reform. This committee comprises both the lower and upper houses of the Irish Parliament. Its rapporteur is Senator Ivana Bacik, a Labour senator and Professor of Criminal Law, Criminology and Penology at Trinity College, Dublin, and an individual with a strong track record of interest and advocacy in the area of penal reform. The sub-committee, which comprises representatives of all parties and independents, set itself terms of reference to look in particular at 'back-door' strategies[4] as alternatives to the use of imprisonment, and to examine the experience of other jurisdictions in so doing. It received submissions from a wide variety of civil society organisations and academics.

The sub-committee's report calls for what it describes as a 'decarceration strategy', designed to reduce the prison population by one third over ten years (Houses of the Oireachtas, 2013). It argues that all prison sentences of less than six months should be commuted and that standard remission should be increased from the current one quarter to one third. The government has yet to act on the recommendations concerning remission, but efforts to reduce the prison population are underway.

Influences on current penal policy
The transformation in Irish penal policy has been both swift and significant. The reasons behind why the transformation happened and the changes emerged so quickly are complex and multifaceted. However, their roots can be traced to changes in key personnel during the period.

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[4] That is, ways of reducing the prison system by reducing the numbers of people currently in custody through, for example, early release.

As might be expected, the Minister for Justice and Equality has played a crucial role in these developments. Alan Shatter, T.D. (MP) was appointed following the election of 2011. He served in this position until May 2014, when he resigned following controversies over policing. Deputy Shatter is a member of a centre right party, but has espoused liberal views on social issues. He was also in a hurry to make changes, as most members of the present Irish government have not had a cabinet position since the mid 1990s, and many were raring to go and put their stamp on their new offices. Deputy Shatter had previously been instrumental in the development of community service orders in the 1980s, and his interest in penal issues was clearly ongoing. In 2011, he laid out a reformist vision in the Irish Penal Reform Trust's Annual Lecture (Department of Justice and Equality, 2011), where he stated:

> *my objective is to ensure that this ever increasing rise in the use of prison does not continue. Criminal justice policymaking under the previous government placed substantial emphasis on harsher sentencing but this emphasis in relation to some, but not all, was political optics and a game of charades.*

In many areas, including family law, personal insolvency, and the courts system, Shatter was considered a highly energetic and reform-minded individual. It is of note that the Irish Council for Civil Liberties expressed regret at his resignation, and several civil society organisations commented upon the changes instituted under his leadership (Irish Council for Civil Liberties, 2014). Though it is too early to say what her impact on the prison system will be, the current minister, Frances Fitzgerald, has a track record of interest in youth justice issues, and a background of instigating change in her previous portfolio in the Department of Children and Youth Affairs.

In 2011, not only was there a change of minister, but at the same time the Irish Prison Service recruited a new director, a former head of the probation service, who has stated publicly his view that, in prison, 'often we get these adult bodies that are actually empty, and what we have to try and do is fill them back up. And usually the main ingredient is love, care and love, decency and respect'" (Irish Prison Service, 2014). The civil service's prison policy division also received a new head official during this period of considerable change in the personnel in charge of Irish prison policy.

Ministers and senior civil servants can have a particularly acute impact on the direction of prison policy (Rogan, 2011). Without further comparative analysis of policymaking, it is difficult to ascertain whether this is a peculiarly Irish phenomenon, or whether, upon closer inspection, all policymaking regimes would demonstrate the centrality of the personality, interests and background of a particular minister on penal policy.

Social and cultural context of contemporary Ireland

The precarious nature of Ireland's public finances is also clearly implicated in the drive towards alternatives to custody. It is quite remarkable that, in the agreement between the so-called Troika of the European Commission; the European Central Bank and the International Monetary Fund, which provided a bail out to Ireland; and the government, it is stated that fine-defaulters should be diverted from prison, community service should be increased and the number of prison staff should be reduced (Houses of the Oireachtas, 2013). In this case, there is an interesting confluence of pragmatism and externally-imposed economic imperatives coming together to force penal change.

While the external factors have clearly been important, the degree of political consensus in Ireland at present concerning penal reform cannot be explained solely by reference to the work of the Troika. Ireland does have a history of the politicisation of crime, particularly during the 1990s, when what was essentially a bidding war on the number of prison spaces parties promised to build took place (Rogan, 2011a; O'Sullivan and O'Donnell, 2003). The contrast to the present situation is revealing. Changing economic fortunes may explain a reluctance to engage in expansionary penal policies now and a willingness to countenance them in the mid 1990s, but perhaps more fundamentally, the Irish political landscape at present is dominated by economic issues. Political debate is taken up with questions of Ireland's high levels of public and personal debt, and unemployment, leaving much less room for questions of crime.

Perhaps most importantly, the political makeup of the Irish Houses of Parliament is such that debate on crime and justice issues is likely to avoid a more 'hardline' approach. Unusually for Ireland, there is a large left-wing component in the lower house of parliament (the Dáil). Following the collapse in electoral support for Fianna Fáil, a party known for its pragmatic approach, which has sometimes been compared to French Gaulism, the hitherto relatively homogenous Irish political culture fragmented, with support going to a variety of independents and left-wing groupings including Sinn Féin. A weakened Fianna Fáil, fighting battles on numerous fronts, has largely avoided the question of prison and penal policy, and its activities in this policy area are far removed now from what they were in the mid 1990s. The more left-wing parties, and the presence of Labour in government, has given rise to a political discourse on prison unlikely to emphasise prison building as a response to offending behaviour.

As well as the distracting effect of the financial collapse, the sobering effects of Ireland's fall from economic grace have given rise to collective reflection and a dislike of the old ways of doing things. Within government this seems, initially at least, to have translated into a 'culture of impatience' (Loader, 2006: 581), through seeking to undo the real and perceived wrongs of the past. Though not the subject of research as yet, there also appears to be a sense of frustration that individuals perceived to bear responsibility for

the fiscal crisis are not being dealt with equitably, with attention being drawn to the contrasting use of prison for those who default on fines of comparatively negligible amounts.

Looking abroad, and to small countries
As a country where the criminological academy is only beginning to emerge, being English-speaking and sharing a political and legal heritage with the United Kingdom, Ireland has always been vulnerable to the phenomenon of policy transfer (Jones and Newburn, 2007) particularly from England and Wales. However, in the past two years, there is evidence of a desire to look to other jurisdictions, particularly smaller ones, for inspiration. The Oireachtas sub-committee on penal reform examined the case of Finland, long celebrated for its efforts to reduce the level of imprisonment. Members of the sub-committee visited Finland as part of their deliberations, meeting members of the Legal Affairs Committee of the Finnish Parliament, officials from the Department of Criminal Policy in the Ministry of Justice and the director general of the Criminal Sanctions Agency. The group also visited Suomenlinna open prison in Helsinki. The report compared the Irish imprisonment rate with that of Finland, noting the different trajectories the countries had taken since 1960. The sub-committee further stated its view that 'the Irish Government should learn from the Finnish experience and seek to bring about a change in penal culture by declaring an intent to reduce prison numbers and the overall rate of imprisonment' (Oireachtas sub-committee on penal reform, 2013: 13). The sub-committee described itself as having been 'strongly influenced' by the visit to Finland and the potential for Irish penal policy to learn from Finnish experience (Oireachtas sub-committee on penal reform, 2013: 6). The sub-committee also heard submissions in which Scotland was mentioned as an example concerning interventions with offenders who are addicted to drugs, which were then advocated by the group.

The effect of the threat of litigation and human rights obligations
An area which has not been studied extensively in the policymaking literature is the effect of human rights obligations and litigation, or the threat thereof, on the formation of policy. The Oireachtas sub-committee and minister for justice have referred to the potential legal liability of the state and a possible pay out for claims concerning slopping out as reasons to improve sanitary facilities in Irish prisons. This would seem to be an example of the phenomenon described by Whitty (2011) whereby human rights become defined as 'risks', with financial implications requiring management. The Irish courts have had limited impact on penal regimes, and not a single case concerning Irish prisons has been heard by the Strasbourg court.

It is difficult to measure precisely the influence on penal policy of bodies charged with monitoring and defending human rights in Irish prisons, but it has been cited as important, at least on some issues. The Council of Europe's Committee for the Prevention of Torture (CPT) (2011) has been highly critical of the conditions created by

overcrowding and slopping out in particular, and recommended that the government consider alternatives to prison building. The Inspector of Prisons has described the practice of slopping out as inhuman and degrading (2009). Both the report of the CPT and the Inspector have been cited by the Minister as influencing the decision to install in-cell sanitation (Department of Justice and Equality 2013).

The role of NGOs
The experience of the Irish Penal Reform Trust[5] is an example of how NGOs can influence the policymaking process (Stolz, 2002). The Irish Penal Reform Trust (IPRT) is Ireland's leading NGO campaigning for the rights of all those in the penal system and for progressive penal reform. Drawing in part on the scholarship of penal policymaking, the IPRT recognised the importance of developing relationships with key policy-makers and the need to ensure that evidence and research was synopsised and distilled down into concrete suggestions for change. The IPRT had carefully created policy positions and easy to read briefing papers on key areas in need of reform prior to the general election and had developed relationships with all the political parties, essentially providing a research function in many instances. This positioned the IPRT well when the programme for government was being negotiated and when new office holders were taking up position.

Conclusion
It is clear that we need to understand a great deal more about the policy process, in particular the role of NGOs, lobbying and the effect of criticism and advocacy based on human rights. Thanks to the work of Jones and Newburn (2005, 2013), Rock (2004) and others a clearer picture of how policy is made is being built, and understanding of what 'people do' in the creation of penal policy is developing, but there are important theoretical and also practical lessons for penal reform groups and others in analysing the policy process and attempting to influence penal change.

The particular experience of Ireland since 2011 indicates a number of learning points for penal reformers. One is the importance of grasping the opportunity presented by a change of government, establishing links with all parties, and, in some cases, providing a research function for politicians in order to create the best chance of having policy positions included in political commitments. The second is the possibility of forming alliances with those seeking to cut costs across government. This, however, must be approached with caution in light of the potential to reverse such actions once the economic situation improves, and the dangers that cuts may be made to services. It is also important to remember that policy implementation can be much more important for everyday penal regimes than policy statements by politicians. As such, penal reform

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[5] The author is the chair of this organisation.

organisations must work with those involved in penal administration, and utilise the work of human rights monitoring bodies as a lever for change.

The case of Ireland also shows that policies emphasising penal expansionism can be reversed through a combination of a favourable, or at least distracted, political culture, energetic individuals, and NGOs willing to work constructively with policymakers.

Annex: Re-imagining of penal policy

1. More just and effective penal policies are needed to ensure better regimes in prison, better use of resources in how people who come into conflict with the law are treated, and more just outcomes for all those affected by crime.
2. NGOs like the Howard League and others work hard to influence the policymaking process to improve it.
3. This research describes how government policy on prisons in Ireland has changed from one which focused on building prisons to one which talks about reducing the prison population. It looks at the role of NGOs, ministers, the political culture, and criticism from international human rights monitoring bodies.
4. This research discusses how the process of policy change came about in Ireland, which may be helpful for other countries trying to change and re-imagine their prison policies.

References

Annison, H. (2014) 'Weeding the garden: the Third Way, the Westminster tradition and imprisonment for public protection', *Theoretical Criminology,* 18,1, pp. 38–55.

Carey, S. (2007) *Social Security in Ireland 1939–1952.* Dublin: Irish Academic Press.

Coakley, J. and Gallagher, M. (eds) (2009) *Politics in the Republic of Ireland.* New York: Routledge.

Committee for the Prevention of Torture (2011) *Report to the Government of Ireland.* Council of Europe: Strasbourg.

Cousins, M. (1997) 'Ireland's place in the worlds of welfare capitalism' *Journal of European Social Policy,* 7,3, pp. 223–235.

Department of Justice and Equality (2011) *Squaring the Circle: Penal policy, sentencing offenders, and protecting the community.* Annual Lecture 2011. Dublin: Irish Penal Reform Trust.

Department of Justice and Equality (2012) 'Minister Shatter announces a strategic review of penal policy' Available at: http://www.justice.ie/en/JELR/Pages/PR12000253 [accessed December 2013].

Department of Justice and Equality (2013) *Minister Shatter publishes Inspector of Prisons Annual Report for 2012; An assessment of the Irish Prison System by the Inspector of Prisons and announces plans for the future use of St Patrick's Institution.* Available at: http://www.justice.ie/en/JELR/Pages/PR13000267 [accessed August 2014].

Fanning, B. (2003) 'The Construction of Irish Social Policy 1953–2003' in B. Fanning and T. McNamara (eds) *Ireland Develops: Administration and Social Policy 1953–2003.* Dublin: Institute of Public Administration.

Fine Gael (2011) *Fine Gael Manifesto.* Dublin: Fine Gael.

Girling, E. (2005) 'European identify, penal sensibilities and communities of sentiment' in S. Armstrong and L. McAra (eds) *Perspectives on punishment: the contours of control.* Oxford: Oxford University Press.

Government of Ireland (2011) *Programme for Government.* Dublin: Government of Ireland.

Houses of the Oireachtas, sub-committee on penal reform (2013) *Report on Penal Reform.* Dublin: Houses of the Oireachtas.

Inspector of Prisons (2013) *Interim Report on the Dóchas Centre.* Nenagh: Inspector of Prisons.

Inspector of Prisons (2011) *Report on an inspection of Mountjoy Prison by the Inspector of Prisons.* Nenagh: Inspector of Prisons.

Irish Council for Civil Liberties (2014) *ICCL Reaction to Shatter Resignation*. Available at: http://www.iccl.ie/news/2014/05/07/iccl-reaction-to-shatter-resignation.html, [accessed August 2014].

Irish Prison Service (2012) *Three Year Strategic Plan*. Longford: Irish Prison Service*.*

Irish Prison Service (2013a) *Annual Report.* Longford: Irish Prison Service.

Irish Prison Service (2013b) *Recidivism Study 2013* Longford: Irish Prison Service.

Irish Prison Service (2014) *The Case for Prevention and Early Intervention (online video).* Available at: https://www.youtube.com/watch?v=xq1ZNdUWJrc, [accessed July 2014].

Irish Prison Service and Probation Service (2013) *Strategic Plan 2013-2015* (no location given) Available at: http://www.justice.ie/en/JELR/Pages/PB13000173, [accessed: August 2014].

Irish Prison Service and Probation Service (2014) *Joint Probation Service – Irish Prison Service Strategy 2014–2016: An Effective Response to Women Who Offend*. Available at: http://www.justice.ie/en/JELR/Pages/PB14000059, [accessed August 2014].

Jones, T. and Newburn, T. (2005) 'Comparative Criminal Justice Policymaking in the United States and the United Kingdom', *British Journal of Criminology,* 45, pp. 58–80.

Jones, T. and Newburn, T. (2007) *Policy transfer and criminal justice: exploring US influence over British crime control policy*. Maidenhead: Open University Press.

Jones, T. and Newburn, T. (2013) 'Policy convergence, politics and comparative penal reform: Sex offender notification schemes in the USA and UK' *Punishment and Society,* 15,5 pp. 439–467.

Kilcommins, S. and Vaughan, B. (2007) *Terrorism, Rights and the Rule of Law: Negotiating Justice in Ireland.* Cullompton: Willan.

Kilcommins, S., O'Donnell, I., O'Sullivan, E. and Vaughan, B (2004) *Crime, punishment and the search for order in Ireland* Dublin: Institute of Public Administration.

The Labour Party (2011) *One Ireland: jobs, reform, fairness.* Dublin: Labour Party.

Lappi-Sepällä, T. (2012) 'Criminology, crime and criminal justice in Finland' *European Journal of Criminology*, 9,2, pp. 206–222.

Loader, I. (2006) 'Fall of the 'Platonic Guardians': Liberalism, Criminology and Political Responses to Crime in England and Wales' *British Journal of Criminology,* 46, pp. 561–586.

Loader, I. and Sparks, R. (2004) 'For an Historical Sociology of Crime Policy in England and Wales since 1968', *Critical Review of International Social and Political Philosophy,* 7,2 pp. 5–32.

O'Donnell, I. (2005) 'Crime and Justice in the Republic of Ireland' *European Journal of Criminology* 2,1, pp. 99–131.

O'Donnell, I. (2008) 'Stagnation and Change in Irish Penal Policy' *The Howard Journal of Criminal Justice* 47,2, pp.121–133.

O'Donnell, I., Baumer, E., and Hughes, N. (2008) 'Recidivism in the Republic of Ireland', *Criminology and Criminal Justice*, 8,2, pp.123–146.

O'Sullivan, E. and O'Donnell, I. (2003) 'Imprisonment and the Crime Rate in Ireland' *Economic and Social Review*, 34,1, pp. 33–64.

O'Sullivan, E. (2004) 'Welfare Regimes, Housing and Homelessness in the Republic of Ireland' *European Journal of Housing Policy* 4,3, pp. 323–343.

Parole Board (2013) *Annual Report.* Dublin: Parole Board.

Rock, P. (2004) *Constructing victims' rights: the Home Office, New Labour and victims.* Oxford: Clarendon Press.

Rogan, M. (2010) 'Charles Haughey, the Department of Justice and Irish Prison Policy during the 1960s', *Administration*, 57,3, pp. 65–86.

Rogan, M. (2011a) 'Yes or No Minister: The importance of the politician-senior civil servant dyad in Irish prison policy', *The Prison Journal*, 91,1, pp. 32–56.

Rogan, M. (2011b) *Prison Policy in Ireland: Politics, Penal-welfarism and political imprisonment.* New York: Routledge.

Rogan, M. (2012) 'Improving Criminal Justice Data and Policy', *Economic and Social Review,* 43,2, pp. 303–323.

Scottish Prisons Commission (2008) *Scotland's Choice – report of the Scottish Prisons Commission.* Edinburgh: Scottish Prisons Commission.

Snacken, S. (2011) 'Resisting punitiveness in Europe', *Theoretical Criminology,* 14, pp. 273–292.

Stevens, A. (2011) 'Telling Policy Stories: An Ethnographic Study of the Use of Evidence in Policymaking in the UK', *Journal of Social Policy*, 40,2, pp. 237–256.

Stolz, B. (2002) *Criminal Justice policy making: Federal roles and processes.* Westport, Connecticut: Praeger.

Tonry, M. (2009) *Thinking about Punishment: Penal Policy Across Space, Time and Discipline.* Oxford: Ashgate.

van zyl Smit, D. and Snacken, S. (2009) *Principles of European Prison Law and Policy.* Oxford: Oxford University Press.

Whitty, N. (2011) 'Human rights as risk: UK prisons and the management of risk and rights', *Punishment and Society,*13,2, pp. 123–148.

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