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# THE POWER TO IMPRISON

Comparing Political Culture and Imprisonment  
Regimes in Ireland and Scotland in the Late  
Twentieth Century



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## Lay Summary

Why do some Governments choose to imprison more people than others? Why are some nations' prison systems more humane, while others are more punitive? And how come these systems of imprisonment change over time? This study explored these questions by conducting a comparative, historical and sociological study of imprisonment in Ireland and Scotland from 1970 until the 1990s. It involved interviewing government officials who worked on prisons during this period and reading archival material, such as memos, reports, notes and minutes. It also included an extensive analysis of government reports and other secondary literature. The thesis reveals the contemporary histories of punishment in Ireland and Scotland. It describes how people were imprisoned in the 1970s, and using a chronological narrative, it describes the changes in practices of imprisonment across the 1980s and 1990s. The central argument the thesis is that differences in how people were imprisoned were the result of differences in the political culture. The values, fears, morals, ideologies of the political culture directly informed the choices political officials make. Political culture shapes how governments think about justice, crime, criminals, society and the role of the State. By understanding the political culture, therefore, we can decode and explain why governments in countries that are broadly similar, like Ireland and Scotland, make very different choices about how to punish law-breaking citizens.

## Abstract

Penal politics and imprisonment in the English-speaking west are often presented as having become increasingly harsh and exclusionary since about 1970. Yet, curiously little attention has been given to Ireland and Scotland, two nations considered as exceptions to these pervasive punitive trends, and this presents some considerable gaps in our understanding of penal politics in this era. This thesis uses sociological and historical research to provide an in-depth comparative analysis of political culture and imprisonment regimes in Ireland and Scotland from 1970 until the 1990s. In so doing, the thesis also explores issues central to the history of punishment and comparative penology, in particular the 'punitive turn' in the late twentieth century. Using oral history interviews, archival research and documentary analysis this thesis recovers the history of penal culture in these two jurisdictions and examines how that changed and evolved over the latter part of the twentieth century. It draws upon resources from cultural sociology, governmentality studies and the sociology of punishment to develop the necessary conceptual resources to illuminate and compare penal politics and the varied practices which constitute imprisonment. Imprisonment regimes here are studied as comprising kinds of places, sets of routines and practices. Political culture, meanwhile, is understood as the working cultural symbols, passions, logic of government, political categories, and perceived social origins of crime. While providing grounded and detailed historical accounts of Ireland and Scotland these cases show how generic and global concepts, such as managerialism, rehabilitation, zero tolerance and incarceration intersect with their local social conditions and political relations. This thesis demonstrates that the heterogeneity of imprisonment regimes is a reflection of their political and social context. Therefore, the differences we see in the uses of imprisonment cross-nationally will both reflect and reconstitute their contrasting political cultures.

## Declaration

I declare that this thesis has been composed solely by myself, Louise Elizabeth Anna Brangan. No publications are included within it, and it has not been submitted for any degree or qualification other than the present one, the PhD in the School of Law, College of Humanities and Social Science, University of Edinburgh.

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Louise Brangan 1 December 2017

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“Though we live in a world that dreams of ending  
that always seems about to give in  
something that will not acknowledge conclusion  
insists that we forever begin”

- Brendan Kennelly, “Begin”

# Chapter One

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## Introduction

This thesis uses sociological and historical research to provide an in-depth comparative analysis of political culture and imprisonment regimes in Ireland and Scotland in the period from 1970 until the 1990s. In undertaking such an investigation, the thesis is concerned to develop a sociologically informed, historically situated and politically nuanced understanding of penal culture in both jurisdictions. The comparative analysis of the distinct cases of Ireland and Scotland also makes a more general contribution, illuminating the cultural, social and political foundations of penal politics.

There is something close to a consensus (in comparative research in particular) about the punitive character of punishment in English-speaking countries over the last four decades or so. Whether it is the arrangement of the political systems therein, changes in the political economy, or the embedded sentiments of national cultures, something has contributed, to a greater or lesser degree, to a more punitive atmosphere in which harsh and excluding penal practices have proliferated, or so it is widely argued (Downes 1988; Garland 2001; Young 1999; Lacey 2008; Pratt and Eriksson 2013; Cavadino and Dignan 2006; Green 2008). Though their penal practices differed from each other in significant ways, both Ireland and Scotland are considered to have preserved their respective prison systems from the most severe penal practices that developed in the Anglophone world in the late twentieth century (McAra 1999, 2005, 2008; Kilcommins et al 2004; Hamilton 2014b; Rogan 2011). How and in what ways did these two small countries – nested in the economic, cultural and political spheres of the English-speaking West – evade, or at least mitigate, the punitive forces which, it is claimed, have dominated this period in penal history?

Besides their being considered Anglophone exceptions, there is also something simple and timely about situating this research in Ireland and Scotland. There has been scant historical or comparative attention paid to political culture and imprisonment from the 1970s onwards in either country. Thus the thesis is first, and maybe foremost, a recovery of the history of imprisonment and penal politics in both Ireland and Scotland. What happened in these places, how were people imprisoned? How were their penal politics characterised? What kinds of ideas and duties shaped the respective governments' use of their power to imprison? How did these change over time, and why? What political forces, social relations and cultural norms supported, promoted and conditioned imprisonment and penal politics in both Ireland and Scotland? In investigating these questions, this research is interested in enlivening our historical memory of punishment in Ireland and Scotland and attempting to reveal it within its own terms. This thesis aims to recover the history of Irish and Scottish penality from being forgotten, shrugged off as exceptional or parochial, too quickly repudiated, or reworked (for whatever reason) into a narrative more readily packaged for contemporary concerns.

To set out the questions this way is to suggest an approach to comparative penology that is historical, but also political, cultural and sociological. But comparative research in criminology provides us with few conceptual and methodological tools which can examine the connections between political culture, social forms and actual penal practices. As I will argue, comparative penology also provides few strategies capable of illuminating the historical forces which inform imprisonment, and fewer resources which can track how these evolve over time. To suggest that political culture shapes imprisonment regimes – as this thesis does – seems on the face of it like a fairly uncontroversial and an almost mundane statement (Lacey 2008; Green 2008; Tonry 2004; Newburn and Sparks 2004; Page 2011). However, I suggest that such an assertion is more complex than is often acknowledged, particular in comparative study. Prisons (kinds of places, sets of routines and

practices) and political culture (the working cultural symbols, passions, logics of government, political categories, and perceived social origins of crime) are each more multifaceted than they are often portrayed in comparative penological scholarship, and thus both required conceptual rethinking.

The thesis focuses on imprisonment in particular rather than punishment in general, mostly for empirical depth but also for analytical reasons. Arguably, the tendency in comparative penology to focus (mainly or exclusively) on the rise of mass incarceration and spread of 'punitiveness' has meant that the prison itself remains opaquely conceptualised in much comparative research (Whitman 2003; Green 2008; Barker 2009; Cavadino and Dignan 2006; Lacey 2008; Pratt and Eriksson 2013). The prison does not only aim to incarcerate people and to deprive them of their liberty, however – though this much seems taken as given if 'punitiveness' as such becomes the object of inquiry. In reality, the prison is usually a mixed enterprise. It can be explicitly aimed at punishment, but also recovery and reform of citizens through productive, rehabilitative and educative programmes, or to achieve other purposes, acknowledged or denied. Investigating prison practices comparatively means we must also be poised to question what is implied by otherwise generic penal terminology, which cannot be taken for granted. For example, in practice what ends are being sought in rehabilitation, education or training?

In comparative penology there is always the dilemma of where to delimit the institutional account of punishment. The focus on imprisonment herein means other components of penal culture are omitted from this account, such as youth justice,<sup>1</sup> fines and other penalties. However, for all that it excludes, I hope that the gains justify this more restrained focus. Instead of focusing on the body of the prisoner, or on how many bodies the prison contains, I research and compare the component parts that make up the institutional apparatus of the prison system – its stated aims

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<sup>1</sup> In relation to Scotland, this thesis excludes what is considered by some commentators to contribute to Scotland's penal exceptionalism, in particular its youth justice system (McAra 2005, 2008; Croall 2006).



and everyday practices. By reconceptualising the prison, the thesis maps a fuller history of imprisonment than has occurred before in either jurisdiction. Using this empirical base, I develop some new interpretive and methodological resources with which to compare the uses of imprisonment. These outcomes would not have been possible with a more divided or diversified focus.

Using official reports, I mapped the systematic sets of heterogeneous routines, activities, interventions, settings and aims which give imprisonment regimes their cross-national distinction. I found two prison systems that diverged significantly in their respective aims. The Irish and Scottish imprisonment regimes contrasted in their depth, tightness and lenience. The kinds of programmes and training used in Ireland and Scotland differed in ways both stark and banal. These forms of imprisonment were also highly fluid. Across the period of this study both Irish and Scottish prison systems appeared to undergo remarkable transformations, as their institutional landscapes were incrementally, and sometimes dramatically, remodelled. These two prison systems did not just differ from each other. Rather they also both displayed striking internal contrasts, concurrently relying on harsh and humane uses of imprisonment. These findings created a comparative puzzle: why did the uses of prison in Ireland and Scotland differ? But they also generated a historical set of questions: why were such diverse kinds of imprisonment used in both Ireland and Scotland? Why did they change?

The historical and comparative distinctions recovered in the organising patterns of Irish and Scottish imprisonment require explanation. Imprisonment changes in the face of surrounding political pressures and social requirements (Barker 2009; Crewe 2009; Garland 1996; McEvoy 2001; Carlen 1983). But more precisely, the actual work of maintaining, administering and building prisons is a government function (Garland 2013). Understanding how and why governments go about those tasks as they do will allow us to reveal the logics that underpin their prison systems. In this thesis, the study of government and penal politics is understood in terms of political

culture. But understanding the influence of political culture on punishment demands a closer, more embedded and sociologically nuanced approach than is usual in the literature. Political culture is often used as a term that is interchangeable with political economy, punitiveness, penal populism and electoral arrangements, or sometimes as a catch-all phrase intended to capture everything about government (Cavadino and Dignan 2006; Tonry 2004; Green 2008; Newburn and Sparks 2004). Yet many invocations of political culture are too detached from the practices and processes of government to be able to explain the development of heterogeneous imprisonment regimes.

Instead this study takes a more grounded approach to the study of penal politics. Like others, I agree that national culture, social structure, political ideology and historical antecedents are the essential stuff that creates convergence and divergences in cross-national punishment. These forces and influences will only find themselves realised in the material character of imprisonment regimes when they shape the practical logic, values, understandings and conscience of the actors who are charged with the power to imprison in situ and in context. As broad social ideas are institutionalised as a working political culture they provide the diverse emotional supports, political sensibilities and cultural common-sense that permit certain kinds of penal intervention, while preventing others. Political culture is the buffer between what is seen and felt to be permissible and impermissible in uses of imprisonment and the deployment of penal power.

In order to illuminate these processes, this research focused primarily on the ordinary business of penal administration and policy development, rather than concentrating entirely on critical junctures and moments of transformation. The decision to site the comparison as closely within government as possible was so that the study could map the choices, events and problems that informed the actual uses of imprisonment. To examine political culture historically, I went to under-researched archives, found previously unread documents and files, and read

memos, minutes and unpublished reports. I went and spoke to people who were there, for whom government and imprisonment were their career. Interviewees recalled the obstacles they faced, the problems they had tried to resolve and the aspirations they had hoped to fulfil with each dispensation of penal power. The historical material showed that the kinds of people prisoners were perceived to be figured prominently in governmental estimations. The government officials also understood the prison as a certain kind of place, one that could be productive and/or destructive. Feelings about crime and disorder were also vital in justifying penal choices. In each context, these specific cultural and penal sensibilities were undergirded by their divergent images of government, both its goals and its limits. They also relied, though mostly implicitly, on a conception of nationhood and social order – of how things are here and how they should be. The historical material combined to show the political sensibilities, cultural currents and social norms that make-up political culture and its disposition towards imprisonment. This grounded historical fieldwork allowed the respective political cultures to be reconstructed from a more insider perspective. As a result, this study recovers previously unseen histories of Irish and Scottish penal politics, with the aim of extending what we know about these two places, and illuminates the cultural and political foundations of their penal politics.

Researching penal politics at this micro-level also provided a vantage point from which to observe the conversion and implementation of collective morality, social norms and political ideologies into practical forms of penal practice (Garland 1990a). Political culture thus ‘looks distinct, tangible, separate – empirically or conceptually – but the closer you examine it, the more it merges into its surrounding space’ (Cohen: 1985:197). Building on these insights, this thesis makes an analytical scale shift. I attempt to provide an account that shows the relationship between political culture, punishment and the wider social relations which support it and from which it draws its social utility (Garland 1985, 1990a, 2001). The uses of the prison, the level of reliance upon it to control, exclude or transform, also reflected

the prison's place within the landscape of Irish and Scottish social order. Systems of social order, other than incarceration, such as emigration, welfare regimes, informal social control, social boundaries and community efficacy are also an ineluctable dimension of the particular histories of Irish and Scottish penal culture. The power to imprison thus supports and reinforces the whole way of life of its jurisdiction or region, each governmental act reiterates the prisons' perceived place in that social tapestry. It should be clear that this is thus a 'punishment and society' project (Simon and Sparks 2012). Undertaking this kind of inquiry over time means we will see the shadow of wider struggles and social divisions which shaped Irish and Scottish social life in the shifting political sensibilities and changing uses of imprisonment. These socio-cultural forces and conventions are also crucial in comparatively explaining differences in penalty.

There is of course more than one way of comparing. One can organise findings thematically, create a comparative catalogue, show cross-national trends and patterns, set the data up to conduct an on-going critical contrast or to generate explanatory typologies (Cavadino and Dignan 2006; Downes 1988; Tonry 2007b; Lappi-Seppälä 2008; Pratt and Eriksson 2013; Barker 2009). Given these historical aims, this thesis wears its comparative concerns a little more lightly than might be usual. As a result of the grounded historical sociological approach taken the comparative account of punishment here is told through a more immersive history, with a chronological narrative that unfolds within each distinct historical, cultural and social landscape. Here I set out each 'case' in detail and on its own terms, rather than to attempt point-by-point comparative and thematic assessments throughout, though there is some of this in the conclusion. I do not use each case to provide direct and on-going 'reciprocal commentaries' (Zedner 1995:529) for the purpose of providing comparative lesson-learning. Comparative analysis is used, first, to provide a perspective that can produce what I hope are compelling and convincing descriptive and analytical histories of Irish and Scottish penal culture. On balance, the deeper understanding of each place as well as a better understanding of political

culture are clear gains, precisely because the descriptive analysis understands each national story contextually and in its own terms, rather than squeezing them into a constricting framework.

Therefore, the comparative analysis is the narrative, the narrative is the comparative analysis (to paraphrase Carlen, 2010). While each history is presented singly, together the distinct cases of Ireland and Scotland make a more general contribution, establishing the cultural and political foundations of penal politics. In both countries, cultural concepts and political sensibilities shaped government officials' understanding of social problems and the goals of imprisonment. The comparison thus demonstrates how political culture is central to how imprisonment regimes are organised, showing that the institution of the prison embodies in concrete form, historically and culturally specific practices, assumptions, and political aims.

## Outline of Thesis

What I found were two remarkable, and perhaps even surprising histories which:

- (1) modify what we know about imprisonment and penal politics in the Ireland and Scotland;
- (2) extend and problematize the patterns of change in late modern Anglophone penality;
- (3) demonstrate the relationship between political culture and imprisonment regimes; and
- (4) illustrate the sociological contingency which underpins and conditions penal politics and imprisonment.

The conceptual and methodological framework is laid out in Section One. Chapter Two outlines the comparative concept of *imprisonment regimes*. This combines the insights from the sociology of imprisonment with the aims of comparative penology to re-conceptualise the prison for the purposes of comparison. Deployed as an

analytical and descriptive concept, imprisonment regimes reveal the diverse arrangement of schematic interventions, categorisations, forms of exclusion and the objectives which, formally or practically, are pursued by a single prison system. This makes for a more detailed but still consistent cross-national comparison of imprisonment.

Chapter Three argues that a comparative analysis of penal politics requires an understanding of *political culture*. In this chapter, I suggest that social concepts, cultural meanings and political ideologies are indispensable to penal politics. These ideas create a working political culture within the penal state. This provides the practical logic which is integral to how penal power is deployed and imprisonment regimes are organised. Drawing on governmentality, cultural sociology and sociology of punishment, this chapter provides the comparative conceptual framework to understand these empirical processes.

The historical research strategy is outlined in Chapter Four. This draws its methodological and analytical approach from historical sociology, post-colonial archival studies, oral historiography and comparative cultural sociology. The rationale for selecting Ireland and Scotland as the comparative historical case studies is addressed here. I set out the conventional wisdom which characterises the penal history of Ireland and Scotland during this era, highlighting questions that remain to be explored. The development of the project, when and where the primary fieldwork took place, is knitted into this chapter.

The historical research and analysis of Ireland begins in Section Two with an outline of the dominant social relations which shaped Irish life. These include conflict in Northern Ireland, the predominance of family, community, rural life and the social control architecture of emigration and the Catholic Church, who operated as a parallel governmental structure.

Using primary historical research material, I identify a distinct Irish mode of incarceration in the 1970s era, *pastoral imprisonment regimes*. During this period, Irish prison underwent a process of modernisation. The outcomes of this transformation were that prisons became more porous, and a more individuated system of interventions was established. In addition, a high security regime was developed for paramilitary prisoners. These highly contrasting forms of imprisonment were emblematic of Ireland's distinct form of political culture: *pastoral conservatism*. As well as offering a closely observed political explanation for Irish imprisonment, the chapter concludes by situating Irish penal culture within its wider social context.

The progressive impetus of the pastoral forms of imprisonment was limited by economic restraint, protests from prison officers, rising crime and growing prisoner numbers from the 1980s into the 1990s, changes which are captured in Chapter Six. These events created a more difficult context for the management of prisons. Some of the earlier aspirations from the 1970s era were restrained as a law and order logic began to emerge.

Chapter Seven describes the changing social and political conditions in 1990s Ireland. By the end of the decade prisons, were re-modelled along the lines of *punitive imprisonment regimes*. These new systems of imprisonment openly pursued punishment, crime control and exclusion as their practical objectives. These practical changes reflected the wider social transformation that was occurring. However, broad structural and cultural changes were only realised in penal practices after they became institutionalised in Ireland's operating political culture, characterised here as *sovereign authority*.

While those changes in Ireland's imprisonment regimes were clearly negative – the prison lost much of its humanity and discretion – this was the adverse punitive consequence of what might otherwise be considered a much more progressive and positive social revolution, one which gradually released Irish citizens from other

rigid and oppressive social relations. The government moved closer to the centre of Irish social life as the power of the Catholic Church contracted. As that happened, the oppressive architecture of informal social control gradually dwindled. The power to imprison was modified accordingly to reflect its new and more central role in the changing organisation of Irish social order, and, crucially, at a time of heightened social anxiety.

Section Three begins by introducing the 1970s era Scottish social life and cultural patterns. Crime, urban disorder, poverty and de-industrialisation were serious public policy issues. Chapter Eight proceeds to a description of the Scottish imprisonment regimes of this period, which are described as *disciplinary and exclusionary imprisonment*. These regimes emphasised industry, responsibility and discipline. These forms of imprisonment were the practical product of Scotland's political culture of *paternalistic liberalism*.

The chapter concludes by arguing that while Scotland had a much-lauded social welfare system, it relied upon the prison as its safety net – a place to put chronic criminals and uncooperative social failures. The prison did not set out to reform prisoners but to effectively contain and control those people deemed beyond the hope of progressive welfare intervention. The prison was the coercive end of Scottish social regulation.

Chapter Nine describes the dysfunctional and traumatic consequences of Scottish penal exclusion. Throughout the 1980s it was as if a civil war had erupted inside the prisons – riots, hostage-takings and violence were ongoing during these years. This undermined the legitimacy of the political culture and the government's forms of prison and prisoner management.

By the 1990s, there were striking systematic changes in how people were imprisoned in Scotland. As well as mapping these modifications, Chapter Ten



investigates the forces and conditions which brought about these penal and cultural transformations. In Britain at this time late-liberalism emerged as a new political ideology. Simultaneously, and relatedly, a stronger but restless Scottish identity developed. In the early 1990s, the political culture of paternalistic liberalism evolved into a managerialist culture of *neo-paternalistic liberalism*. As a practical consequence of the changes in the cultural and political foundations of Scottish penal politics, a new form of *soft authoritarian imprisonment regimes* materialised.

The differences between neo-paternalistic liberalism and its cultural predecessor should not be overstated; the chapter concludes by arguing that this was not an epistemological break. These changes represented a civilising process rather than a humanitarian revolution. Government officials did not seek to reduce the use of imprisonment, but to refine it. New performance management techniques entrenched the prison as the place of last resort. Prison use remained exclusionary and disciplinary, but now imprisonment was more profane, professional and efficient. The social forces from which Scottish prison exclusion drew its power and conditioned political culture were enduring across this period.

The thesis concludes in Chapter Eleven with a discussion of the potential comparative, historical and political implications of the research. This thesis looks at a familiar time in somewhat unfamiliar places in order to 'open exciting possibilities for extending existing theoretical work in new directions' (Pierson 2004:6-7). As an enterprise history is not just a way to memorialise or describe past events, and comparison is not merely a method to catalogue difference or sameness. Historical and comparative accounts can be critical analytical instruments. The framework developed herein could be used to support future comparative punishment and society studies.

What may be particularly relevant for criminological scholars in Ireland and Scotland is the development of what Nellis has called 'a historically tutored

memory'. This can, I hope, yield some contemporary benefits, using the past to suggest new future visions of punishment and penal politics. An analytical history of Irish and Scottish imprisonment and political culture can reveal 'its roots and its achievements, its turning points, its lost opportunities, its past ambitions', but also 'its still unrealised possibilities' (Nellis 2001:35). Comparatively doing historical recovery may serve to open up new avenues of political reflection, presenting the hopes and ambitions which may still lie dormant but unfulfilled in our contemporary penal systems (Loader and Sparks 2004).



**SECTION ONE**  
**Theorising Comparative Historical Penalty**



## Chapter Two

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### Comparative Imprisonment Regimes

#### I. Introduction

How, precisely, do we compare imprisonment? What is it we compare and why? An understanding of imprisonment is central to the research and analysis of how people were incarcerated in Ireland and Scotland, examining how that changed, and understanding why it differed. I propose that to further the project of comparative penology we ought to concentrate on developing coherent, consistent and precise descriptions of imprisonment. But what conception of national imprisonment most illuminatingly and sufficiently captures the sometimes perplexing, and often contradictory, features which constitute a system of incarceration? Moreover, how do we best compare such inconsistent forms, routines and functions? Comparative penology, however, provides few conceptual tools which can, first of all, engage with a prison system's variegated routines and practical character and, second, does so while also rendering imprisonment comparable.

The chapter begins by highlighting lessons from the sociology of punishment, showing the kinds of institutions and practices that give imprisonment its characteristic forms and carceral effects. This literature allows us to more easily reveal the limitations in how prison is conceived in comparative penology. The chapter then outlines some of the themes and debates about the purpose and aim of the comparative penology project. As comparative penology has expanded it has generally positioned 'punitiveness' as its principal concern. More often than not, the prison is inappropriately reduced to being a 'punitive' or 'lenient' intervention. The central contention of this chapter is that comparative penology is faced by conceptual restrictions regarding how to conceive of imprisonment, and thereby

study the arrangements that constitute its practice – interests which can be marginalised in the comparative study of something as amorphous as penal punitiveness.

This chapter proposes the comparative concept of *imprisonment regimes*. Though this is not an ethnography of imprisonment (e.g. Crewe 2009; Liebling assisted by Arnold 2004), the conceptualisation of prison systems proposed here adopts the broad lessons from the sociology of imprisonment. This framework can illuminate the precise routine activities, institutional categories and interventions which constitute it and determine its social uses, but which are often overlooked by the comparative penological gaze. It is hoped that the concept will contribute to better descriptions and understandings of national practices of imprisonment and, crucially, support the continued expansion and refinement of a comparative sociology of punishment.

## 2. The Sociology of Imprisonment

I want to briefly highlight some of the ways we have come to conceive of and research the prison in the sociology of imprisonment. Prisons have been identified as factory-like (Melossi and Pavarini 1981), a place of treatment (Garland 1985), used as a warehouse (Simon 2009), or evolved to reflect other distinct strategies of reform and political indoctrination (Piacentini 2004). At the institutional level, we know that prisoners are organised and assembled in regimes based on legal categories and social labels (Carlen 1983). A single prison system can have sites of great depth, as well as places where prisoners possess greater freedom of movement and autonomy (Downes 1988; Sparks 2002), but no matter what the security levels, prisons are somewhere in which order must always be maintained (Sykes 1958; Sparks et al 1996). Prisons can govern using welfare or more punitive practices, though these patterns can evolve and adapt over time (Garland 1985, 2001). In addition, a prison system is often informed by more pluralistic penal strategies

(Garland 1990a). These are, in turn, institutionalised into the routine of prison life (Foucault 1977).

Within a prison system each institution has its own aims and means, it exercises power against its prisoner population to seek certain ends (Crewe 2009; McEvoy 2001). The weight of punishment that prisoners have to bear (King and McDermott 1995) can vary between prisons. The uses of control can be either authoritarian or less abrupt, though the pains of imprisonment imposed by these kinds of control cannot be read as immediately obvious as either punitive or lenient (Crewe 2011a, 2011b). For example, prison education is important and laudable, in practice it can be designed to support people to develop confidence (Warr 2015), but it can also be used as a narrow means to reduce prisoners' re-offending (Warner 2007). While the size of a national prison estate may expand, we should also pay close attention to how its form and techniques of intervention change or evolve (Feely and Simon 1992; Hannah-Moffat 2005; Simon 2007).

Though this overview is brief, it is drawn on to highlight the complexity of imprisonment, its capacity for change and the diversity within prison systems. These insights and the kind of research which generates them contrast from comparative penology, which as we will see, instead takes a different view of prison, where much of this nuance falls away.

### **3. The Comparative Penology Project**

If there was a 'little avalanche of penal comparisons' in at the beginning of the millennium (Sparks 2001:165), it has become one of criminology's sustained growth industries (Barker 2009, Green 2008; Tonry 2001a, 2007a; Jones and Newburn 2007, Newburn and Sparks 2004; Beckett and Western 2001; Downes and Hansen 2006; Lacey 2008; Nelken 2009; 2010a; 2017; Savelsberg 1994; Lappi-Seppälä 2008; Melossi 2001). The justifications for comparative criminology are plentiful – it opens our



eyes to different penal practices across various times and places; it may force us to reconsider (sometimes) taken-for-granted penal practices and processes; we can build theories connecting different social contexts, test universal claims and refine theoretical propositions.

However, before these central projects can be undertaken, comparative research needs conceptual anchoring regarding what is being compared, in the case of this thesis: imprisonment. The discussion of comparative penological studies here focuses on the conceptions and methods for comparatively researching the prison, thus leaving aside the very valuable contributions and explanatory insights about international penal patterns in this body of scholarship. The critique which follows is that the ways of comparatively presenting the prison, though diverse, are often restrained by an underlying commitment to making punitiveness the principal object of comparison. Punitiveness has become among most dominant issues in comparative criminology (Downes 2011b). This has been with good reason. The contemporary history of Anglophone criminology suggests that punishment has evolved to become more restrictive, stigmatising and extensive, while other countries have resisted these forces (Wacquant 2009a; Garland 2001; Phelps 2017; Cavadino and Dignan 2006; Lacey 2008; Whitman 2003; Young 2009; Lappi-Seppälä 2008; Pratt and Ericsson 2013). The implication of comparative penology's interest in punitiveness, and resistance to it, is that in writing about comparative imprisonment, 'the prison' is most often represented as somewhere to contain and confine prisoners and where the power of the prison is starkly represented as oppressive or not oppressive.

## **The Punitive Prison**

Prominent in comparative criminology is an approach interested in matters of similarity and difference in international imprisonment 'profiles' (Lappi-Seppälä 2011), using commensurate incarceration rates. As comparative penology has developed, imprisonment rates have emerged as a proxy for national punishment

styles and they remain popular as a ready reckoner of degrees of governmental penal severity (Cavadino and Dignan 2006; Pratt 2008; Lacey 2008; Lynch 2011; Lappi-Seppälä 2008; Melossi 2001). There is also sometimes a global narrative arch to the use of imprisonment rates, suggesting that 'there has been a global trend towards punitiveness and increasing rates of imprisonment' (McAlinden 2012:177) and an 'inexorable' spread of certain types of penal patterns (Cavadino and Dignan 2006:3). Though, as Lacey (2008) and Cavadino and Dignan illustrate, national imprisonment growth has not advanced at similar rate internationally, or at all in some countries (see also Tonry 2007b).

The merits of aggregate imprisonment rates are that they demonstrate that despite the many political, cultural and historical differences, prison is a global institution and a universal political technology. Practically, imprisonment rates provide researchers with an even empirical surface for revealing and comparing the penal patterns of countries without necessarily effacing transnational diversity. Imprisonment rates also allow a greater number of countries to be compared. Research in this vein reminds us that even in this globalised world (Chan 2005), variation in punitive patterns persists. Those enduring patterns of commonalities and divergences in imprisonment rates – and thus penal harshness – have become the puzzle that much comparative criminology has set about trying to solve.

For all that they measure and reveal, however, such comparative studies can also conceal and obscure (McAra 2011:100). Contrasts in the uses of imprisonment for different groups, such as men, women, young people or special category prisoners, are omitted. As are the different degrees and forms of control and discipline, rehabilitation, management and measurement of prisoners. As such, the very sort of peculiar contrast and local specificity that might provide a rich comparative research field are effaced by contrasting imprisonment rates alone (Nelken 2009, 2010b).

Without the addition of this more extensive qualitative data, imprisonment rates are sometimes produced as objective representations, inherently emblematic of punitiveness, reflecting either virtuous or unethical prison systems (e.g. Hamilton 2014b; Cavadino and Dignan 2006; Pratt and Eriksson 2013). Indeed, differences in imprisonment rates are often the central plank which support often stereotypical images of the punitive Anglophone world, with its high and expanding prison populations, as opposed to Nordic penal parsimony, with its lower rates of imprisonment (Lappi-Seppälä 2011:305; Pratt and Eriksson 2013; Cavadino and Dignan 2006; Lacey 2008). Arguably, to investigate whether a prison system is relatively more punitive in its orientation or extensively crueler than its comparative counterparts must be established at a more grounded level, taking account of uses of imprisonment in addition to other forms of incarceration, such as 'coercive confinement' (O'Sullivan and O'Donnell 2012), immigration detainees (Barker 2013), and practices such as criminal justice net-widening (Cohen 1985). Perhaps one of the most considerable limits of comparative imprisonment rates is that they may not really tell us much about what it means to be imprisoned. The quantified view of prison practice implies that ultimately, prison is used for the overt purposes of penal confinement and physical exclusion.

That imprisonment rates reveal something of importance is not in question. But imprisonment rates are more easily understood as an insight into legal, legislative and judicial patterns, such as sentencing and uses of remand, rather than as indicators of what happens to a person when they are imprisoned, let alone as a distillation of an entire culture. As Lynch has written, in the case of imprisonment rates 'penal change is legal change' (Lynch 2011:676) – which of course would give rise to its own series of revealing investigations (see Nelken (2009) for a brief but illuminating account of Italian imprisonment rates and their supporting criminal justice and sentencing practices). Some forms of imprisonment are without question significantly more severe than others, but it seems difficult to reveal the punitive complexity, moral nuance and practical character of those systems just at the level of

cross-national prison population metric. For example, the UK alone – as a multi-jurisdictional polity – provides ample evidence of how regional borders divide styles of punishment in the same way they divide intra-state nationality.

Imprisonment rates in Scotland and England have almost entirely matched from the 1970s but their respective legal systems' age of criminal responsibility and forms of youth justice are but two of the sharp and prominent differences at the level of penal policy and practice (McAra 2005, 2008; Muncie 2011). The complex of penal practices, legislation and political discourses which create divergent penal systems remain unobservable at the level of imprisonment rates.

In order to overcome some of these difficulties other comparative researchers incorporate additional facts, criminal justice practices and statistics to create a more complex and varied depiction of national or regional punitiveness. This slightly contrasting research agenda promotes the significant and important challenges of context sensitive comparison. In doing so, this literature tends to argue against the global perspective of cross-national imprisonment rates, contending that punishment remains a manifestation of intractable local patterns (Tonry 2007b; see also Whitman 2003; Green 2008; Hamilton 2014b; Barker 2009). For these scholars, such as Tonry (2015), punishment is so entangled and embedded in its national history, culture, religion and politics that the usefulness and insightfulness of the comparative penology project is in capturing and cataloguing cross-national distinctions and revealing its local cultural roots. As a result, illuminating comparative penal patterns is often seen to be hindered by the zealous and over-argued search for commonality.

As a consequence, these scholars forward a more diversified and expansive methodological approach to comparing punishment, characterised by a well-documented collection of regimes of distinction (Nelken 2009), highlighting 'pronounced national differences in penal policy' (Tonry 2001a:519). In this endeavour, others have also advanced the indices of cross-national measures.

Explicitly surveying the extent of punitiveness in Ireland, Scotland and New Zealand, Hamilton (2014a, 2014b) includes the size of the prison populations along with a catalogue of other annual prison indices, such as sentence length, imprisonment rates for violent and property crime, mandatory sentencing and prison admissions. This mode is considered an advance in broadening the points of punitive comparison using 'clear-cut social-scientific criteria' (Hamilton 2014a:336). Whitman's study (2003) of comparative penal harshness in Europe and the USA compares penal practices, the use of pardons, the standards of dignity, prison living conditions and the flexibility with which punishment is applied. Similarly, other comparativists researching per capita imprisonment rates and punitiveness also include prison mortality rates, prisoner rights and prison conditions against which the comparative punitiveness of a prison system is judged (Downes 1988; Pratt 2008; Pratt and Eriksson 2013; Karstedt 2015). A leader in shaping this comparative criminological perspective, Tonry (2001a; 2007b; 2015; Tonry and Farrington 2005) uses a more broadly drawn conception of penal policy to illustrate the very different cross-national penal trends. This includes sentencing severity, procedural rights, penal policy and practices, which are the result of divergent and complex national arrangements of un/elected criminal justice officials, policy choice, constitutional structures, legislative styles, civil or common law, income inequality, normative cycles and hyperbolic crime news (Tonry 2001a; 2001b; 2004; 2007; 2015). Barker (2009) has also extended the toolkit of comparative penalty by providing the helpful concept of 'penal regimes' which captures imprisonment rates but also the discourses, the severity of criminal justice sanctions and conceptualisations of justice.

Downes (1988), who provided one of the first examples of grounded comparative penology, went furthest in challenging the reliance on comparative penal statistics by showing how static and de-humanised they are. In his comparative study of British punitiveness and Danish penal lenience, Downes gives the prison more sustained attention and provides an outline of the nature of imprisonment,

providing a point-by-point survey of differences and commonalities in the two systems under comparison. These include the differentiated character of the prisons, the use of security classification, age and gender groupings, numbers of prisoners per cell, the ratio of the prison population that is on remand, the average size of the prisons, levels of militarism (such as prison officers carrying weapons), use of remission and pardons and facilities for mentally ill prisoners (ibid.:22-25). He also interviewed prisoners in The Netherlands and England to assess their experience of the 'depth of imprisonment' (ibid.:166).

The value of these perspectives is that they have yielded 'more focused and detailed policy histories' (Jones and Newburn 2007:7) and prison features. These more grounded accounts have extended our understanding of penalty and local uses of punishment, such as, probation (Phelps 2016), penal change (Goodman et al 2017), youth justice (Muncie 2011), and democracy (Barker 2009). Moreover, they illustrate how punishment is organised differentially across time and various places. This comparative approach advocates that these distinctly local patterns of punitive penalty should be the fulcrum of investigations.

The aims advanced throughout this thesis share the general emphasis on the local and particular character of penal practices with these scholars. However, I suggest that even these more detailed comparative punishment profiles are still confined within the punitive/lenient comparative prison categories. For all the additional data which shows the multitudinous quality of the penal system, prison practices and routines – characteristic of how the prison is conceived in the sociology of imprisonment – remain obscured beneath an array of cross-national signal legislation, sentence length, normative concepts, average prison size, racial disparities, differences in a host of prison programmes, judicial characteristics, observations from prison visits etc. One is also left with the sense that, implicitly or explicitly, while punishment may have a greater number of comparative points, 'imprisonment patterns' tend to remain tethered to imprisonment rates first and

foremost (Tonry 2004:1194; Barker 2009). Or, wanting to illustrate the dissimilarity or penal distinction, the imprisonment estate is sometimes scaffold upon signature institutions and pieces of legislation of either excessive harshness or exceptional lenience. We are told that institutions like the Barlinnie Special Unit are exemplary of Scottish imprisonment style, for example (Hamilton 2014b). One can easily think of other exemplar prisons associated with a nation or penal history, such as 'the shining jewel' of Bastøy (Pratt 2008), or the French prison amnesties (Whitman 2003). This may well be the case, yet rarely are readers given the wider view of systemic imprisonment practices in these places which would confirm that these prisons are truly representative of their entire carceral apparatus. These accounts lack the descriptive insight which demonstrate how forms of penal pain or probity fit within a prison system.

When we are comparing the prison in comparative penology, and despite the variation in research strategies, it seems that what we are most often comparing are prisons expressive and instrumental punitive dimensions and its capacity for confinement. Many of these detailed comparative cases move the project of comparative penal theory and explanation along a great deal (e.g. Downes 1988; Lacey 2008; Barker 2009), but they leave us with a picture of imprisonment that is too thinly drawn and often static. While the prison remains central in comparative penology, to make the prison amenable to comparison there is a tendency to tame the prison, potentially hide its nature and conceal its social meanings. Thus, most often the comparative penology project fails to capture imprisonment's practical, productive and diversified quality, its systematic forms and routine functions which conduct prisoners through their imprisonment.

In comparative research, the prison still tends to be conceptualised as something that only punishes or represses, or in contrast is lenient (and therefore seen as non-punitive), and rarely is an entire prison estate that coherent in practice.

Imprisonment as a system will be incommensurable, differentiated and

multifaceted. To be held in segregation in a country which is considered welfarist would come as little relief to those persons who experience depths of confinement which limit and deny whatever degree of autonomy and physical movement is usually afforded the general prison population (e.g. Barker 2013; Shammass 2014; Hannah-Moffat 2014). And the opposite is also possible: people held in open prisons with strong community links and liberal uses of release may well be experiencing incarceration in a manner that feels disconnected from what academics perceive as that nation's punitiveness. Also, two countries may indeed have highly punitive prison systems, but punitive practices, and what even counts as a punitive practice, may well vary between two countries. These are national and cross-national divergences and penal patterns calling out for comparative investigation and explanation. But by comparatively registering the prison by two dichotomised points, we might miss some of the other instrumental aims and cultural forces which shape prisons diverse system, and thereby support and perpetuate cross-national divergences in the uses of imprisonment.

To conduct comparative study of imprisonment one is left feeling that the texture of a nation's overall prison system could still be better articulated. Despite the increase in cross-national research, and the significant contributions and advances already made in comparative analysis and explanation, the need for refinement regarding what exactly we are comparing when we compare imprisonment remains. A comparative perspective on imprisonment is near impossible without first establishing a *terra firma* of descriptive prison patterns.

## Conceptual Gap

The point here is not just that imprisonment rates (Pease 1991; 1994), key indicators, observations or clusters of comparative distinctions are imperfect measures of punitiveness. Punitiveness as an object of study – and its associated binary concepts of severity/lenience, moderation/harshness – diverts our attention from mapping imprisonment as a routine system of practices in which things are done to people as



part of prison's daily rituals (Foucault 1977).<sup>2</sup> As the lessons from the sociology of imprisonment outlined at the beginning tell us, a prison system is devised and adapted so that it can care, feed, educate, treat, reform, assess, punish, control and potentially utilise prisoners. It is those routine activities which cause human suffering and foster opportunities for human development within the prison. This, and much else about imprisonment that might interest us sociologically and empirically, gets lost when the object of concern in comparative study is how harsh punishment is or how many people it contains.

Arguably, the problem currently faced by comparative penology is conceptual. There is a requirement for a comparative category of imprisonment with a slightly different focus. Taking inspiration from the sociology of imprisonment, we can better conceptualise imprisonment, re-assembling its core features and practices beyond confinement, severity and punitiveness. Looking at the precise functions and routines which shape imprisonment may also provide a better platform for comparatively examining diversities that exist within a single prison system. Thus, we may be better able to explore one of comparative penology's key question: how does imprisonment differ cross-nationally?

The remainder of this chapter provides an outline for a descriptive analytical approach to comparative imprisonment. This is not explicitly concerned with explaining or measuring punitiveness; to develop the next stage of comparative penology this agenda will need to be put aside. To advance our study of national and cross-national imprisonment, we require refined conceptual means to moor the research and relate penal practices in one country or case study to another (Rose 1991).

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<sup>2</sup> To undertake a comprehensive study of punitiveness would involve a complex series of research questions and considerations about what constitutes punitiveness? Where can one locate punitiveness – as policy, intention or experience? How to account for objective punitive outcomes and non-punitive subjectivities? How best to distinguish between the descriptive and evaluative in comparing punishment (Nelken 2009, 2006)? Though whether a thoroughgoing investigation like that provides the best account of cross-national imprisonment remains open to debate (Matthews 2005).

## 4. Imprisonment Regimes

As mentioned above, prisons are heterogeneous, functional and moral places in which people are incarcerated but also coerced, encouraged and disciplined in order to achieve certain social and political ends (Foucault 1977; Melossi 2001). We require a way of conceiving imprisonment that can capture its practical and complex character, but still render it comparable. The comparative conceptual framework I propose aims to reconnect the lessons of prison sociology with comparative penology's aims to examine commonality and local diversity in how people are imprisoned. I take a view of what I shall call the *imprisonment regime*. Comparing imprisonment regimes allows us to identify what kinds of *places* prisons are, and by locating those places more securely within the context of the organisations in which they are embedded, we can discern their systems of interventions, categorisations and routines. This might help achieve a better empirical grounding in which to comparatively assess the divergences in penal patterns.

Imprisonment regimes as a researchable comparative concept would begin at the moment of imprisonment (Carlen 1983), be that sentenced or on remand. What happens to people once they are imprisoned? As a result, empirically mapping imprisonment regimes would still include imprisonment rates but would de-centre them as the key comparative variable. Whether or not they are successful, we must also examine the direct attempts which are made to expand or reduce the size of the prison estate. Imprisonment rates as a sealed and objective indicator of penal systems should not be taken for granted. Rather, this is an empirical question about how high or low imprisonment rates are seen, imagined and responded to by government officials (Armstrong 2013). The tailoring or expanding of the imprisonment regime in response to the size of its population is a process of comparative concern, rather than seeing imprisonment rates as emblematic of the entire nature of the penal system. Small prison systems can be expanded on purpose, but still maintain relatively low per capita imprisonment rates, for

example. Or large prison systems can implement systems of furlough and remission intended to reduce the number of people in prison (Nelken 2011:110). Political actors can respond to high imprisonment rates by placing more mattresses on the floor of already cramped cramped spaces, or building more prisons, both open and closed.

Imprisonment regimes plot characteristic differences *within* the national imprisonment estate as well as divergences *between* national prison practices. It would take into account the function and agenda of the different prisons within the prison estate, which tends to traverse a wider gamut – from open prisons to segregation units, with much else in between, including closed prisons, high security prisons, but also smaller experimental units (Shammsa 2014; Sparks 2002; Genders and Player 1995; Sparks et al 1996). Even the standard closed prison may differ from one context to the next (Downes 1988; Pratt and Eriksson 2013).

These prisons are not stand alone units, but exist in networks and systems. In accounting for all the prisons within a region or state, imprisonment regimes also consider how people move through a prison system. This can be reflected in the parole arrangements which allow people to move in and out of prison, or in the disciplinary procedures organised at the level of the state, which govern how prisoners migrate through the prison system. This emphasis on mobility has important consequences for how we conceive of comparative imprisonment. With imprisonment regimes we compare not only the heterogeneous ways people are incarcerated but also the systematic forms of 'circulation', or penal mobility which constitute the dynamic of the regime (Armstrong 2015:11-12). This means, however, that it is unlikely that one prison can ever be an exemplar of an entire imprisonment regime, that kind of conceptualisation can become detached from the forms of movement which shape the system of imprisonment regimes.

What kinds of activities, such as work and education, do prisoners have access to? These are important because they shape the daily fabric of imprisonment. What are these programmes intended to achieve – personal development, normalisation, reducing reoffending, pacifying or disciplining?

This comparative perspective catalogues the various constituent groups, formal and informal prisoner classifications within a nation's prison population, including men, women and special groups, such as dangerous prisoners, prisoners with AIDS or sex offenders. These categorisations shape the organisation of imprisonment regimes; they are riven with the perceived needs, vulnerabilities, problems and risks of the penal subject (Sparks 2001). Categories are an organisational feature consistent across western penal systems, though not identical in their application and meanings; imprisonment regimes thus seek to capture both these broad similarities and difference at the level of practice in cross-national prison systems.

Imprisonment regimes also works as a fluid comparative category. How do imprisonment regimes change? What new prison programmes are developed? What kinds of prisons are built? These shifts, changes and events themselves become points of comparative concern. Therefore, this concept can also help us take an historical turn with comparative penology. Using imprisonment regimes as a grounded comparative concept allows us to more closely track the changing shape of incarceration and observe how these are (or are not) modified, giving us a basis from which to examine the changing uses of prison and its relation to the prevailing social, political and culture values (Garland 1985; McEvoy 2001).

By researching prisons as a system of practices affords us an improved comparative perspective. Imprisonment regimes are inherently varied in their practices and have potentially contradictory and conflicting aims. The concept of imprisonment regimes redraws the conceptual boundaries of comparative imprisonment. This has consequences for how we describe and comprehend national and regional

incarceration. A penal topography of this kind shifts the analytical focus beyond the deductive cataloguing that can occur when research is concerned with mapping punitiveness. Imprisonment regimes are institutional, focusing on how each prison system operates; instead of examining penal patterns we are comparatively excavating the empirical practices and processes of imprisonment. The logic behind these descriptive imprisonment regimes thus seems to be at least as illuminating a place to begin comparative analysis as punitiveness or penal exceptionalism.

Tracing an imprisonment regime pays greater heed to the variation in local practices while also rendering these practices comparable. An important potential benefit of comparing national imprisonment regimes is that this perspective will likely soften the sense of either punitive exceptionalism or convergence, revealing more varied patterns and intentions in the organisation of punishment between national states, but also within them.

Using the concept of imprisonment regimes, we can more fully 'establish the phenomenon' (Merton 1987) of national imprisonment characteristics before we comparatively interpret them, or suggest patterns of divergence and convergence and assess the consequences of governing fields, economic modes, cultural meanings or social settings upon imprisonment. The concerns underpinning this concept are animated by the idea that comparative research, armed with a fuller understanding of the prison system, can challenge both 'sweeping assertions of either difference or sameness' (Newburn and Sparks 2004:7); and perhaps also reveal the critical significance of more mundane penal practices which have previously gone unremarked or less examined in comparative study. The research agenda proposed by this concept moves our attention away from how many bodies are imprisoned. The prison is repositioned so that we can compare how it contains people, what demands a prison system makes of prisoners, what processes they are put through and what opportunities they are offered. The insights generated from comparing imprisonment regimes may redirect comparative penology's critical debates about similarities and divergences in cross-national punishment.

In grasping this more acute comparative understanding of these practices of confinement, new gaps in our explanatory accounts could become evident. In attempting to also explain the plurality inherent in imprisonment regimes we may also have to develop more complex explanatory models, which themselves reflect the multifaceted character of imprisonment regimes. How feasibly can paradigms of capitalism, political typologies or embedded foundational cultures elucidate the contours of these variegated, yet coherent, systems of incarceration? Nonetheless, we will be better placed to develop new theories for exploring punishment by beginning with these fine-grained empirical accounts of imprisonment. We can also further explicate the relationship between these regimes and the political forces, social settings and local cultural meanings which made these forms of imprisonment permissible, legitimate and useful. Thus, by prompting a re-evaluation of what constitutes comparative punishment, the concept of imprisonment regimes may refine our understanding of national prison systems but also contribute to the next stage of development in comparative penology.

## 5. Conclusion

This chapter suggests that the problems facing comparative penology are as much conceptual as methodological and explanatory. The prison has been under-conceptualised, and as a result its punitive and repressive features (or lack thereof) are what tend to be compared in comparative penology. The concept of imprisonment regimes is proposed as a means to mitigate against the limitations of comparative penology literature. Imprisonment regimes focuses on the operation of prison systems and the core institutional features of imprisonment, such as movement, prisoner classifications, and the kinds of prisons, all of which function together to create a prison system. This will help advance the nascent project of comparative penology in greater empirical depth, providing a consistent and clear outline of cross-national prison practices, and thus moving us beyond some of the usual

prison metrics used to establish punitive comparisons. Imprisonment regimes take seriously the peculiarities and distinctions of national prison systems, but provides the conceptual scaffolding to support a more consistent and precise cross-national perspective of incarceration. While remaining committed to understanding the local, imprisonment regimes allows us to do so in a manner which emphasises the functionally equivalent features, such as penal mobility, the aims of activities, prisoner classification, prison function, programmes and interventions.

The concept of imprisonment regimes will allow us to generate precise, consistent and comparable descriptions of Irish and Scottish imprisonment regimes which may defy but also alter and extend some the historical narratives about the practices of punishment in both places. Rather than seeing merely lenient, pragmatic, welfarist or punitive punishment, we can observe more pluralistic modes of imprisonment focused on release and segregation; inclusion and exclusion; and penal programmes which support and pacify.

But comparative questions will emerge which require explanation. Why are similar prison problems met with different institutional responses? When prisons offer a familiar menu of activities, why does their emphasis and objectives vary between one jurisdiction and another? And why do these functions change over time? What is the rationale behind the differences in comparative imprisonment regimes? What sorts of ideological resources, ambivalent cultural meanings and social problems propelled the creation of these diverse regimes in Ireland and Scotland?

Researching imprisonment regimes provides us with a more precise sense of the differences we must explain in comparative penology. It is to the political processes which support and produce imprisonment regimes which will be explored in the following chapter.

## Chapter Three

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### Comparative Political Culture

#### I. Introduction

The concept of imprisonment regimes allows us to establish the objective practices which constitute a prison system's form and functions. This departs from the punitive conception of imprisonment that tends to dominate in comparative penology. Building on the argument in Chapter Two, this chapter develops a comparative explanation for the characteristic uses of prison in Ireland and Scotland as well as the differences between them.

In modern democracies, the government is central in organising imprisonment. From providing the financial resources, the legislative framework, creating prisoner categories, conducting the daily administration: the political apparatus underpins the prison system. Yet, few comparative studies have empirically researched government as a source of penal divergences. The explanatory framework developed here connects the use of the prison to the governmental processes that produce and order it. Others have already opened up avenues for this kind of comparative penology, in particular Lacey (2008), Green (2007, 2008), Barker (2009) and Cavadino and Dignan (2006). I will first briefly outline the descriptions of penal politics in those comparative accounts, concluding that, for various reasons, they do not possess the conceptual resources to enter inside the realm of government. Most critically for this thesis, they arguably lack the specificity to generate explanations for imprisonment regimes.

To help us rethink the political dynamics of punishment I utilise the concept of political culture. I employ literature from governmentality, sociology of punishment



and cultural sociology to highlight a different way to conceptualise penal politics, which attempts to capture the instrumental agendas and expressive forces which motivate penal states, allowing political actors to make sense of problems and decide on modes of redress. Terms, concepts, sensibilities and idiom cannot be taken for granted, therefore, but become the object of comparative investigation. This means excavating, disentangling and reconstructing the comparative political ideologies, instrumental penal ideas and cultural meanings which inform political action. I will further argue that political culture is the 'practical consciousness' (Williams 1964:130-131) of the penal state, thus it is pragmatic. Political culture should be studied in its routine conduct and acts of problem-solving, interpreting the pragmatics of its decision-making. Finally, that political culture is relational, a product of its social landscape. To understand politics and imprisonment is not to study those things in isolation. These processes operate within a wider social field and cultural milieu which provide the distinct creative tensions to support, encourage and prevent certain kinds of political action. These patterns of action in turn cultivate the governmental routines that reproduce imprisonment and thus, comparatively, shape the enduring differences in cross-national imprisonment regimes.

## 2. Existing Accounts of Politics and Culture in Comparative Penology

This thesis seeks to investigate the political sources of different cross-national *imprisonment regimes* rather than *imprisonment rates* or *punitiveness*, as opposed to much other comparative penology. By utilising a more complex conceptualisation of the penal object, this section will argue that other comparative political frameworks are not sufficiently diverse to yield explanatory power. This is mostly due to a tendency to rely on political economic typologies and political ideal types which are used to comparatively align imprisonment rates with kinds of political systems or structures. But while conceptual gaps persist, this is a useful starting point. There are

important lessons to be gleaned from the comparative penology literature – in particular, how do we investigate the proposition that certain kinds of punishment correspond to certain styles of political reasoning?

Cavadino and Dignan (2006) render governments comparable by grouping countries into political economy family models: neoliberalism; conservative corporatism; social democratic corporatism; oriental corporatism, each of which fosters different exclusionary/inclusionary attitudes. This comparative political abstraction allows them to align political and penal systems in what Nelken has described as ‘near perfect matching’ (2011:106). Their work significantly broadens the breadth of our comparative criminological map, and advances our cross-national imagination of penal politics.<sup>3</sup> However, these are only familial resemblances, and these countries, despite their political similarities, continue to display remarkable penal (and therefore also political) variation (evidenced by Cavadino and Dignan’s own measure of punitive scores and imprisonment rates); features which are downplayed within the analytical prism, such as ‘neo-liberal’ US, South Africa, England and Wales, Australia and New Zealand.

Their thesis has been advanced by Lacey (2008), who expands the explanatory purchase of the framework by supplementing the political economic and penal correlations with political science literature, arguing that differences in market economies can impact upon the democratic ‘capacity to meet the normative demand of reintegrative inclusion’ (2008:8). Liberal market economies of the USA and the UK are more individualistic and exclusionary, for example. While co-ordinated market economies are more likely to promote inclusionary criminal justice practices (2008:58-59). Lacey also complicates these institutional mechanisms by including electoral arrangements, short versus long-term market economies, welfare typologies and constitutional constraints. Lacey and Cavadino and Dignan’s

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<sup>3</sup> They include the USA, South Africa, New Zealand, England and Wales, Italy, Germany, The Netherlands, France, Sweden, Finland and Japan organised along a series of socio-economic and penal indices (see 2006:15 for a table of characteristics).

respective frameworks make clear that cultural values and attitudes of course matter in upholding penal systems, but that political dynamics must also be taken into account if we are to explain comparative penal convergence and divergence.

Matters of comparative political systems have been taken up in by Green (2007, 2008), who writes that differences in politics can 'help account for differences in national appetites for punishment' (2007:591). Using diametrically opposed case studies of punitive England and lenient Norway, political culture is argued to be the central dynamo of these divergences. Borrowing from political science, political culture is framed using typologies of majoritarian and consensus democracies. Green concludes that adversarial political systems exhibit a tendency to 'accelerate' crisis while more consensual systems dampen the incentives to moral panic (ibid.:527).

These accounts strongly suggest that there is a connection between political systems and punishment outcomes. While political dynamics are central to these accounts, by conflating political culture with constricting categories of political systems one may wonder what is left on the cutting room floor. As McAra has written, the sensibilities that are typified in these kinds of comparison are usually more ambiguous and 'highly complex and not so readily squeezed into the categories of punitive/exclusionary or welfarist/inclusionary' (2011:100). There are dangers of dichotomies as well. They risk biasing the case study: one seeks out evidence to illustrate punitive or lenient tendencies, rather than objectively investigating what was intended by prison choices and developments, and exploring what social, cultural and political conditions made them possible. Also, countries such as Ireland and Scotland confound these patterns (Cavadino and Dignan 2006; Kilcommins et al 2004). Moreover, there is something static about these depictions. Even if neoliberalism has been the ascendant political ideology for the last number of decades, how do we account for the changes in the uses of punishment if political cultures' instrumental intentions have remained fixed?

Overcoming some of these issues, Barker's comparative contribution seeks to explain divergences in American penal severity by illustrating correlations between the character of punishment and forms of democratic engagement. Barker's study – influenced by and building upon Savelsberg's work on comparative political structures (1994) – illustrates a situated comparative historical study of penal politics in three American states which reflects, among other things, the diverse impact of collective agency, social forces, and cultural narratives of crime within different political contexts. Her account highlights agency, showing that political action is not merely epiphenomenal to structural and ideological forces, emphasising the importance of on-going political struggle and the character of political authority in shaping the uses of imprisonment. Using comparison, Barker demonstrates that there is something distinct about how politics is practiced in each place (Barker 2009:178). However, Barker gives primacy of explanation to the democratic institutions, concluding that penalty takes its timbre – be it parsimonious, punitive or pragmatic – from the particular types of democracy which forms its political context. However, her typologies are rooted in her empirical data, and the reader is left with a stronger sense that they now know how these penal and political systems operate in practice.

Others have put the cultural aspect of political culture at the forefront of their analyses; convergence between political culture and national culture has also been a common theme in comparative punishment studies. Tonry (2007b) describes the divergent punitiveness in Francophone political cultures (Quebec, France and Belgium) and Anglo-Saxon political cultures (Scotland, Northern Ireland, England, Australia).<sup>4</sup> Similarly, Nordic countries have become almost entirely synonymous with 'exceptionalism' or 'leniency' in comparative literature (Pratt and Eriksson

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<sup>4</sup> By abstracting up in this way can conflate critical place-specific differences. For example, it is unfortunate that Tonry (2007b:30) hypothesises that Northern Ireland's punitive sensibilities reflect an enduring Calvinist legacy or embedded Anglo-Saxon political culture given that attempts to make Northern Ireland an Anglo-Saxon and Protestant place are among some of the most significant reasons for vexatious social division, civil rights campaigns and violent conflict in Northern Ireland.

2013; Cavadino and Dignan 2006). Whitman (2003), in ambitious continental breadth, contrasts American and European penal culture. Penal politics here is infused with the essential national socio-cultural dynamics. But there is something ahistorical and deterministic in these depictions of political culture, bound to national cultural ideals, political culture is detached from the instrumental and pragmatic governmental processes which produce imprisonment. As Melossi (2001:414-415) has written, culture is a 'repertoire of motives' that is multitudinous and changeable, and should not be viewed as a national 'variable'. But how are we to compare these repertoires and how they function inside government?

### 3. Political Culture

Without diminishing the serious advances these works represent, there remains much left unsaid about some important core features of penal politics. Why do some governments choose certain kinds of punishment over others? The question becomes more complicated if our aim is to explain imprisonment regimes, which are inherently heterogeneous. And why do singular political systems – neoliberal, corporate, inclusive – produce diverse prison patterns? As a result, we need to develop a more multifaceted image of penal politics. We require less singular more multidimensional conception of penal politics that can examine the political processes – and the character of decisions and choices which constitute those practices – which shape imprisonment regimes. Comparative political frameworks tend to favour ideological factors, organisational dispositions, political patterns and institutional mechanisms. They provide no way to engage with penal politics as a sociological site of practice, ideas and cultural passions which converts broader ideological, political and social forces into actual prison practices.

Comparative penological scholarship might benefit from a more embedded understanding of government and the management of the prison system. This calls for more empirical comparative questions. Who is involved in governing and

administering imprisonment regimes? How do they rationalise their governing power? Why do these bodies and departments construct (often literally), alter and maintain the control systems of their national imprisonment regimes – what are the sources and foundations of their know-how? What knowledge do governmental bodies draw on to make sense of problems and legitimate their actions? How do they achieve such ends – with what bureaucratic mechanisms, administrative tools and governmental powers? What patterns those enactments of the penal state? How do people come to respond to prisons, evaluate needs and make administrative judgements? The answer, I will argue, is *political culture*.

Culture is a notoriously plastic term, freighted with many meanings, definitions and uses in colloquial conversation and academic literature. What is culture? How is it related to social world, politics, power or economics? Culture is a term that continues to be used<sup>5</sup> because, despite its plasticity it has a plausibility, continuing to capture some of the integral forces and practices observed in sociological study. The persistence of this contested term bespeaks what I believe is its enduring usefulness, providing an avenue for thinking about government that helps move beyond some of the limitations present in prevailing accounts of penal politics in comparative penology outlined above. Culture here is used to give us a way to think about the practice of politics in particular, rather than more amorphous or simplified macro national culture.

A clear and precise definition of political culture is required if the term is to be employed for the purposes of comparative research (Rose 1991). Below I outline the kinds of thinking, ethos, emotions, judgements, ideologies and felt imperatives which we can reasonably identify as the features which give political culture its

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<sup>5</sup> Cultural criminology is an established field (Ferrell and Sanders 1995; Ferrell, Hayward and Young 2008; Hayward 2016); Melossi's account of cultural embeddedness continues to be an important reference in comparative study (see for example Hamilton 2014b); Garland's most generative work has been the *Culture of Control*, though he has written more explicitly about culture elsewhere (1990a; 1990b; 2005; 2006). A recent special edition of *Punishment and Society* (2015) was dedicated to Punishment, Values and Local Culture, though the editorial provides no definition/s of culture. Newburn and Sparks (2004) edited a collection of essays concerned with political culture.

precise nature. Literature from cultural sociology (Schalet 2011; Biernacki 1995; Wagner-Pacifici and Schwartz 1991; Williams 1977; Swidler 1986, 2001), governmentality (O'Malley 2010a, 1999; Dean 2009; Rose and Miller 2010; Rose 2010, 1993; Garland 1997), and the sociology of punishment (Garland 1990a, 1990b; Sparks 2001; Simon 1993; Melossi 2000; 2001; 2003; Girling et al 2001; Garland 2013; Loader 2006), are drawn on to outline the concept of political culture, and demonstrate how political culture will be interpreted throughout this thesis. While there are some overlaps across these literatures they are not engaged in regular dialogue in comparative studies of penality. Given the breadth of concerns across these academic fields I have sought to identify and refine the most relevant concepts and ideas for developing an explanatory and descriptive comparative analysis of penal politics.

## The Penal State

Penal politics is explicitly located in what Garland has referred to as the 'penal state', (2013). These are the 'leadership elites that direct and control' punishment, in this case imprisonment (ibid.:495). This is a 'neutral' and 'non-evaluative' term which does not privilege a vision of government but is bound to the actual network or systems of organisations and bodies which officially wield the power to punish, be it administratively devolved to a region or centralised in the political apparatus of the national government. Government and the penal state herein is seen as an ongoing activity which contributes to the State (territorial entities that endure beyond the lifetime of specific regimes of government), rather than focusing on political administrations (elected parties). Throughout the thesis the terms penal politics, government or penal state are used interchangeably to refer to real site/s of empirical practice which continuously govern prison systems. Importantly, the term political culture is never here used to refer to 'the political culture' of the entire governing apparatus. It refers *only* to the very particular ideational and cultural views, as they were practiced, in relation to the prison. Motifs of the political culture

found in Section Two and Three will likely be broadly generalizable to other contemporaneous departments and policy areas. How they work, however, will differ depending on what the object of government is. Meaning that across the government there will be contrasts and contradictions in comparison to the aims of the penal state, even if these departments share broad ideas and aims.

This thesis seeks to comparatively research the penal state '*from the inside*' (Loader 2006 original emphasis). By expanding on Barker's example (2009), comparative penology needs to be attuned to research government as something that is not comprised of fully formed systems of objective and coherent relations (e.g. neoliberal/neo-corporatist), but as something living and active, involved in a process of ongoing formation, subject to enduring struggle and incremental adaption. As a necessary elaboration and extension of these theses, this study suspends the normative conventions that tend to propel other comparative studies. Instead, following a descriptive and inductive programme for empirical investigation of penal politics, this study reconstructs what Loader describes as the disposition toward governance held by government officials. These include 'the beliefs, values, sentiments and fears that constituted this particular reading of the art of government' (Loader 2006:561). Apparent objective visions of political reasoning are displaced in favour of subjective forces which make punishment meaningful and useful to political actors (Nelken 2011). Thus this study makes the interpretation of values, sentiments, political conventions of the penal state the object of comparative study rather than institutions and economic models. Though the character of those sentiments requires further theoretical reflection

### **Culture – a form of feeling**

That emotional dispositions and morality are central to the uses of punishment is a core lesson in the sociology of punishment (e.g. Durkheim 1984; Elias 1978; Garland 1990a). There is a tendency, however, to portray punishment as shaped mainly by



punitive anger. For example, scholars examine the anger (Hartnagel and Templeton 2015) inspired by punishment, the complex of negative emotions which limit empathy for prisoners (Canton 2015:63), the perverse kind of solidarity we collectively feel from punishment (Carvalho and Chamberlen 2017), or research the 'punitive views' of the political classes (Brown et al 2017). Focusing on the worst and most debased penal sentiments tends to be exacerbated in comparative study, where lenient penal virtues are contrasted to penal punitiveness (see for example Pratt and Eriksson 2013; Cavadino and Dignan 2006; Green 2008; Downes 1988).

Penal sensibilities, unlike punitiveness or lenience, are not homogenous, they are inherently ambivalent and have a plural and contrasting quality (Garland 1990a). Government decisions may express an emotional maze of hope and despair, revulsion and sympathy, an inexplicable desire to exclude offenders but also to help them. Penal sensibilities accord penal culture much of its complexity and contradictory character.

Political culture can be first recognised as having a set of penal sensibilities – those distinct visceral and unresolved feelings evoked by crime, punishment and social disorder (ibid.; Girling et al 2001; Loader 2006; Smith et al 2000). These sensibilities are the patterned ways of feeling, felt in reaction to actual penal policies and public debates surrounding acts. They are the characteristic forms of ire, sympathy, disgust, compassion or fear which people view the lawbreaker. Thus, people respond at an emotional as well as rational level. This is because crime and its punishment always incites a plethora of feelings, and a range of reactions, moral standpoints, complex sympathies as well as aversions and/or commitments to pain and punishment. The first central claim regarding political culture is that these feelings are an integral feature of government work, 'part and parcel of the predicament' of each deployment of the power to punish (Crawley 2004). Penal sensibilities contain the 'specifically affective elements of consciousness and relationships: not feeling against thought, but thought as felt and feeling as thought' (Williams 1977:132). As a consequence, penal sensibilities place limitations on even

the most zealous political regimes (Garland 1990a), as sets of emotions they compel and constrain the penal state in what is often 'the inflicting of pain' (Christie 1981:i).

This is a more complicated and generous view of the emotions that simmer beneath penal plans and debates. It does not portray penal culture as just negative aggressions or episodic moral panics – those are just moments when cultural ire is more visible. Penal sensibilities are often inchoate and contradictory, but they are an eternal feature of penal reasoning, and are embedded in each attempt to rationalise appropriate political responses to crime and punishment. For the purposes of comparative inquiry, however, I want to extend the kinds of conceptual content of penal sensibilities to achieve greater clarity when contrasting political culture. Subjecting penal culture to 'patient empirical enquiry' (Sparks et al 2001:889, see also Girling et al 2001; Loader 2006) necessitates an investigation of the social images and cultural conventions that anchor and pattern primal penal sensibilities.

## **A Web of Meaning**

These felt penal sensibilities are structured by cultural norms and traditions. They are kindled in response to the social meanings which constitute crime and punishment. In a provocative metaphor about the pervasive and inescapable character of culture Geertz wrote 'that man is an animal suspended in webs of significance he himself has spun' (Geertz 1973:5). These meanings are what orientate people's penal sensibilities. The anxieties which crime generates, the discomfort or passions that are revealed in penal debates are not mere cognitive possessions but are connected to social and cultural meanings, distinct imagery, visual metaphors and layered narrative associations. This is what gives crime, punishment and penal politics their collective and individual sense of social consequence.

## Crime and Criminality

The problems criminality is perceived to present, its causes and possible outcomes, all contribute to the logical reasoning that informs government responses to crime and, therefore, uses of imprisonment. Research on penal politics must interpret the representations of crime which are bound up in the designing, planning and routine decision-making of the penal state. It is essential that we see crime as an inseparable and foundational ingredient in political culture.

The absence of a clear statistical correspondence between crime rates and imprisonment rates is regularly argued in the literature (Tonry 2005, 2009; Alexander 2010), or what Wacquant has called the crime-punishment disconnect (2009a, 2009b). This claim is established at the statistical level (Lappi-Seppälä 2008), but culturally, socially, and politically, crime and punishment do not operate independently, as has been argued by others (Tonry 2015:507). As crime rises and more people are exposed to crime, this may alter the subjective views of crime held by citizens and governing officials and, as a consequence, reduce the levels of their tolerance (Garland 2001; Nelken 2010b). Even if crime has a low statistically recorded prevalence and frequency, the public perceptions of it will provide governments with some of their essential motivation in making and shaping penal policy (Hall et al 2013). This is because crime is a meaningful cultural category, and pragmatic penal decisions are not informed exclusively through direct engagement with criminal acts or objective reading of statistical reportage. As Hall et al (2013) have argued, what crime means in a place is learned and perpetuated through the salience of its cultural representation and communication. The perceptions of crime held by those actors inside government affect the reliance on imprisonment, regardless of the crime rates, according to Melossi (1993). The images and cultural narratives of crime and their relationship to penal politics are important webs of meaning that need to be mapped and understood. In addition to these, other sets of interrelated cultural codes which inform penal politics must be accounted for.

## Personhood

Governing and imprisonment are always undertaken in relation to people: the kind of people they are perceived to be and the kind of citizen-subjects governments wish them to be. Melossi has described the world of meaning as a 'cultural environment' which 'produces a given 'knowledge' of the criminal' (Melossi 2000:298). Every deployment of the term prisoner, each penal dispensation, is an iteration of the prisoner's perceived criminal motivations, social biography, personal needs, and their degree of blameworthiness. The kinds of interventions and categorisations employed to correct, punish and encourage transgressive citizens are partially founded on this cultural knowledge of the criminal.

Douglas talks about 'outsidership' (1992:120): the greater the social divide the more likely the poor (and other related groups, such as the prisoners) are othered in the collective consciousness, seen as a hostile sub-group. As a result, 'the central community will be more likely to respond punitively' (ibid.:119) and less likely to be considered for, let alone warrant, positive government support. Thus we might inquire: how are prisoners viewed and politically represented in relation to the central social community – as solid members or a subcultural threat? This opens up the interpretive space for an array of possible meanings which constitute personhood and insider/outsider status in a given time, be it labour (Simon 1993), community and familial background, immigration (Melossi 2003), social and political conflict (McEvoy 2001), gender (Carlen 1983), social marginality (Garland 1985), locals versus out-of-towners (Girling et al 2001), or ethnicity (Barker 2013). Reconstruction of these visions of personhood show the enduring dialectic between micro cultural meaning and prevailing social ideas (Melossi 2000).

In their study of the contentious creation of the Vietnam War memorial, Wagner-Pacifi and Schwartz (1991) found that the struggle to find a design that was suitable, and even to agree in the first place that a memorial was an appropriate

undertaking, was partially rooted in the pervasive and unsympathetic visions of Vietnam veterans as opposed to other veterans. The American public perceived them as degenerate, drunks, and out of work. This serves as a useful illustration of the connection between governmental decisions and images of unsympathetic social subjects. The prisoner, like the veteran, as a concept-in-use is plural. This is evident in imprisonment regimes, which are a collection of prisoner categories. Dangerous offenders, sex offenders, long-term prisoners, short-term prisoners – each of these categories invokes a slightly different set of penal sensibilities and visions of penal subjecthood. And each of these classifications is produced by government, which draws upon these cultural resources and images. For example, intersectional perceptions of gender and criminality are a constitutive dimension of how prisoners are identified. Carlen (1983) has shown how the uses of women's prison regimes, sentencing and denial of community welfare provision were a product of the particular social and political assumptions regarding women, femininity and petty criminality.

These divergent meanings of personhood can help explain how coherent political systems produce variegated and even logically incoherent imprisonment regimes. While gender differences (to stick with this example) between men and women in the criminal justice system may prevail cross-nationally, the way that men and women are treated in the prison system within the Western or neoliberal countries continues to display variation (e.g. Scraton and Moore 2005; Hannah-Moffat 2000). Following Melossi (2001), examining the variation in the accepted ideas of the prisoner, their social personhood and their perceived criminal motivations, can reveal how political culture works and how it yields differential effects at the level of the prison.

## Place

We saw above that place has been central to those who argue that comparative

explanation is tied to national culture. I suggest that we require a more grounded understanding of place, however, which sensitive to the surrounding circumstances and the particularities of each place or nation. This will loosen some of the overly homogenous depictions of national penal cultures and political systems that prevail in the comparative literature (e.g. Francophone or Anglophone). This third set of concepts also concerns meanings of insider/outsiderness but is embedded in collective meanings regarding dispositions towards communities, streets, towns and cities, all of which constitute a fluid and complex vision of the nation or territory being governed.

Justifications for punishment and criminal justice interventions often make descriptive recourse to concrete places, maps and communities (Story 2016; Girling et al 2001). Such narratives summon the attendant 'place-myths' and metaphors (Sparks et al 2001:888), employing distinct images of crime, civility or order, all of which are tied to the meanings of those places, their perceived needs, and the threats they pose. Civil servants, ministers and senior administrators make penal decisions using these particular national visions, regional cultural frames and imagined criminal geographies. This contributes to the acceptability or contestation of penal politics. People intuit that certain groups are more deserving of punishment, or others see these same acts as a labelling process which stigmatises certain communities. The feelings this imagery invokes help produce forms of punishment which are culturally legitimate, coordinating penal practices so that they align with the sociological imagination that permeates a place and its inhabitants. How is imprisonment linked to the places that are governed? How are these sites envisioned and enacted through the practice of penal politics?

## **Meanings of Political Culture**

The work of the penal state is undergirded by a distinct and varied cultural currents. These conceptual resources outlined above allow us to explore in more

detail the contours of each penal states' political culture. These are not merely rhetorical decoration. When confronted by social problems government actors employ these inter-subjectivities and sensibilities to comprehend problems and construct a legitimate narrative for the use of punishment. These political truths are bound to place and time; therefore, certain meanings and feelings may not be acceptable nor indeed accessible in the management of prisons and prisoners in one place as they are elsewhere.

This helps avoid the coterminous view of comparative penal culture which envisions generalised or timeless categories such as English speaking, Nordic or Francophonic. Political culture is not about abstract universal ideas but about 'structures of feeling' (Williams 1977:132) as they are politically experienced and how they evolve in different political contexts in reference to place-specific social imagery and webs of meaning. These are the frameworks which allow government actors to not just systematically assess but intuitively *know*, without deduction, who and where is dangerous, who are social insiders and who are deviant outsiders, firmly rooting the practices of penal politics to their 'precise moment in history' (Foucault 1982:785). The work of government departments – their daily routines of planning and administering – should be studied as acts which reflect these persistent, culturally patterned and emotively attentive 'moral evaluations' (Wagner-Pacifici and Schwartz 1991:378, see also Lamont 1992).

Moreover, emotions and sensibilities cannot be contained and severed from penal practices. Those in government are never truly insulated from 'public emotion' (Tonry 2007b:15) because civil servants and political culture are forged within, and draw upon, and contribute to the social spheres which constitute the meanings which allow them to make sense of punishment. These form a fundamental part of their 'toolkit' (Swidler 1986; Melossi 2001); these are the means by which political actors make practical penal decisions, forming governmental outlooks. Thick description of these associated social views of crime, place and personhood will help us generate context-sensitive accounts of penal politics.

## Political Mentalities

These more fine-grained interpretive accounts can reveal what is distinctly cultural about political culture. But what is inherently political about political culture? Penal politics is not just motivated by conceptualisations of crime and disorder, but is also contingent upon distinct conceptualisations of government. The full scope of governmentality's central claims or popular uses are not outlined, defended or critiqued here. Instead this section distils the most relevant concepts – rationalities, techniques, subjects – for this comparative study of the politics of imprisonment.<sup>6</sup>

Governing is always conducted within a web of strategic mentalities. These are the parameters of political objectives; they are the governmental 'idiom' which frames problems and solutions (Miller and Rose 2010:277). In making decisions about appropriate uses of imprisonment, government departments are also always making decisions about the appropriate uses of government authority. Such an understanding allows us to view imprisonment 'in a more substantively political light' (O'Malley 1999:189).

First, rationalities include political principles such as citizenship, justice, liberty, common-sense, responsibility, fairness etc. (Miller and Rose 2010:276-277).

Rationalities also contain a vision of how government should act in achieving those ends – what are the appropriate forms of government and kinds of authority, be it centralised, devolved or authoritarian, for example.

Second, these ideals are deployed in relation to the objects of government, be it prisoners, families, security, public health, economy, prosperity and so on. In this way political ideas are 'articulated in relation to some conception of the nature of

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<sup>6</sup> This also reflects the process of how these concepts have developed throughout this thesis. Governmentality, cultural sociology or criminological concepts have not been deployed deductively but have been filleted and fashioned in a more grounded approach in response to the nature and character of research, how the world was viewed by those who inhabited it, and the ongoing comparative mid-range dialectic between the two research sites.



the objects governed' (Miller and Rose 2010:277), be it workers as a resource, prisoners as dangerous, or children as vulnerable.

Following on from this, concerned with shaping the conduct of citizens, guided by a particular set of norms, governing bodies aim to direct and align people's behaviour, aspirations and subjectivities with the governing objectives (Dean 2009:18; Garland 1997:175). The prison is a tool of social engineering, with routines and programmes which are intended to instil certain traits in prisoners. This provides an important distinction about the nature of penal power as it is conceived in this thesis. Governments are not necessarily just 'punishing' to inflict pain, but imprisoning citizens in ways which may also serve particular political rationalities. Penal power is not just negative and prohibitory, but also productive and inciting (O'Malley et al 1997:506; Miller and Rose 2010:272; Foucault 1981:253).

Governmentality is interested in subjects, and how power is exercised towards the behaviour of its inhabitants (Foucault 1991:92). According to Miller and Rose (2010) and O'Malley (2010:38) there is something inherently moral about rationalities.

Government action is motivated by a sense of how the society, and all it encompasses, *should be*. Subjectivity is thus not *suppressed* by government actions but the desired personal dispositions are *cultivated* in prisoners via the prison.

## Kinds of Rationalities

The conceptual resources sketched out above have been prominently employed to critique the shifting liberal rationalities of our modern era (Rose 2001; Rose and Miller 2010). However, this thesis takes its starting point to be more sociologically motivated and inductive, employing grounded questions as suggested by Garland, asking: 'how have governing authorities understood their powers and what rationalities of governing are implicit in their practices?' (Garland 1997:176). I will identify and outline some forms of rationalities, their governing traits and social agendas, without suggesting these are fixed typologies – these are themes which

form the contextual meaning of government, rather than providing an account of how they are precisely practiced in empirical reality.

Liberalism is shaped and informed by a vision of a society inhabited by rational and unencumbered individuals who exercise self-denial, reason, responsibility and personal initiative. While seeking to inculcate these traits in citizens, through policy, education, welfare and punishment (Joyce 2003; Donzelot 1980) liberal political rationalities prohibit government agencies from overzealous intervention, instead promoting wise restraint (Garland 1997). Governments must avoid trespassing upon a citizen's sense of internal individual responsibility, supporting rather than intruding on the autonomy of civil society (Joyce 2003). These particular ideas characterise the actions of a liberal government, informing its conduct and social expectations.

This is just one potential form in which the art of government is deployed, however. A neo-liberal rationality is motivated first by libertarian economic principles (Loader and Sparks 2016). Neo-liberalism envisions citizens as self-regulating entrepreneurs, responsible for their own fortunes, prudent in their decision-making, increasingly guided by calculations of risk. Governments will therefore 'govern-at-a-distance', allowing the market to fill the regulatory vacuum left by the state.

Dean describes an authoritarian rationality (2009). As a non-liberal view, instead of working through free citizens, it seeks to inculcate obedience in subjects and temper any opposition to official authority. A government with an authoritarian mentality will go to almost any length – e.g. eugenics, prison camps and death – to suppress and extinguish threats to governmental power and social order.

A government that is motivated to support or inculcate 'membership of traditional collectives such as the family, the community, or the nation, are in a sense given in the nature of social beings, rather than contractually, rationally, or voluntarily chosen by individuals on the basis of self-interest' (O'Malley 1999:186) could have a

conservative set of rationalities. It may rely on overtly moral reasoning, favouring caution over innovation. This kind of thinking privileges central state power and social authoritarianism, displacing freedom, that key tenet of liberal rationality, to a more subordinate agenda.

In describing the character of punishment in the late twentieth century, O'Malley identifies a neo-conservative rationality which has conservative traits but is also pro-free market. In fact, O'Malley argues that much of what is characterised as neoliberal is in fact neo-conservative (1999:185). Neo-liberal and neo-conservative mentalities contrast (with their respective and divergent emphasises on individual entrepreneurship and social traditions), but they also align in their preference for market provisions. Thus despite their divergences, they can exist and operate concurrently, creating a 'volatile and contradictory' style of penal politics.

This is an important lesson. Governing mentalities may appear hegemonic, but careful examination can reveal that other rationales may also be present and equally integral. Being attentive to this kind of variation, as O'Malley is, may help explain some of the more incongruent practices of penal politics. Moreover, these plural political mentalities signal that there is no need to develop totalising or reductive 'cookie-cutter' analyses of government thinking (Rose et al 2006:98). Analysis instead should focus on developing a descriptive 'open-ended, positive account of practice of governance in specific fields' from which rationalities should be read (Garland 1997:174).

We may also observe a pastoral rationality, in which the condition of 'the flock' is paramount. This set of objectives inspires the government to behave as pastor or shepherd, looking after each individual as a member of a community (Foucault 1982:783). Concerned with the morality of individuals rather than legality of the system, the government agent-as-pastor is animated by the desire for care, control and salvation of the individual. The aim is to ensure that subjects are brought back

into the fold, while also seeking to achieve their total obedience (Golder 2007:167; Foucault 1982:783, 1981). In many ways, modern nation states exhibit some form of pastoral power, such as the welfare state (Foucault 1982, 1981), though whether pastoral reasoning favours traditions and families or the protection of individuals and their rights will depend on whether it has hybridized with a variant of conservative or liberal rationality.

Government decisions and responses which are ostensibly about imprisonment will also conform to the understanding of the ascendant governing rationality. The prison thus is organised in such a way so that it may strengthen or sustain the character of the state as well as punish or reform (Foucault 1981). Each of these positions has a different vision of society and distinct ideas about the conduct of government, and thus have divergent claims about the role of incarceration in achieving that order. So, comparative divergences and convergences in penal politics and imprisonment are also the outworking of the political order it is trying to instil, be it conservative, liberal or neo-liberal, etc. This is close to what Loader and Sparks (2016) and O'Malley (1999) have suggested when they wrote that punishment is always political. Indeed, as Foucault (1977:23) has already written, punishment is a 'political tactic' that is designed to have 'positive effects'. Though these instrumental political mentalities often go unacknowledged by government officials (Dean 2009:24-25) whose own repertoire of political know-how regarding the appropriate strategic methods to use in the control and direction of citizens is fundamentally drawn from these rationalities. Following Foucault (1980:121), then we must explore how power is rationalised in systems of practice and effect rather than focus on the power and autonomous capacity of individual ministers and political leaders. The decisions of even the most critical or self-interested political actors are often participating in the ongoing production of dominant political ideologies (Smith 2015:358). These 'mentalities of government' imbue imprisonment regimes with a distinctly political motivation.

## Techniques

Competing rationalities are eventually realised through techniques, which are the mechanisms governments use to govern social problems, populations and subjects. However, this study proceeds to distinguish techniques in three ways, regarding (1) techniques of rule, (2) techniques of hierarchy and (3) techniques as cultural conduits.

First, decisions of prison design, planning and administration are taken using governmental techniques, such as statistics, budget audits, dossiers, performance measures, expert insight, prisoner demographics, census information, prison population forecasts and surveillance. These provide governments with the workable knowledge for penal decision-making. Government's decisions are thus not arbitrary but based on certain kinds of insight, information and intelligence, and these techniques are both 'invented' and 'deployed' in relation to the particular characteristics of governing mentalities (Rose1993:290). The prison population is 'rendered visible both as an object and as an end of government' via techniques (Gunn 2006:709). Employed to determine 'the character of social facts', techniques of rule form the reasoning and thus shape outcomes, such as laws and prison classifications (Hacking 1991:181).

Second, the form of government, the nature of institutional hierarchy which contains, organises and disperses governmental power is also a disciplining technique upon the penal state – it imposes rationalities upon civil servant actions and binds the state to particular forms of behaviour. Using agencies, devolving organisational power, creating additional layers of management oversight, quangos, inspectorates, working groups and boards are all means through which governing rationalities are institutionalised and made into everyday work via new incentives, audits, line management and reallocation of budget resources (Barrett 2015).

This may be a slightly unconventional use of techniques; particularly as governmentality already contains the concept of 'governmentalized', characterising how the apparatus of the state has been increasingly organised through a more diverse administration (Dean 2009:30). For the purposes of comparative clarity, it is more useful to consider how administrative practices are organised as surveillance and normalising practices upon governmental institutions, which in turn help internalise governmental expectations and ways of thinking, thereby institutionalising asymmetrical power relations (Sauder and Espeland 2009).<sup>7</sup> As such, the systems of paperwork, oversight, report writing, accountability audits, evaluations and bureaucratic hierarchies are used to impose a certain political rationality and yield practical effects on the working routines of civil servants. And despite some practitioner resistance to changes in ethos (McNeil et al 2009), Bennett's study of prison managers has shown that senior staff who 'embodied' targets and bureaucratic mechanisms were believed to epitomize a 'good' manager (2016:53). Techniques of hierarchy show how rationalities enforce certain kinds of political practices.

Pursuant to this, I propose a third sociological perspective on techniques. The creation of these techniques is how political rationalities and culture are enacted, solidified and routinised into penal practice. Techniques convert 'vocabularies of motive' into political actions (Mills 1940:905). The creation of legislation, the establishment of boards and management groups, the routine acts of institutional decision-making, annual reports, and demands for policy documents are all standard and practical functions of governmental practices (Shore and Wright 1997:10), but they each are embedded with, and a consequence of, the currents of political culture. Garland (2006:438) has written that while cultural meaning and ideas may be pervasive, we must clearly identify the 'processes and mechanisms

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<sup>7</sup> Sauder and Espeland show how external Law School rankings permeate university departments. Rankings work as techniques of normalization and surveillance, and staff internalise these pressures, stigma and anxieties in a process of self-disciplining. Though these disciplinary processes are contingent on the dynamics of context and are thus realised differently and display 'variability' in how schools respond to rankings.

that translate (or enact, perform, inflect, express and rework) culture into action'. I argue that techniques are important cultural conduits, converting belief into systematic routines of government and, ultimately, imprisonment.

Understanding techniques as such means we must ask certain questions about governmental activity. The array of techniques that is used *upon a population* and *upon government*, their particular forms will depend upon the contextual meaning of governing authority in which those tools are formed.

## Rationalities of Political Culture

Governmental rationalities refer to the purposive, strategic and distinctly political 'ways of thinking and styles of reasoning' embodied in penal politics (Garland 1997:184). O'Malley (2010:13) writes that governmentality is 'rather hostile' to grand narratives, 'preferring to focus on contingent and specific turns of history and politics, as opposed to unfolding historical logics of modernity, and therefore has the capacity for ambiguity and uncertainty'. This grounded approach helps avoid reductionist analysis of governing activity,<sup>8</sup> which clears the way to think about political culture as inflected with instrumental governmental aims, not only animated by punitive demands, social norms or penal philosophy. Rationalities provide the lens to identify fundamental and avowedly political ideational forces which shape how political agents take penal actions.

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<sup>8</sup> While governmentality is interested in the 'programmers', namely those making policy, these agents are implied rather than researched explicitly. Governmentality studies usually avoid the 'familiar, realist, sociological terrain' of government (O'Malley 2001:193), instead conducted in a way that separates programmes and textual analysis from the 'messy actualities' (Barry et al 1993) in which government work is actually deployed. Leading figures in governmentality are candid in the claims that governmentality is not a sociological endeavour as it does not have as its object, writes Dean, (2009:28) 'simple empirical activity of governing' and is not about creating descriptive accounts 'of how various people or agents in positions of authority rule. An analytics of government is not a 'sociology of rule'.

Distancing governmentality from sociology has been critiqued by Garland (1997) and O'Malley et al (1997). Garland (1997) emphasises the amenability of governmentality to sociological inquiry, and provides an instructive criticism about how historically reassembling the character of mentalities and technologies should not be analysed as distinct from 'the pragmatics of use' (ibid.:199).

#### 4. Political Culture – A Logic of Practice

In many ways, governing mentalities, with their strategic rational character, are diametrically opposed to the form of non-calculative and emotional values expressed by cultural sensibilities. Each framework proposes a different analytical and empirical agenda – one concerned with power and control, the other symbols and meanings. However, following a view of punishment set out by Garland (1990a; 1990b; 2006), these are not mutually exclusive. By bringing the cultural and the political together, we see that it is in fact these ‘twinned’ dynamics (Garland 1997:203) that give penal politics its operational fault lines and creative tensions. It also shows how difficult it is to create a singular political culture which has a coherent quality and set of intentions. Governing, policymaking and penal decision-making are informed by political rationalities, ways of viewing populations, territories, idealised visions of citizenship and an understanding of how government works best. This instrumental view risks presenting a world reduced to strategic agendas and utilitarian ends in which all outcomes, no matter how negative, were the intentional product of instrumental political calculation.<sup>9</sup> Despite the strength of intention behind political rationalities and professed efficiency of governing techniques, matters of crime and punishment can never be purged of their cultural narratives and social imagery. If political culture is the collective ways of thinking about governing then it cannot be reduced to system effects (such as voting arrangements), ideology or political economy. The ways people think about crime are always affective; substantive images and practical senses are drawn from dominant social relations and cultural inculcation. Governmentality is interested in the making-up of subjects, but the cultural is something much more fundamental and antecedent. Penal decisions are not just a reflection of the kinds of citizens governments want to incite. They are also founded upon much more visceral and emotive sensibilities about who the person, in this case the prisoner, is already

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<sup>9</sup> For example, the creation of delinquents (Foucault 1977; 1980:45).



believed to be. Cultural meanings provide the repertoire of common-sense which limits and directs instrumental recipes for action. These are the 'untutored modes of doxic opinion that exist prior to 'ideology'' (Loader and Mulcahy 2003:55), the sources of punishment that exist outside the penal and political field. Instrumental rationalities draw on these feelings, institutionalising them, helping assess the limits and borders of justice, fairness and citizenship. Rationalities and cultural meanings should not be seen as mutually exclusive. Both of these forces are at work concurrently. They combine to create a political culture, providing the meaningful and strategic frame for what becomes the legitimate response, form and use of penal power.

Thus conceived, political culture is practical, generative and diverse rather than abstract or typological. These are the *distinctly political cultural motivations* behind systems of punishment. This reveals the patterns of ideas, beliefs and strategies which determine the political outlooks held by government functionaries, how they understand the subject of imprisonment – those places and people over whom forms of penal authority are deployed. Bringing these literatures together to develop the concept of political culture may advance our understanding of penal politics.

These intertwined dynamics of political culture can better explain some of the incongruent and contradictory actions by governments. Like any conceptual framework both the cultural and the governmental have limitations, but the limitations of one is alleviated, complemented or extended by how it has been combined with the other, showing how the seemingly incompatible character of expressive and instrumental are counterparts in political culture. These ideational forces are mutually limiting, revealing why strategic ends are, for the most part, never fully realised and why emotive sensibilities do not always dominate political decisions; as sets of governing practices they propel, sustain and mitigate each other in ways that give penal politics its general habits of thought and action. The political

seeks always to make routines and reason out of the endemic morality and tragedy which crime and punishment evokes. As Sarat has written, 'modern legal orders are built on the edge of fear and anger' (Sarat 1997:181-182, in part referencing Dumm 1990), as well as the wider gamut of emotional feelings, including hope, empathy and tolerance. In striving to create rational, control-orientated penal systems governments can never disconnect themselves from the systems of meaning that often contradict the demands of instrumental rationality.

Political culture 'has to be understood *as a category of thought and affect*' (Loader and Mulcahy 2003:39 original emphasis); it is animated in relation to practical problems and struggles. Political culture is embodied, enacted and performed, it is evident in the practice of habits and routines of government (Biernacki 1995; Garland 2006; Swidler 1986; Sewell 1996; Carlen 1983; Schalet 2011). Actions are taken and decisions made in response to particular problems as they are encountered in reality (Bourdieu 1990:86). The cultural forces which shape penalty can adapt in response to the problems and threats over which governments attempt to gain control. These can be political (changing nature of liberalism, decreasing conservatism, demands for greater/fewer government interventions, economic circumstances), social (changing crime patterns, poverty, shifting demographics or urbanisation) or penal (riots, overcrowding, extreme prison harshness, lenience or dangerousness). Of course, these problems usually overlap, one invoking and exacerbating the problems of the other in unpredictable ways.

This kind of 'practical logic' means that a government 'never ceases to sacrifice the concern for coherence to the pursuit of efficiency' (Bourdieu 1990:262). In desperate situations 'the threshold of logical requirements [are] lowered even further so as to exploit all the available resources (ibid.:264, see also Sewell (1996) on 'emotional ruptures' and Vaughn (1996) on normalisation of organisational deviance). Each problem, dependent on its context and object, will invoke different governmental ideas about what is culturally and strategically appropriate, meaning a policy

portfolio may only loosely cohere.<sup>10</sup> Political culture is not just habits of thought. It is also the terrain of ideas upon which substantive penal agendas are mobilized, governmental struggles are bound and problems resolved, albeit within the existing remit of power and resources (Sewell 1996).

Political culture then is solidified in practice, but is also bound to the particular 'social ground' (Geertz 1973:9) in which it is rooted. Political culture mediates social distinctions, transforming them into concrete government actions and practices of imprisonment, while reproducing social norms and sensibilities of what is worthy, valuable, troublesome, distasteful and repugnant. By taking seriously the social meanings of personhood, place and incivility, justice and legitimate political authority as they appear in a political culture, it will be impossible to avoid tracing our way back to the wider social stratification and structural forms ordering everyday life which support these practices. Political culture is thus relational and cannot be cabined away from the vital social sources in which it is grounded. These political visions of prisons, prisoners, government and crime are inescapably entangled with other social norms, such as family, community, nationality, gender, race, poverty, class and so on. The balance of recognition that is struck between these ideas will also vary depending upon the social context, and how these other social issues have been rationalised as an object of governmental intervention. As Mills wrote, every imputation of reason each of us gives is not itself without a social reason (Mill 1940:904).

Additionally, prison operates in a field of social control. Decisions to alter the shape of the prison will also reflect 'correlative transformations' (Garland 2001:5) in other kinds of social control institutions. Changes elsewhere in the social control field can place new pressures or demands on those in government as the effectiveness of the prison comes to appear imbalanced. In these circumstances government may

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<sup>10</sup> This is what Bourdieu means when he describes, in typical Bourdieusian paradoxical prose, how the logic of practice is not the logic of the logician. It is coherent in a fuzzy way but realised when deployed in relation to practical problems (1990).

attempt to realign the prison while they seek out a new equilibrium in the social order. In grasping this point, we better understand political culture and the decisions that are made about how people are imprisoned by illuminating the social conditions that generated their actions and decisions. This relationship of the penal state to social forces and social controls gives government its dynamism. As governments attempt to tame the social world political culture 'is continually producing, altering or adapting its governing practices and institutions' (O'Malley et al 1997). Political culture has a patterned solidity, but rests upon potentially shifting social order, and during times of social upheaval the dynamics of political culture can alter accordingly.

The comparative view of political culture espoused here is inherently relational, situated and pragmatic, revealing how control and management of the prison system and the prisoner become embroiled in the political attempts to ameliorate or chastise social and political dilemmas (Douglas 1992:99). The work of penal politics then is not a pure expression of political culture upon the world. It is the logic enacted and embedded in government conduct, responses and inactions as they attempt to negotiate populations and places. What we as outsiders (or as experts) may view as excessive, ill-advised and unsubstantiated penal policy choices come into existence because they find purchase in the overlapping sections of the community which constitute the wider social world. Governments draw their interconnected knowledge of and emotional in/sensitivity to places, people, problems, sense of insecurity and carceral necessity from the social world. Viewed this way it becomes difficult to uphold statements in which we may situate the blame for increasingly punishing and discriminatory imprisonment tactics upon an autonomous political environment (Green 2009).

For these reasons, I have chosen the term political culture rather than government culture. I understand that latter term as being closer to a bounded organisational culture, organisational tradition or the ethnography of office life and policymaking (Annison 2015; Souhami 2014; Stevens 2011; Windelsham 1987, 1993, 1996, 2001;

Jones and Newburn 2005). Political culture, as will be made clear, is more foundational because of its relational dynamics, affecting aspects of organisational culture (i.e. the right way to go about things and tasks). Political culture is always produced within 'larger societal set of stories, conflicts, troubles and insecurities' (Sparks et al 2001:889) and has meanings which stretch beyond the organisational borders and routines.

This is an inherently pluralistic view of political culture. What Sparks (2001) has described as the narrow and sometimes 'skimpy' view of political culture as lenient, punitive, populist, corporatist, neoliberal etc. is at odds with the complex meanings and circumstances that determine the ordinary business of penal administration and policymaking. Thinking about crime and punishment as something semantically dense, pragmatic, meaningful, politically coherent and socially contingent captures some of the enduring tensions and demands of penal politics. In developing prisons governments must administer services to living people to whom they are charged with immense responsibility of care. At the same time, and in the very same actions, they must attend to the complex demands of punishing, using it as a solidifying expression of political power and an act of social good. All of these concerns are coloured by the visions of justice/injustice, insiders/outsideers, citizenship/exclusion, fear/empathy which shape the kind of place or country which governments are involved in creating and contesting. Political culture does not provide solutions to the problems; it is the 'bounded rationality' (Vaughn 1996) which provides the value and political framework in which problems can be identified, made intelligible and legitimately acted upon.

## 5. Lessons for Comparative Criminology

Why might comparative penology require a conception of penal politics which is dynamic, relational, pragmatic and built upon the seemingly incompatible inter-

subjective fault lines of political instrumentality and cultural sensibilities? This conceptualisation captures those political forces which tend to escape apprehension in more general depictions of penal power. The potential of political culture conceived as such overcomes other gaps in current comparative penal politics of abstractness, mechanistic and overly unified political narratives; which tend to efface localised social conflict and political actions. The benefits to comparative penalty of an inductive comparative concept such as political culture is that if conducted on a small scale it is (1) a bounded concept which allows for cross-national comparison of rich empirical detail; (2) has a denaturalising effect upon our understanding of governmental actions; (3) tempers often overzealous claims of national uniqueness; (4) prevents false universalism; and (5) yields comparative explanation for divergent imprisonment regimes.

Set in comparative contrast, who makes-up the penal state? What techniques do they use to govern prisons? What kinds of characteristic 'facts' are used by governments to describe political uses of imprisonment (Melossi 2000:303)? In his historical comparative study of the differences in the factory systems in Germany and Britain, Biernacki (1995) describes how the payment practices and routines of factory life reflected the different value-laden working conceptions of labour power. Similarly, Schalet's comparative research (2011) examines how parents chastise, encourage, dissuade, punish and shame their teenagers in relation to their emergent sexuality. By setting these concerns in comparative relief of The Netherlands and America, Schalet illustrates through empirical research and contrasting comparative analysis how culture – particular meanings of adolescence and adulthood, appropriateness, and political concepts of individualism – came to shape what is among the most intimate challenges of parenting and governing family life. These comparative studies show how basic routines of governing are constituted by distinct and situated political and cultural meanings.

Like these examples, the expressive and instrumental political concerns can become sublimated beneath the routines of everyday life and not explicitly acknowledged

by government actors – though they are no less vital to penal politics. Thus, instead of the usual units of analysis, namely policy (Jones and Newburn 2002, 2005; Rogan 2011; Annison 2015) or political structures (Page 2011; Barker 2009), what is so often taken for granted as the seemingly ineffable and allusive stuff of politics will be the object of comparative political analysis and research throughout this thesis.

Comparatively, this means we must look to identify what people mean when they utter these political cultural terms and examine how they use these ideas to justify actions in relation to what kinds of problems.

The denaturalising effects of studying comparatively embedded ideational forces may drain some penal terms of their generic force, and while they are still broadly comprehensible we cannot disregard their distinct local usage. The objective terminology of prison programmes such as education, parole, labour, training and rehabilitation are deprived of some of their general meaning as we begin to look at *how* they are deployed (to educate? to make employable? to aid? to exclude? to normalise?). Biernacki has emphasised that this is precisely what comparative research should strive for, unpacking seemingly objective terminology to reveal the context of their definitions (1995:2).

A generic term such as ‘prisoners’ now must be understood as having condensed within it a diffuse array of culturally and politically appropriate ideas, visions and meanings. For example: an implicit cultural and social biography which is invoked every time this is stated, with a related moral and emotional quality, feelings of fear and/or sympathy, an implied understanding of criminal acts, their motivations, varying degrees of tolerance of these acts and the people who commit them, an express view on the nature of social disorder. How is the person in prison valued or appraised by governments? What sorts of stances of antipathy or empathy do those governing authorities adopt in relation to the imprisoned? What sort of social proximity or distance do they exhibit? In addition, when people invoke ‘the prisoners’ in their commentary, justifications, work practices, assessment of needs

and cultural narratives they are *also* always inflating that vision with often implicit views of the perceived obligations of government. The prison is fine-tuned to engender particular political traits in these deviant subjects. But it must attempt to achieve these ends within the limits of government, be they demarcated by conservative, liberal or pastoral rationalities, and with a knowledge of the penal pains which are permissible to achieve those ends. It is this array of political cultural resources that government actors employ each time they identify a problem, propose a penal mode of redress or suggest an adjustment to penal sanctioning.

This mix of views, strategies and sensibilities is often inchoate, but these elements are always embedded in and enacted through each statement of this kind, which seeks to regulate and control prisons and prisoners, allowing for forms and functions of imprisonment that are culturally coherent but potentially diverse in practice. Arguably, current accounts of politics in comparative penology tend to overestimate the coherence of a political style or the directive capacity of institutions. As a consequence, they lack the dimensions that can show how and why governments create penal systems which simultaneously use excessive punitiveness, progressive welfare programmes, formulaic administrative and morally indifferent financial penalties such as fines. Insidious images of a cohort of capricious prisoners will put restraints on and filter anxiety into the most instrumental agendas, instead intuitively justifying extra-control regimes. Even political systems committed to the wise restraint of liberalism, therefore, can employ penal tactics which are tempered by an expressive and seemingly incoherent illiberal character.

This applied conceptual comparative approach will likely present a challenge to some of the false universalism that presents itself as theory of late modern or Anglophone penalty (Zedner 2002; Matthews 2005). As a result of the entrenched hierarchies of knowledge – in which the UK or USA are often cast as criminology's



capitals – other national cases are sometimes described as ‘exceptional’.<sup>11</sup> That these studies find differences in their national and regional territories is welcome, but ‘exceptionalist’ analyses are not without their inherent limitations. The term exceptionalism is often an ‘empty signifier’, which lacks ‘a fixed core meaning’ and that perhaps as a result of this ambiguity ‘such an “empty” concept may become politically and intellectually hegemonic’ (Offe 2009 n.23). Exceptionalism tends to conceptualise empirical findings by negation, namely, defining findings by what they are not. These conclusions can cast research studies outwith prevailing theoretical debates rather than entering into dialogue with them and challenging some of the presumptions that undergird the often ethnocentric character of the comparative penological imagination.<sup>12</sup> Moreover, they can (though certainly not always) gravitate towards essentialising and/or idealised visions of national culture, leaving less room to map the contingent social forces, events and political decisions that gave rise to and buffer penal politics.

Thus, denaturalising problems should not result in generating an artificially parochial view to the exclusion of general political qualities; comparative study should have greater aspiration than cataloguing the ‘uniqueness and difference between jurisdictions’ (Nelken 2010b:18). Paradoxically, while disentangling the ideographical reasoning of political action this study aims to do so without entrenching claims of false uniqueness (Rose 1991:450).

This is because the concept of political culture is one with ‘bounded variability’, which are ‘functionally equivalent’ ideas with similar attributes and which permit description and analysis to travel the borders of our comparative research sites (Rose 1991:447-448). A prison is still a prison; a government is still a government. These terms yield an instantaneous and almost universal intelligibility, but in

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<sup>11</sup> Currently one can observe Irish exceptionalism, Scottish exceptionalism and Nordic exceptionalism – though Irish and Scottish exceptionalism seem to be the least contentious of the exceptionalist claims, though this could be because Nordic exceptionalism has been subject to comparative support and critique (Barker 2013, 2017; Ugelvik and Dullum 2011; Pratt and Erikson 2013; Downes 1988; Green 2008). Also, to complicate matters American imprisonment is often described in terms of exceptionalism.

<sup>12</sup> See Lee and Laidler (2013:141) on expanding ‘criminology’s geopolitical imagination’.

practice they are not understood entirely objectively. Their characteristic forms and practices can only be grasped in their practical sense. It is well-attuned concepts which allow us to report local histories and political processes in a manner that reveals something about the general dynamics of penal politics. Otherwise what we have are unbounded inventories of political spectacles, watershed policy moments and key speeches 'assembled together but [with]...no basis for relating one country to another' (ibid.). Political culture captures the general patterns which inform penal politics and the uses of imprisonment. Those general features allow for locally attentive comparative analysis which challenges 'sweeping assertions of either difference or sameness' (Newburn and Sparks 2004:7), avoiding the extremes of universalism and particularism.

This helps us rethink the prevailing conceptual models for comparative political processes. Comparative reflection of political culture admonishes the tendency to take for granted what political actors do and why they do it. Each case can provide a source of intellectual stimulation for its comparator, providing a contrasting analytical light that can reveal the prohibitive moral boundaries, oddities of outlook and characteristics of penal politics which may have previously gone unremarked.

There are of course limitations. Because of its small scale and middle-range nature (Merton 1968) the concept of political culture outlined here does not yield enough abstract space to develop typologies or general theories. This framework serves as an alternative route to comparative knowledge, however, which can challenge and extend, rather than undo, existing comparative penal narratives as well as diversify – particularly Anglophone – criminological theory and history.

In contrast to other models of comparative penal politics, comparative political culture is not only the property of a sovereign minister, the structured outcome of institutions or the result of a risk society, a neoliberal ideology or a lenient or punitive collective culture. Political culture does not provide a grand teleology (in say the way risk, neo-liberalism or a de-civilising process are sometimes employed

to do) but involves chance, events and uncoordinated circumstances that defy grand or neat abstraction. It is a complex and variable form of political reasoning done by group of actors inside the penal state, their expressive reactions and moral judgements, all of which inculcate a particular vision of society, government and citizens which demand different modes of penal response. Political culture allows us to understand how government works, and through detailed rather than abstract analysis understand the divergent uses of imprisonment and character of penal politics. This, I believe, gives political culture greater explanatory power, because imprisonment regimes are the practical outcomes of these activities.

Political culture is the inter-subjective dispositions which constitute the power to punish, a definition which allows us to better comprehend how political culture 'works', turning social, cultural and political forces first into political culture and then into practical means of punishment. Political culture is embedded in the routines of government organisations, departments and civil servant work, such as legislative decisions, report writing and the daily chores of administering.

Imprisonment regimes, those systemic patterns of incarceration, are the material realisation (in the architecture, rules, prison classification systems, organisation of prison space, programmes, institutional functions etc.) of how these competing frameworks of meaning resolve problems of prisons, prisoners, crime, government responsibility and social disorder as they arise.

Why do some prison regimes emphasise exclusion, while others seek to improve the lives of incarcerated people? Or, if two prison systems espouse same general aims, say reintegration, a measure of last resort, why do they attempt to achieve these ends through different penal means and techniques? How can we explain the variation not just between but also inside national prison systems? Political culture provides the modes of reasoning which produces certain kinds of prisons and the knowledge which makes prisons governable. It would therefore make sense that we will see correspondence between the characteristic practices of political culture and

the characteristic means of imprisonment regimes. Therefore, it is the nature of political culture that we must research and decode if we are to begin to explain the divergent cross-national modes of imprisonment that continue to perplex comparative penology.

## 6. Conclusion

I have argued that the view of politics in comparative penology is often too restrictive. If we are to better understand penal politics and their consequences upon punishment we must take a more sociological view of government, one which attends to the meanings, emotions and the strategic political ideas which shape political actors' mental dispositions and habits of action. Political culture and its study do not simply entail a description of meanings and intentions, but require us to get to grips with how they form a logic of practice, and direct the conduct of government. Political ends and cultural sensibilities are embedded in every penal dispensation. Examining punishment via political culture, as presented in this chapter, helps illuminate the multi-dimensional nature of imprisonment, which is a complex political and social institution. Moreover, it helps advance a comparative penology which can explain the cultural and political foundations which give rise to divergences in cross-national penal politics.

This concept of political culture as being both embodied and enacted, practical and relational, will be used throughout the thesis to: (1) better understand penal politics, the kinds of ideas, techniques and meanings which constitute it; and (2) explain how imprisonment regimes acquire their particular routines, programmes, penal classifications and systems of control. Political culture is employed as a descriptive empirical category as well an explanatory one. With this interpretive conceptual framework, I offer a potentially better way to understand political culture and the ways in which it works to create and maintain imprisonment regimes. At the same

time, this framework provides the comparative lens necessary to explain the difference between cross-national imprisonment and penal politics.

As a bounded concept, this allows us to track changes in political culture over time and observe how this affects imprisonment. However, conducting comparative sociology of punishment historically requires other specific methodological resources, matter which are discussed in the following chapter.

## Chapter Four

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### Recovering the Past

#### I. Introduction

In Chapters Two and Three, a conceptual framework was sketched out for the analysis of comparative penalty. This chapter proposes an approach to researching political culture and imprisonment regimes which, while being descriptive, comparative and explanatory, also takes an historical turn. By investigating politics and punishment over time – their changing form, categorisations, diagnoses of the crime and social problems – we can establish a fuller analysis of their correspondence. In addition, by pursuing these matters historically we can empirically establish the combination of historical processes, choices and events which underlie penal transformation.

This chapter first introduces the two comparative sites, Ireland and Scotland. I highlight the most prominent and characteristic conventional wisdom which shapes historical understandings on punishment and penal politics in both jurisdictions. In a broader comparative view, I point out the way both countries have been side-lined in Anglophone criminological imagination. The limitations in these accounts are the justifications for a comparative and historical study of Ireland and Scotland in particular. Historical recovery is important for potentially correcting the historical record in both Ireland and Scotland and as a direct result, improving our analysis of Anglophone penal politics in the late twentieth century in general.

The chapter then makes a shift into describing the usefulness of a number of methods: oral historiography, archival retrieval, interpretation and documentary

analysis. The thesis employs the critical archival work of Stoler (2002): What kind of form did governmental material take? Using Vaughn's (2004) historical ethnography of the archives the thesis asks: what meanings did actors employ to make sense of their work? I draw on Loader (2006), Schalet (2011) and Girling et al (2000) in their respective uses of oral historiography and interviewing to reconstruct governmental dispositions: what were the eclectic logics and myriad views held by the agents of penal power? These methods are situated alongside Foucault's (1977) interest in grounded practices: how was power exercised? As well as assembling tools for an historical comparative approach to political culture and punishment, the chapter also suggests means to tether the insider perspective of oral history and archival material within its social landscape (Hall et al 2013). To do this we must rely on pertinent secondary literature to expand our historical understanding of penal culture in both places.

The chapter will also describe how I sought to do this, namely, when and where the research took place, is braided into the relevant sections throughout this chapter. The final section outlines how these materials were analysed. Combined, these methods and tools provide a means whereby the thesis can draw an analytical line between political culture, social context and imprisonment. They provide the empirical base to track these changes over time and, as a result, develop a more comprehensive comparative and historical account of Irish and Scottish penal culture.

## **2. Why Ireland and Scotland?**

Understanding comparative differences in political culture and imprisonment regimes, as I have set them out in the previous two chapters, requires a grounded context in which they can be explored and their differences understood. The empirical setting of this study is Ireland and Scotland from 1970 until 2000 in Ireland, from 1970 until 1995 in Scotland, for reasons that will be explained below.

Why undertake this kind of inquiry in the English speaking west? The north Atlantic nations have been the base in which some of criminology's key concepts have been produced, and there is a need to look elsewhere to extend these ideas and to reduce the epistemological inequalities in our knowledge production (Aas 2012; Lee and Laidler 2013). Even what is referred to as 'Anglophone' criminology might be better categorised as 'North Atlantic' criminology, as Aas (2012) does, given that it excludes post-colonial Anglophone sites (such as Singapore, India or Hong Kong, to name but a few). Cognisant of these inequalities, the thesis focuses its comparative lens on Ireland and Scotland for two important of reasons. The first is conceptual. The second and more prevailing rationale is empirical.

The first priority was to reconsider and extend what we think of when we refer to Anglophone penalty in the latter part of the twentieth century. Ireland and Scotland are rarely included in their own geo-political criminological context (e.g. Garland 2001; Pratt and Eriksson 2013; Whitman 2003; Lappi-Seppälä 2008). Both Ireland and Scotland's absence from what we imagine when we tend to discuss Anglophone, Western or European penal history diminishes the breadth and purchase of our analytical insight and, more critically, flattens our memory of punishment in this small part of the world. The source of this semi-exclusion does not just reside with those working outside Ireland and Scotland, however. Within both Ireland and Scotland, scholars entrench this separation. It has been argued that general trends and transformations in Anglophone crime control do not precisely mirror or explain Irish and Scottish penal trends, discursive shifts, historical forces and penal politics. Ireland and Scotland, implicitly or explicitly, are presented as 'exceptional', with the term 'Hibernian exceptionalism' gaining some traction in recent years (Hamilton 2016; Griffith and O'Donnell 2012; in Scotland see Duff and Hutton 1999; McAra 2008). Thus, by omission, but sometimes by design, scholars present these two north Atlantic countries as largely outwith general patterns of penal transformation in the late twentieth century. At the very least, an historical



investigation of these two jurisdictions may expand the historical horizon of this geo-political territory.

Secondly, is the matter of historical recovery. Imprisonment and penal politics in the late twentieth century in both Ireland and Scotland have been subject to only marginal historical investigation. Consequently, there are lacunae in what we can say we know about these places. This thesis aims to use historical and sociological research strategies to fill the historical gaps in both jurisdictions.

To provide a backdrop for the claims made in substantive chapters of this thesis I briefly outline the most prominent criminological conventions regarding the contemporary penal history, first, of Ireland and then of Scotland.

## **Ireland**

Until the turn of the twenty first century criminology was described as Ireland's 'absentee discipline'. That is certainly no longer the case and the historical research field has expanded to allow an established history of penality to develop which tends to have the following assertions:

*Irish political culture has been characterised by an ideological vacuum:* The single most dogmatic narrative in Irish penal historiography is that the Department of Justice, the Irish 'penal state' (Garland 2013), totally lacked in ideology, principles or philosophy, essentially operating in a 'vacuum' (Rogan 2011, 2012; O'Donnell 2005; Hamilton 2014b; Griffin and O'Donnell 2012). Instead, it is argued, Irish civil servants engaged policy with what Rogan has referred to as 'gut instinct', 'ignorance...or on nothing particularly substantial at all', making it all but impossible to discern any principles in Irish penal policy (Rogan 2012:306). Kilcommins et al (2004:292-293) make this most explicit when they assert that a 'culture of control', for instance, is replete with characteristic political rhetorical claims around crime control matters, and thus an interested and attentive observer

is made aware of the moral principles upon which punishment rests. They write that 'In the Irish case, the hope for such clarity is defused by the imperative to respond' and that 'Irish penal practice is rarely supported by reference to a set of clear principles'. In lieu of political principles, Irish penal policy, it is claimed, was led by rational pragmatism.

We need a corrective to this charge of ignorance and absence in Irish political culture. No decision is ever merely pragmatic – even the most baldly straightforward choice is in fact a constellation of 'principled positions often unintelligible to their promoters' (Freedon 1996:18). To understand what civil servants thought and did about prisons, the problems they raised, the solutions they had to choose from, we must think of them as socially situated actors with a taken-for-granted know-how that can be revealed through a close reading of historical materials.

*Irish penal politics was epitomised by crisis management:* From 1970 prisoner numbers began to rise beyond capacity levels the government had no choice but to release prisoners or build prisons to maintain enough space. From 1970 into the 1980s imprisonment has been characterise as an unimaginative and pragmatic supply and demand mentality. Pressure upon prison space was acute (Kilcommins et al 2004) and the government continued to lack a 'forward-looking approach' (Rogan 2011:212). While this outlines the difficult context in which the government and the prison operated, and critiques an absence of innovation, these accounts do not clarify the substance of those penal choices and their permissibility.

*Penal policy change in Ireland in the late twentieth century has been led by ministerial interest, without this policy has stagnated:* This has been put most forcefully by O'Donnell (2008), who describes the era from the 1970s until the mid-1990s in Ireland as one defined by 'stagnation and change'. 'Stagnation' has been taken-up by other researchers who argue that it was the central feature of Irish prison policy

history (Rogan 2011; Hamilton 2014b; O'Mahony 1993). It is easy to show that formal or programmatic policy in Ireland was largely inert from 1970. Apart from the annual prison reports, it was not until the 1990s that any prison policy documents were produced. Unlike their counterparts in Westminster, Irish Justice Ministers rarely made political capital out of punishment. But when they did it came with great consequence (Rogan 2011; O'Donnell and O'Sullivan 2001). However, it would be a mistake to look only to publications and ministerial statements as evidence of governmental activity and penal practice. Prisons operate on a 24/7 cycle; they require constant oversight, maintenance and adjustment. When we use history to illuminate only penal transformation we truncate the past, skirting over the history of penal reproduction. The government are always working on prisons - if little changes then our questions should instead be concerned to recover what sorts of prison order and kinds of regimes the government sought to maintain and perpetuate? Prisons have also endured historically, their programmes will likely have adapted in subtle ways to reflect new demands of a changing social context, whether or not that is stated in policy documents. The absence of policy documents does however beg questions about Irish political culture rather than Irish prison practice, a distinction that is better addressed when both issues are made more discrete, as they are throughout this thesis.

*Rehabilitation only existed at the rhetorical rather than practical level:* One of the major points of distinction between Ireland and other Anglophone nations was that Irish pragmatism, combined with the absence of ideologies, meant that corrective and rehabilitative policies never animated Irish prison regimes (Kilcommins et al 2004:287). But as rehabilitation waned elsewhere in the 1970s (Garland 2001) Ireland began to employ the rhetoric of rehabilitation, though it did little more than mark a discursive shift in legislation (Rogan 2011). This is a point of distinction about the Irish penal story that is of clear importance, but this unfortunately does not represent a satisfying conclusion. If Irish prisons did not treat or cure, then in what ways were people imprisoned? What sorts of programmes and regimes were

prisoners subject to? What expectations were made of prisoners, prisons and the government? These are significant questions that remain to be answered and would yield new insights if subject to a fuller historical recovery and a more searching social analysis.

## Scotland

Scotland, unlike Ireland, has enjoyed a longer established history of criminology (McAra 2008), and yet there has been curiously little engagement with penal history. That said, however, there is still a strong sense of Scotland's penal past, but its basis in systematic historical research is open to doubt.

*Scotland remained a paragon of penal welfarism:* The Scottish Office, where the civil service was based, was said to have been imbued with a strong welfarist ethos which shaped the wide vista of penal policy (McAra 1999; Croall 2006; Tata 2010; Hamilton 2014b). When the rest of the UK saw a rise of penal populism, penal welfarism endured in Scotland. But the empirical foundation and historical consistency of these claims, in relation to the prison at least, are less than clearly established in the 1970s and 1980s, with McManus (1999:231) describing the impact of welfarism upon imprisonment as having been only 'piecemeal'.

Within the contemporaneous writing of the time there was an acknowledged harshness, a dichotomy in the character of Scottish punishment (Young 1997, 1999; Coyle 1991). Scotland has had historically high per capita imprisonment rates and the use of infamous sites of segregation (Sparks 2002). This historical dichotomy between welfarist Scotland and high and sometimes harsh use of imprisonment has never been fully reconciled. While others acknowledge that Scotland has always relied heavily upon imprisonment (which in other contexts is usually *the* proxy for penal harshness) it can be minimised as an historically anomalous trend in an otherwise generally welfarist tradition (Hamilton 2014b; 2014a). There are clear empirical gaps in these accounts of Scottish imprisonment and penal politics as

there has been very little sustained attention given to the historical shape, character and practices of Scottish imprisonment across this period.

*Scotland's penalty was defined by a distinctly Scottish cultural tradition:* Following the welfarist argument, a reader familiarising themselves with the Scottish socio-legal context will also be confronted with claims that the Scottish criminal justice system can be characterised as: 'England and Wales it isn't!' (Tata 2010). These kinds of statements refer as much to technical differences in the system as they do to something much more essential. Scotland is different. Its criminal justice culture reflects Scotland's idiosyncratic civic identity as somewhere with an impregnable collective sense of fairness and communitarian values (Hamilton 2014b, 2013).

As Cavadino and Dignan described the situation, Scotland has remained 'relatively immune from the populist tendencies that were rapidly infecting its southern neighbour' (2006:231). And while there is the evidence in the literature that Anglophone trends such as managerialism made inroads into Scottish criminal justice practice, these ideas have been adapted such that they reflected the Scottish welfarist sensibilities (McAra 1999). Therefore, unlike England and America, it is claimed, there was little evidence of a punitive shift in Scotland in the 1990s, where the distinct national culture buffered these negative forces (Smith and Young 1999; Duff and Hutton 1999; Hamilton 2014b).

Such strong claims of national distinction remind us to avoid the coterminous claims that there is a British or UK penal policy. On an explanatory level these cultural assertions may make broad implicit sense, but there is very little detailed empirical work which identifies these distinct sets of cultural norms and social relations and maps their practical and patterned consequence upon Scotland's prison system. The disjuncture in Scotland's historical narrative suggest that there is a risk that those who were subject to penal interventions in the late twentieth

century have been 'doubly marginalised' (Delaney 2011:600).<sup>13</sup> People who were first marginalised by the actual penal practice of social work support (Carlen 1983; Moore 1978). Then, arguably, they now risk further marginalisation by criminal justice scholars and criminologists who may unconsciously construct a historical and comparative Scottish penal welfare success story, in what E.P. Thompson once called the 'enormous condescension of posterity'.

### **History Still to be Written?**

For both Ireland and Scotland these conventional accounts do not feel satisfyingly complete or entirely persuasive. The kinds of descriptive demands and interpretive questions posed by imprisonment regimes and political culture would ask what kinds of prisons were built? What other ways were rises in prison numbers responded to? What sorts of meanings and intentions made some prison choices or decisions pragmatic? As of yet, we still do not have a thorough historical account of penality in either Ireland or Scotland from 1970. Within both the Irish and Scottish cases there are considerable lacunae in our historical knowledge of the shape of imprisonment, the character of penal politics and the forces that constituted it. This, I suggest, justifies focusing on the history of Ireland and Scotland while also developing the comparative penological project.

Regarding the dates which frame these histories, both begin at the same point in time but end in different years. There is no clear analytical moment in which momentous change truly happens or historical origins can be identified, the point in which the study begins and ends its history must be chosen for theoretically and methodologically refined reasons. The thesis is limited to the latter part of the twentieth century for practical reasons of methods, particularly in conducting oral history and key actors still being alive. The initial rationale for the timeframe was inspired by the many prominent Anglophone sociology of punishment projects

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<sup>13</sup> Delaney writes that history which tracks the exceptionalism of a nation state can leave those who did not fit 'in a curious state of purgatory' (2011:600).

which have persuasively identified the 1970s until the 1990s as a period of change and sometimes volatile penal transformation (Garland 2001; Pratt et al 2005; Wacquant 2009a; Loader 2006; Bottoms 1995; Feeley and Simon 1992; Simon 2007; O'Malley 1999; Liebling assisted by Arnold 2004; Newburn 2007; Young 1999).<sup>14</sup> For valid and well-founded reasons, some scholars oppose the emphasis on the 1970s as mistaken because it implies a critical and artificial break in history (Gottschalk 2006; Barker 2009; Goodman et al 2015). However, I broadly accept that this decade marked the beginning of a process of a change in contemporary history, though not one that was an historical rupture (Zedner 2002), which continued (albeit it an uneven pace) into the 1990s.

The reasons for the different end dates is more empirical and emerged through the research process. 1998 was the initially proposed end-date. But it transpired that penal change in Ireland came to fruition, or was at least more settled, by 1999. To more fully map the form those changes took required some additional years so that the trajectory of the analysis and narrative did not feel truncated. The account of Scotland ends in 1995 as the major penal changes which took place were more established by that time. Scotland gained a devolved parliament in 1998 (which had been the original reason for limiting the study to that year), significantly altering the political context. To look at the penal issues thereafter would require a longer perspective to track their evolution and would bring the study of Scotland closer to the present day. Bringing the study from the 1970s to our contemporary time would minimise the descriptive and analytical depth of the late twentieth century history. Having less years to cover allows for a more grounded detailed and a continuous chronological history, which avoids depicting penal change in dramatic epochs. For these reasons I forgo some of the academic neatness and symmetry of beginning and ending at the same year and instead allow for a more organic conclusion.

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<sup>14</sup> Though, they are not in agreement about either the causes of these changes or about the degree of depth of penal transformation.

### 3. History and Penal Change

While this thesis is avowedly historical rather than a history of the present (Hinton 2016; Garland 2001), we still must be careful about how we extend the claims of historical causality. While punishment may be the product of entrenched cultural history Mary Douglas warned that we should not ‘wheel in culture’ in a way which implies it ‘works because of what it can say implicitly, drawing upon the reserves of understanding’ (1992:167), and the same cautionary critique can be directed at assertions of historical legacy. Convincing claims of essential foundational cultural legacies and historical contingency (Hamilton 2014b; Tonry 2007b; Whitman 2003; Pratt 2008; Pratt and Eriksson 2013) are best explored and substantiated through grounded and sustained historical research which establishes cultural narratives via meanings-in-use and follows their practical evolution across time. In addition, such a project is not an end in and of itself; we must identify mechanisms and process through which meaning is attached to action and translated into routine penal practices. In doing so we can avoid over-emphasising the historical legacy of penal outcomes.

Rubin has remarked that penal changes are ‘less a product of their times than the result of years, decades, or even centuries of thought and experience’ (Rubin 2017:2). However, this is only partially true. Penal practices and political culture evolve and always adapt to their ‘contemporary habitat’ (Garland 2010:18). Political actions are also made in reference to the contemporary situations and extant anxieties which confront governments. To think historically about political culture is to explore how pre-existing meanings and present predicaments coalesce in the activities of government and shape new material and cultural outcomes. Moreover, if there are dramatic changes in contemporary social and political forces, or there are significant events, we will likely see imprisonment and the penal state reorganised to some degree to reflect these new contexts (Sewell 1996).



But this is not to dismiss historical contingency, only to provide a slightly more nuanced way to research and account for what is historically contingent and what is contemporary. The long-term perspective is particularly useful in this respect. It yields greater empirical depth and allows us to make better assessments of what is novel and innovative in penal practice in times of penal change, and identify what is inherited or modified for new practical circumstances. To research the evolution of penal practices over the time-frame of the late twentieth century will temper our ability to find either historical ruptures or historical determinism.

The penal transformations that occurred in Ireland and Scotland in the 1990s (Rogan 2011; O'Donnell and O'Sullivan 2001; McAra 1999; Coyle 1992) can be reassessed in light of a proper account of the immediately preceding decades. Assessments of what was lost and what was gained in moments of transformation may change when viewed through the historical lens. Furthermore, in understanding these historical social, political and cultural forces we will better understand what is at stake at moments when prisons and penal politics are subject to debate, dispute and transformation. Comparatively, it will also be easier to assess how penal transformation differs between places, even if they may appear similar at the level of policy (Jones and Newburn 2002, 2005). How these historical comparative questions were researched is what we turn to next.

#### **4. Historical Sociology**

History in this thesis is therefore not considered only a 'prelude' to the present (Gottschalk 2006). Historical political culture and imprisonment studied herein are recovered as an enduring and perpetual present in which people lived. Following Bourdieu's incitement to empirical recovery research must seek out 'the deepest logic of the social world' which can be recovered 'only if one plunges into the particularity of an empirical reality, historically located and dated' (Bourdieu 1998:2). This study continually asks: what were the penal and political practices at

that time? Why were they deemed appropriate and possible? Have they changed? History is used here as a vehicle to recover and enliven the immediacies in which penal politics were experienced, rather than as an explanatory strategy to reveal the source of our present penal predicaments. To undertake an historical study which wishes to comparatively recover and reconstruct penal politics across the late twentieth century necessitates sources and analytical tools which can reveal the sensibilities, fears and hopes, social and political imagination, cultural criteria and ideological rationalities of political culture. The second aim of this thesis is to map the practical carceral consequences of political culture. This requires material which can similarly illuminate the forms and uses of imprisonment regimes. To achieve these demands, history was viewed ethnographically (Vaughn 2004), and I collected an array of diverse materials to support the historical reconstruction of penal politics from inside the penal state in 'an attempt to elicit structure and culture' (ibid.:321). These included oral history interviews, archival research and a comprehensive documentary analysis, a combination rarely used in comparative criminology.

## Oral History Interviews

To begin the process of historical recovery oral history interviews were conducted with (mainly retired) civil servants who had worked in the penal state or criminal justice in both jurisdictions. The interviews began in Scotland in January 2014, where I interviewed eleven people. They appear under the names Euan, Henry, Philip, Douglas, William, Alistair, Robert, Adam, Ken, Derek and Peter (see Appendix 1 for a note on anonymity). I made contact with the first interviewee by a fortuitous meeting at a conference, then a fairly brief google search led me to the contact details for a number of people whose names appeared in the archival material. Two respondents in particular did some advocating for me, and sent emails, on which I was cc'ed, to their former colleagues whom had been hard to

track down. Each interviewee signed a consent form (Appendix 1) and interviews lasted between 90 minutes and three hours and all were recorded and transcribed.

The limits of this snowballing method confronted me early on as I interviewed two additional people who were considered to be of interest by others, but I found that their work had been too distant and thus their accounts too anecdotal. Having transcribed the interviews later I decided to accept that these had been “failed” and to leave them aside. However, looking back I would still advocate that it is usually useful to interview people who you are put in touch with. You are unlikely to know someone’s full CV trajectory and they might have had worked on penal matters in some other way which you might not have been previously aware of or could not have anticipated.

In Ireland interviews were conducted across the summer of 2015 and one was arranged later in 2016. Conducting the fieldwork in Ireland I also relied initially on a snowballing method, as a former penal state civil servant whom I knew already put me in touch with his former colleagues who had remained friends. It became clear that this meant I was getting views from a small group who, while certainly not entirely aligned, I suspected were in broad agreement about what was good or bad about the past. I spent time seeking out a number of others whose names I had from the archives and who I could tell had been influential and/or in senior posts. The last interviewee in 2016, for example, had been hard to track down. I got in touch with one of the more senior of the interviewee cohort to ask for some advice or assistance. Upon hearing this predicament, he got in touch with the Department of Justice and told them to call this other former civil servant and ask them to call him. He then sent me an email to say that this other person was now expecting my call. A pre-existing friendly contact inside the Department of Justice put me in touch with other people who brought their own perspectives. In the end, I felt that I had managed to gather a greater variety of views. I conducted nine interviews, who are named here as Cormac, Jim, Liam, Seamus, Gerard, Pádraig, John, Tom and Niall.

Following the same format as I did in Scotland, all interviews lasted between 90 minutes and three hours and all but one was recorded. The unrecorded one took place on a breezy cliff walk despite of my polite attempts to cajole them into a café (or really any location in which my dictaphone was not powerless). From this interview, I made immediate notes afterwards and while the interviewee did not sign a consent form he gave full oral consent to be quoted.

In conducting interviews, I sought to follow the example set by Girling et al (2000) in *Crime and Social Change in Middle England*, looking at matters of punishment and politics intensively and *in situ*, as something empirically grounded, lived and expressed in relation to ordinary situations. Undertaking that task politically and historically Loader's *Fall of the Platonic Guardians* (2006) advances the interviewing and research approach he employed with his collaborators in the *Middle England* project and wrote about elsewhere with Sparks (2004). People often reference Loader's *Fall of the Platonic Guardians* for its findings but rarely copy how he achieved its insights via in-depth qualitative interviews (a point about methods Loader pointedly identified as being critical). In those works, one sees the value of long digressionary interviews in which the interviewer understands that politics and penal sensibilities are not composed of fixed ideas, but are myriad and often contradictory. This, as seen in the previous chapter, is central to how political culture is conceived herein.

Each interview conducted began with an inquiry about how they came to work in the civil service. This approach immediately de-intellectualised the interview, avoiding abstract or sociological questions which detached the interviewee from their lives (see Sacks quoted in Jefferson and Holloway 2000:35). This first response could go on for quite some time as people told me about their family background, their educational achievements or unrealised aspirations. It also elicited their first impressions of the civil service – their nervousness, mistakes they made, processes they did not understand. For example, one respondent told how much they hated

their first year in government and how long it took them to learn to speak civil service English. Others described to me their pride in working in the government and lessons they were given in their first days, all which later became valuable research evidence in reconstructing Irish and Scottish political culture. I always concluded by asking interviewees a more 'appreciative' question, usually what had been the best features or best memories of their work (Liebling 1992; Liebling et al 1999; Liebling et al 2011). I did this because I wanted to hear what had kept them in those prison and criminal justice occupations, what motivated them in doing government work. Otherwise, the trajectory of the interview followed principles of practice from Holloway and Jefferson (2000:34-37). First, I used open-ended questions so as to track people's sensibilities within their own 'meaning-frames' and how it related to their governmental life. Second, I sought their stories. These recollections also avoid abstraction and allowed respondents to use their own terms to describe events and routines. What did they do, how did they do it, how did they find it etc.? They explained what positions they were promoted to; the general order of their daily workload, how they did their work, how it changed and also how they felt about those changes. They told me gossipy titbits but also on occasion brought me into their confidence, they confessed as much as they defended. People spoke about contentious policy issues they supported or disdained about colleagues they respected, others they opposed (mainly privately and on occasion more formally). Third, I would try and use respondent's own terminology in my responses. While I never brought a formal interview schedule I did have my notebook to jot down these words or points so I could come back to them later in the interview or use them as prompts to get them to carry on with a story. This has the advantage of curtailing the imposition of too much of my thinking upon their narrative. Therefore, avoiding the tempting menu of pre-set terms from criminology's lexicon, such as 'punitive' or 'lenient' and avoided the temptation to ask respondents to reflect comparatively on why their country and penal arrangements were either greater or less than those elsewhere. Fourth, I relied on free association. In my notebook I also had jotted down a couple of the key moments that would have

occurred during their career, such as a new prison opening or a prison closing. If appropriate, I would ask what they recalled, what comes to mind? Though this could be followed by an inquiry about how directly they were involved or had experienced it. This way I heard about their concerns and aspirations regarding various changes. This means the interviewer should not interrupt to either investigate the relevance of the account or to move it along if it seems insignificant.

Respondents spoke with emotion, recalling success as something enthralling, and remembered with relish attempts to improve punishment – though ideas of improvement both differed between Ireland and Scotland and changed overtime. Failures and fractious incidents were often summoned with expressions of pain, anger and panic as well as feelings of victory and success. Free association and personal stories allowed people to digress and switch between personal accounts and wider social narratives. Finally, at the end of each interview I summed up in a couple of words or short sentences what I understood the main thrust of what an interviewee had told me, identifying what I felt had been the key themes they described. This always yielded some extra and useful commentary. Interviewees would often respond enthusiastically, with ‘Yes!’, ‘Exactly!’, then expand a little further on the broader themes I had presented back to them. On one occasion a person who had provided a rather positive account retreated slightly, appearing a little regretful at this, having heard my summing-up and a feeling that perhaps he had over-remembered the good at the expense of the more troubling. That interview then continued for another hour in which more critical and contrasting stories and issues were recalled.

This complexity reflects Mills (1959), insight that social structure can be observed at the intersection between history, society and biography. In her comparative study of culture and class, Lamont reflects that interviewing leads ‘the researcher towards the most appropriate analytical categories’ for comparing cultural life (Lamont 1992:15). However, interviewees were not expected to be able to fully account or

‘understand completely their own actions’ (Holloway and Jefferson 2000:43; Bourdieu and Wacquant 1992).

Engaging with penal politics through this kind of interview means the information being privileged is meaning, symbolism, rhetoric and explanation, not truth and facts. Both Bruner (1987) and Josselson (2004) have written that interviews do not serve the purposes of ontological verification; rather what we must do is use interpretive analysis to reveal their meaning. People’s stories provide thick descriptions of how they felt in conducting their work. Rather than judge them for their factual precision, then, we can consider them as providing vital illumination of their thinking, their construction of the penal problem, and the pattern of taken-for-granted considerations which governed their actions (Portelli 1991; Schalet 2011). Interviews then are not about facts, but about the ‘social perception’ of those facts (Thompson 1978:96 quoted in Briggs 1986). Oral history deepens our understanding of government actors, guiding us towards what they ‘were concerned about, and committed to’, revealing their penal, cultural and political sensibilities (Loader 2006:571).

Oral history is often used as a means to give a more phenomenological quality to research, particularly potent in illuminating the lives of those whose voices and experiences have been marginalised by making big issues of policy, economics and politics the focal point of history (Thompson 1988). Such matters are regularly represented through aggregate statistics such as unemployment, population sizes, demography, crime figures and recidivism rates, for example. Thus the lived experience of the working class, the poor, women, people of colour and the imprisoned are all regularly marginalised in public policy and grand narrative history. The in-depth interview is seen as a critical method which can address the inequities in social representation (Presser and Sveinung 2015) and bridge the gap between normative criminological theory and the lived experience of punishment (Schinkel 2014; Nugent and Schinkel 2016). However, I suggest that a similar

problem of abstraction surrounds how government tends to be represented in criminology, as highlighted in the previous chapter. Moreover, criminal justice officials in government are not often sympathetic figures in such accounts. They make policies we might oppose, fail to produce penal changes that we might deem more humane and can make vitriolic pronouncements and stoke public fears. I do not propose to make government officials sympathetic, however, but hope to develop an account of political culture which bases its analytical assessments on a willingness to try and understand it from their point of view (Skinner 2002:6); using oral history as a tool to yield insight into the lived experience of doing political work and thus reveal something of the broader nature of government. In doing so I try and address a gap in punishment and society identified by Liebling when she asked: 'Why is sympathy reserved for the offender and denied to those who (sometimes in good faith) work in criminal justice, with their own lives, stories, pains, motives and understandings ...?' (2001: 476). As Thompson has written, 'Oral history by contrast makes a much fairer trial possible...It provides a more realistic and fair reconstruction of the past, a challenge to the established account' (1988:6). This generosity should not be mistaken as 'indulgence'. This more charitable sociological approach allows for a fuller historical reconstruction and provides stronger grounding from which to build both critique and comparison (Bourdieu 2000:61). It is a humane and qualitative way to recover the past, to think about penal politics and political culture and what it is we mean when we draw on these terms in criminology.

## Archives

To make the critical link between culture and practice required an additional empirical base. As already stated, interviews were not conducted as fact-gathering, but to gain historical insight into political subjectivities – how people thought, discussed and constituted penal subjects and objectives. But when we are dealing with matters of punishment and the deprivation of liberty in particular, this also



seemed like an exciting place to begin to explore how culture affects action (Swidler 2001). What sort of material consequences were wrought upon punishment by Irish and Scottish political culture? Also, at the very least, I found myself craving some facts, like timelines of key events and a chronological narrative to foreground the interviews. Moreover, what had become clear during the initial stages of the PhD was the absence of contemporary prison and political history in Scottish and Irish criminology. In addition, I had seen how secondary readings of Scottish criminology now perpetuated the idea of Scottish penal welfarism, and perhaps in each re-telling expanded its borders (e.g. McNeil 2004; Croall 2006; Hamilton 2014b; Halliday et al 2009).

This demanded a return to the source of this evidence and in order to generate my own data and questions in a more detailed historical recovery (Loader and Sparks 2004): fundamentally, this required original archival fieldwork. I went to the National Records in Edinburgh in spring 2014. In the same year I contacted the Scottish Prison Service to arrange access to their files. I completed an ethics form (see Appendix 1) which was quickly approved. There, I had access to several large filing cabinets containing notes, letters and drafts from the 1990s which had been largely untouched. The Irish leg of the archival work did not begin until summer 2015 when I went to the Irish National Archives in Dublin to begin the process over again. In both locations, I searched the on-line catalogues for any documents I could retrieve regarding 'punishment', 'prison', 'offender', files on individual prisons and any Prison Division and Department of Justice files. Ireland, however, has a 30-year rule on government files so I could only access files up until 1985, and for various reasons of administration at the archives a number of Department of Justice files from 1985 had been temporarily removed from circulation. However, a contact inside the Department of Justice who was supportive of the project arranged for me to visit the Prison Division for three days. They retrieved some files from storage they thought might be relevant as they pertained to the later period of the 1980s. Numerous files and boxes were set up in a boardroom for me. While I sifted

through them, a civil servant (who was not a junior member of staff and certainly had much better things to do) had to sit at the other end of the boardroom table each day for the full day, a standard precaution on such occasions in the Department. Also, thanks to other Irish interviewees who were willing to share their spoils of retirement with me, I also rooted through a few attics and found material, particularly minutes and report drafts from the 1980s as well as one unpublished autobiography by a former Irish Department of Justice civil servant, all of which were otherwise unavailable to me. The statutory restrictions are obviously an unavoidable limitation on the Irish archival material from the 1990s, and future research in the late 2020s will be able to assess and refine my claims about this period.

In undertaking this archival approach to history, I read and photographed memos, meeting minutes, letters, press releases, unpublished working group reports, inter-departmental communications, standing orders, any pertinent marginalia, research trip reports, organisational maps, and on one occasion some unfulfilled prison blue prints. There were also a number of valuable unpublished research reports and notes, several of which have not been analysed before as far as I am aware.

Government work is largely publicly communicated via documents, such as policy reports, green papers, white papers, accounts, press releases. Government work is also internally conducted using memos, minutes, notes and letters. These archival documents are not 'neutral or innocent' (Manoff 2004:14), seemingly objective numbers and statistics are representative interpretations from the political culture. Also, official material, such as minutes, written by a notary, present an officially acceptable and formalised account of a meeting. Despite these reservations, these materials are widely used in history and have been shown to 'open a window onto the minds, emotions, and experiences' of those they are reporting on, and illuminate prevailing 'cultural mentalities' (Kounine 2017:220). With this in mind, I approached reading archival documents in a similar way to the interviews and the transcripts.

What was it they identified as problems? What resources did they use in addressing these matters? What did they aspire to do? Who was involved in management and decision-making – with what express or implied expectations?

While remaining cognisant that archival material and government reports are constructed within a particular set of power relations – and that these representations and distortions are what should be interpreted, not their accuracy (Stoler 2002; Manoff 2004; LaCapra 1985) – it would be a mistake to deny the factual material that is also within the archives. The archives have been subject to ‘postmodern scepticism’ (Bradley 1999:119), but the archive does give access to facts, such as dates and times, names, department titles and office addresses. Who constituted the penal state and where it was (which turns out to not have been inconsequential), could also be more easily mapped and tracked through archival material.

Documents are therefore a vital resource in reassembling the political culture and imprisonment regimes that prevailed from 1970 in Ireland and Scotland. With this material, the research also began to take on a chronological shape. Propelled by the desire for historical insights I decided to forgo a more particular focus on the landmark moments of change. Instead the history of the entire period was conducted in the mode of a grounded researcher, allowing the sum of the findings, argument and conceptualizations to be ‘discovered, developed, and provisionally verified through systematic data collection’ (Strauss and Corbin 1990:23). Barker proposes that this long-term perspective provides a more thoroughgoing way to research comparative penal politics as ‘the work of governance is made up of ongoing activity, small moments: small movements, repetitious and mundane’ (2006:7). The study of history here is thus undertaken as the study of both social reproduction, political adaption and social transformation.

The welter of documents and sheaves of paper together provided the first transportation back to the inner-world of the penal state, like the process of becoming fluent in the thinking of another time. It has to be said, on occasion the archives can be monotonous, because office work can be mundane. When a particularly vivid, snappy or cutting comment appears it is unbelievably refreshing for the parched mind. However, to take seriously the routine and ordinary, reconstructing what constituted that normal order of things means one must resist the allure of hit and run sound-bites and 'anecdotalism' in lieu of analysis (Bryman 1988). Historical materials and transcripts can be read for their 'regularities, for its logic of recall, for its densities and distributions, for its consistencies of misinformation, omission, and mistake' (Stoler 2002:100), capturing the dimensions of political culture. To read the archival material 'is to pause at, rather than bypass, its conventions, those practices that make up its unspoken order, its rubrics of organization, its rules of placement and reference' (ibid.:103).

To try and develop an understanding of the archival material during the data gathering period I wrote 'theoretical memos' (Corbin and Strauss 1990:421). On one occasion when going back over journal notes made at the end of an archive day and after interviews, one prominent repetitive matter emerged: 'the prison' is not the same. The system contained so many *kinds of prison*, and those prisons were spoken about differently; their functions varied depending on the kind of prisoner presumed to be held there. This is a lesson so obvious to anyone interested in the sociology of imprisonment that it is almost embarrassing to describe it as an insight. But from the comparative perspective, this returned me to the belief that for culture to have a useful purpose for the study of penal politics it had to be clearly and explicitly connected to action (Garland 2006). By recovering different kinds of political cultures, can comparative penology also explain the different kinds of imprisonment between, but also within, Ireland and Scotland? This revealed a huge gap in the comparative penology literature. The prison was regularly compared at the quantified level, using mixed inventories of penal stuff to show how different or

exceptional a place was or is (Tonry 2001a, 2001b, 2007; Hamilton 2014b; Cavadino and Dignan 2006) or relying on a mixture of both of these approaches with the addition of observation (Pratt and Eriksson 2013); a prison system is often a black box in comparative research. As a result of this realisation, I returned to the national libraries in Dublin and Edinburgh in early 2016 to re-read all of the Annual Prison Reports and official publications to develop a more precise map of what came to be called the imprisonment regimes. This material provided information on imprisonment regimes: what prisons, how many, serving what function, fluctuations and increases in the number of prisoners, the number of prisons, changes in a prison regime, increase or decrease in access to certain programmes of work, education or parole and release.

There is obviously a persistent overlap between these sources of information regarding imprisonment regimes and political culture. Using these methods, this thesis builds an historical and sociological account of government and an institutional account of imprisonment. Imprisonment regimes are an 'analytical and expositional device' (Garland 1985:x) and the prisoner here appears only through the eyes of those in the penal state. To compare prison regimes cross-nationally requires a slightly broader canvas if we are to understand the imperatives and aims behind each prison and how the system operates. We better grasp a prison's function if we understand how it fits into its national network of incarceration. Additionally, those decisions are made by government officials, and yet we have very few comparative studies of prison systems and sociological accounts of government (though see Downes 1988 and Barker 2009). Thus, the thesis makes no claims to represent the prisoners' experience of imprisonment. I try to be careful not to overemphasise official government records as 'firm evidence' of imprisonment, but see those accounts instead as reflective of what government's were trying to accomplish (Atkinson & Coffey 1997:47). However, these issues are also not mutually exclusive. Who political agents believe prisoners to be informs the shape and use of imprisonment, its punitive force and supportive regimes, and thus

informs how prisoners experience prison. An oral history of the perspectives of Irish and Scottish prisoners could complement or extend this work and presents future avenues of development from this project.

The documents used here to research Ireland and Scotland thus include publicly available parliamentary debates, annual prison reports, crime control and penal policy documents. When relevant, supporting political statements from ministers are also included. Though often these have been elevated as epoch defining in the history of imprisonment (e.g. 'Prison Works!', 'Zero Tolerance'). These ministerial moments can be given a not always justified causal weight, which can ultimately impoverish our understanding of government and its intersection with cultural and social forces. The political leader occupies a major and influential role in the penal state, but they do not hold all of the penal power. History of the kind outlined here is fuller in the sense Thompson imagined (1988:21), as it does not focus only on insights from 'leaders, but from the unknown majority of people' inside government. As suggested in the previous chapter, ministerial actions are tethered to the political culture; however, they hold one powerful position in a network of circulating power, ideas and people. The research design as it evolved was an attempt to take forward, through evidence, an understanding of the government that is less top-down, a collection of mavericks, villains and named individuals. Instead government was researched as something which has its own perpetuating 'force field' – to borrow a metaphor from Bourdieu (Bourdieu and Wacquant 1992) – with its own logic and regularities. Any use of those critical political statements must be copper-fastened to that political cultural context.

### **Extractive and Interpretive**

The formal political document is not merely a ledger of information, and to reconstruct the past, specifically through publicly available publications, we must see the documents and reports also as artefacts of political culture, products of their practice. The annual report is precisely where political culture and the

imprisonment regime are regularly reiterated – and as a result, the annual report receives a renewed prominence in this analysis. Annual reports produce as much as they record, in reporting the system it contributes to its political ‘ethos’ (Hacking 1985:169), they are among the key assets a government has to establish its agenda and authority. Political culture, as was outlined throughout the previous chapter, is not hidden, it is embedded in every aspect of administration – it is the world of meaning, categories and rationalities which actors act within and reproduce. And while publications for public circulation, such as the annual report, will be organised in a way which has a certain acceptable tone and careful omissions, perhaps over emphasising success or downplaying problems, those are the narratives which need to be analysed to reveal culture and intention.

Annual reports are the practical legacy of political culture. They are historical artefacts from which intentions and ideational forces behind penal practices can be inferred. Facts are inseparable from representation; the most pragmatic decision is also always meaningful (Garland 1990b). For comparative and analytical purposes this means we must read routine documents, texts and governing practices as carriers of political rationale and not just depositories of factual information to be mined. How are prisons reported, for example? Using annual reports? How are those annual reports framed? Do they rely on storied narrative, audit overview, business reports etc.? How are problems reported and successes disclosed? Or are financial and capital spending documents the main avenue of reportage? Are prisons rendered public via population surveys, and if yes, what measures are used to frame and calculate those penal subjects? How are prisoners made visible: as customers, risky, dangerousness, or as patients with needs or vulnerabilities? Documents and reports are profiles and enactments of government, mapping them empirically can evidence the character of governmental thinking, its aims and objectives in relation to prisons. Undertaking a task such as this comparatively can begin to better denaturalise punishment and uncover government’s banal routine practices, illuminating the edges of penal acceptability and rectitude, finding the

outer limits of political permissibility. The annual report implements political culture through categories and diagnosis, which are then fundamental techniques in structuring and maintaining imprisonment regimes (Foucault 1977; Freeman and Maybin 2011). The welter of documents – be they public and private, routine and momentous – represent the making of penal taxonomies, codified beliefs, the construction of facts, clusters of moral codes, the preservation of penal authority and the affirmation of the national prison narrative (Stoler 2002:91).

## The Political Life of the Policy Document

Annual reports and policy papers also serve political as well as penal ends, therefore. The historical perspective reveals the necessity for a further interpretive angle on the formal document, one that looks at its character and form. The document can be taken seriously as both a declaration and a material representation of state power – a process I interpret in two ways.

First, while the penal policy document is ubiquitous feature in contemporary Irish and Scottish political life this governmental practice should not be presumed to have been an omnipresent political technique. Indeed, if there is one core general message history can demonstrate is that ‘we should take nothing for granted’ (Dobbins 1994:140). Changes in Irish and Scottish political culture can also be traced by pursuing the evolution of the ‘print culture’ of the penal state (Eisenstein 1980). We might say that the flood of documents we see from governments these days on penal policy, evidence-based policy, financial reviews and strategies are a particularly hyper print culture, which can be interpreted as one clue as to the character of political culture. Transformations in the frequency of governmental print culture, therefore, can be interpreted as a reflection of changing political practice. What is the character of the print culture which communicates matters of prisons and penal authority to the public? How often, and with what kinds of standardised regularity, does the government publish reports and documents? Does



public material increase over the years? If yes, what new strategic ends does that print culture serve? What public demands does it seek to address/ What changes in the character of governmental authority does it represent? Thinking about the augmented way in which political culture is disseminated, the evolution of political print culture opens up a new space to consider how the power to punish was deployed and how it transformed from 1970. For example, in Irish criminological scholarship, the 'vacuum' argument outlined above tends to rest on the absence of prison policy documents from the Department of Justice until the 1990s. The archive, however, can reveal policy documents and research reports which were produced but never published, instead they were circulated in-house. Using both the archives and the publicly published documents means we can better track the changing nature of Irish and Scottish political print culture. This methodological approach, taking print culture as evidence, means we may develop a less pessimistic reading of the past, potentially drawing analytical correspondence between public and confidential political print culture, seeing this as evidence of political culture rather than – as others have mistakenly read it – as an absence of political culture or principles (Rogan 2011; Kilcommins et al 2004) or as an uninterrupted continuation of historical penal practices (Croall 2006; Halliday et al 2009; McAra 1999).

Secondly, what form does the policy document take and how does this change? The policy document also serves to enforce (or at least attempts to do so) an image of the state. The policy report may be a relatively standard feature of modern governments, but how it looks and the order it takes will not have been static across the twentieth century. This analytical perspective is perhaps more obvious in longitudinal historical research, yet it has been rarely done in historical criminology. While we may mine reports for content and concepts, as part of the historical recovery, the material form of official documents is seen as a site of state power and production. By form I mean size, paper, how standardised these things are across the years. The document's form can embed the image of the state into social life,

suggesting, to paraphrase Godson, who researched the proliferation in Catholic material culture in nineteenth century Ireland (2015:1), creating a new uniform image for documents may have been significant in regularising political expression and demonstrating new understandings of political authority.

Following the changing print culture and material form of these 'policy products' (Souhami 2014) – their size, standardised order, paper and prevalence – the document can be critically reinterpreted as a product of the political process. It is a material object required to propagate, disseminate and standardise political and penal authority. While still using reports as sources of both prison facts and cultural insight, this thesis, following Stoler's (2002) general point, also engages with the publication-as-subject, in which the paper trails of government are sites of political cultural production (to paraphrase Stoler 2002:87). Reports and policy documents as government acts are attempts to express and thus entrench political power, culture and identity. The character of the print culture and form of the documents mean we can interrogate the historical process of political knowledge production. In sum, documents are 'monuments of states as well as sites of state ethnography' (ibid.:90).

This may seem a slightly left-field approach to archival material that is interested in creative analysis for its own sake, but that could not be further from the case. When sourcing and looking at these publications from across a longer period of time and between two different political contexts, changes and contrasts in the documentary form physically display transformation in political culture. This added important empirical support to the reconstruction of political practice. Political culture is communicated, it is in public dialogue, it must be represented. Taking the documents' material and narrative form seriously, as dimensions of the historical sociological research strategy, allows further access to what is being represented, gaininf insights into changing visions of political order and uses of authority. By extending our analytical eye to include new and changing forms of political print

can deepen our understanding of the history of penal politics and penal transformation.

## Social Setting

The critical relationship between political culture and imprisonment regimes are researched in empirical detail in this thesis. A history of the kind proposed above must be grounded in evidence but also, as Braun and Clarke wrote (2006:94), succeed in going beyond description of the themes and fully analyse data in its wider social and cultural context. Here we must make a scale shift, situating the currents, thinking and actions of political culture and practices of imprisonment within the social dynamics which supported and conditioned them. Hall et al (2013) employed this perspective to powerful critical and empirical effect. They wrote that if we want to recover and know a social world, we may begin by 'reading masses of secondary material in the form of books, articles and commentaries', which while not participant observation is still informed by an ethnographic sensibility (Hall et al 2013: xi-xii). We should research 'concrete events, practices, relationships and cultures' by also 'locating them in the histories taking place behind all our backs' (ibid.). Following this example, while studying the fabric of government through documents, archives and oral historiography, I aimed to do so without neglecting the social context from which penalty draws its force and urgency. Finding connections between changes in the penal state and imprisonment is fruitfully supplemented by a 'break out' from the narrower empirical focus (Skocpol 1987:27), and employing a wider perspective which links structural transformations to lived experience of penal politics.

The prison is fundamentally a social institution and a form of social control (though how that manifests in practice is dependent upon the political actions which support and produce it). The prison thus should be identified in its relationship to other social forms which give it its sense of necessity, imperative and distinctive role in society. This sociological historical perspective shows that 'crises in penalty do

not arise primarily from the internal problems of punishing offenders but from transformations in social and political structures' (Simon 1993:5). In conducting the analysis in tandem with the secondary literature I followed the complementary agendas set out by Garland (1990a, 1990b) and Carlen (1983) in the sociology of punishment and Vaughn's (2004) archival research. Combined, these perspectives suggest that social meanings, political intentions, and cultural resonances are often submerged and rationalised into the working patterns of the prison. The job of a sociologist of punishment is to interpret those diverse strategies to reveal their embedded sources of common-sense and rationality. Using historical material, the researcher can also 'track' actions and the attendant 'cultural constructions' of their supporting ideas, prerogatives and meaning-making to wider structural matters (Vaughn 2004:321-322).

An example of these qualitative methods and analysis done in a rigorous comparative way can be seen in the work of Amy Schalet (2006), who researched differences in the parenting styles of Dutch and American families, particularly with regards to their adolescent children's burgeoning sexuality. Using interviews with parents and their children, Schalet reveals the different ways parents police, chastise and govern these most intimate and fragile familial relations. By listening and analysing people's own words and understanding that those words are tied to wider social, political and cultural concepts, Schalet discloses a much bigger story about the relationship between our domestic rules, our desires for orderliness on the personal level, and the social order and political system which we inhabit. American parents 'dramatized' approach to sex education was conditioned by cultural and political ideas of American volunteerism, individualism, and was further curtailed by the limited character of the American welfare state. Their Dutch counterparts' 'normalising' style was informed by a consensual sense of collective principles and supported and reinforced by a more extensive welfare provision. Though different situated cultures may use generic words – parenting, governing, rehabilitating, modernising – what each of these mean will be freighted with its own local

meanings and distinct social resonance. It is a means of explaining cross-national differences by showing, as Mills did, how our personal troubles reflect public problems.

Following the examples of Schalet and Hall et al, analysing and explaining changes in imprisonment and the character of penal politics therefore must also look to the social grounding that conditions ideas and expectations of state intervention, and generates new demands for imprisonment. Throughout the substantive chapters that follow, the insider perspective of the historical ethnography is woven together with secondary data and government reports. These illuminate the shifting quantities and forms of such issues as crime, employment, family structure, class, demographics, emigration, economics, religion, political dissent, social discrimination etc. when they are directly relevant. The social frame allows us to locate some sources of change that exist beyond the struggles and administrative patterns of the prison administration. In addition, examining social order within the longer trajectory of historical social change provided both new explanations and improved assessments of penal transformation. We should never forget that political demands made of imprisonment do not only reflect matters of crime and punishment, but their shifting place in wider cultural sensibilities. Set in the wider social topography and longer historical trajectory, we might see, for example, that negative or more punitive prison practices can in fact be the result of more generally positive or progressive social changes, and vice versa.

## **5. Analysis of the Data**

Chapters Two and Three outlined the interpretive comparative framework of imprisonment regimes and political culture, the preceding sections of this chapter have addressed how the thesis data was gathered and recorded. Here I will address how that material was then analysed. The arguments and insights in this thesis are not the product of theory testing but the result of an inductive approach which

allows the researcher to simultaneously develop theoretical concepts through the interpretive analysis of data (Mason 2002:180-181). The data was analysed thematically, identifying patterns of meaning, latent concepts and ideologies in the data (Braun and Clarke 2006) and also supporting the historical research agenda (what happened?). Loader's *Platonic Guardian* essay provides a useful example of how to analyse such cases, describing the kinds of political ideas embedded in governmental talk, such as responsibility, power, justice and fairness. In the same way Girling et al (2000) show that analysis of these kinds of digressionary interviews contain within them beliefs about bigger issues of exclusion and inclusion, welfare, the proper role of government, and a sense of appropriate ways to maintain their local order. A close thematic and analytical reading of this kind can bring to the surface the grand ideas of legal and political theory, social concepts, and show penology writ small and made workable, informing people's habits of thought and action.

Thematic coding was part of the analytical strategy. Themes became the heuristic devices to reflect upon the data from which they were drawn, and used to make larger sociological arguments, generate new explanatory theories and develop broader insights therein. To describe the process as 'coding' makes it sound simple and linear, but it is more iterative and sometimes a meandering process of discovery. Creating codes from the data 'is also about conceptualizing the data, raising questions, providing provisional answers about the relationships among the data, and discovering the data' (Coffey and Atkinson 1996:31). I did not use software packages to support the analysis of the data and instead used word documents and folders to organise material. In undertaking this process, I transcribed all the interviews, but also engaged in a process of re-listening to the original recordings, re-reading the transcripts on numerous occasions and continuously returned to read and re-read my archival material and documentary sources. What themes emerged also had to be mapped over time to see how their patterns evolved.

But this all-too-clear account of a central thematic finding is a 'chronological lie' (Bosworth 1999:83). At first I found myself coding everything and soon was overwhelmed by a messy semiotic over-abundance. But in the lengthy and iterative process of transcribing and re-reading the primary data my familiarity with the patterns and events grew and I managed to merge small disparate themes into larger relevant thematic groupings. But that is part of the thematic practice which is a much lengthier process of refinement (Coffey and Atkinson 1996).

## 6. Conclusion

This chapter suggests that taking an historical turn provides comparative study with both additional empirical depth and analytical leverage. It provided an overview of how the research material was collected, recorded and analysed. The historical research design tempers the study's capacity to make sweeping conclusions about penal change. That grounded historical context significantly improves the comparative perspective. We can examine the relationship between political culture and its effects on imprisonment by looking at it in depth, overtime as well as between place.

Narratives can achieve 'a certain education of memory' (Ricoeur 1999:8). This thesis favours a chronological history, one which can reassess, confirm and complicate standard narratives of Anglophone, but particularly Irish and Scottish penal politics. The histories presented in the following chapters are situated in their contemporaneous political and social milieu. Herein, the thesis tracks the changing penal sensibilities and governmental techniques in order to (1) understand how imprisonment was situated in those political cultures, (2) examine why that differed between jurisdictions, (3) with what divergent consequences for offenders after the moment of imprisonment in Ireland and Scotland, and (4) using a wider sociological perspective, explain why these patterns changed over time. As a result of the

methods and interpretive framework developed in this section, the accounts of Ireland and Scotland outlined in the sections which follow might be best described as revisionist. They will, to some degree, modify and extend what we think we know about these matters, based on new historical evidence and interpretations.





## SECTION TWO

### The History of Irish Imprisonment and Political Culture, 1970-2000



## Chapter Five

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### Pastoral Penal Culture

#### I. Introduction

This chapter is the first of three, and shall begin the recovery Ireland's penal history using archival material, documentary data and interviews with Cormac, Jim, Liam, Sean, Gerard, Pádraig, John, Tom and Niall, all of whom worked inside the Department of Justice in Ireland in relation to prisons. This chapter discusses Irish penality from 1970 to the early 1980s, using the historical methods, and concepts of imprisonment regimes and political culture as set out in the previous Section.

Employing a narrative form, the chapter first provides a textured understanding of the contours of social life, anxieties and political norms in 1970s Ireland. Using secondary sources, this chapter shows Ireland as a nation defined largely by its religious and cultural homogeneity, shaped by collective values and where family life was paramount to the national order. Ireland had been a poor country and emigration was a pervasive phenomenon and a major social concern. By the 1970s a new modernising impulse was being felt in Ireland, but there was also violence and civil war in Northern Ireland. These emergent progressive and disruptive forces provided the motor for Irish penal development in the 1970s to beginning of the 1980s. Though they merged with the traditional social practices and political outlooks which were embedded in the Irish penal state, it is the relationship between these forces, and their impact upon imprisonment, that this chapter will explicate.

The chapter draws on annual reports, archival material and interviews to recover a map of imprisonment regimes for 'ordinary' and 'subversive' prisoners in Ireland in

this period. I suggest that Irish imprisonment was produced and maintained by the political culture of this time, defined by a *pastoral conservatism*. Characteristic of pastoral conservatism was a commitment to state restraint, motivated by the totemic image of the Irish nation as familial and communitarian. There was an acknowledgement of the pains of imprisonment and a tangible empathy with the plight of the prisoner, informed by humanitarian and indulgent sensibilities. But also, in what might appear as a paradox, pastoral conservatism had a capacity for authoritarianism.

Finally, this chapter also makes a broader argument: that Irish political culture (and thus imprisonment regimes) were embedded within Ireland's distinctive social field. Building on the themes highlighted in the extended introduction, this chapter argues that the reliance on emigration, collective efficacy and the importance of the Church in maintaining social norms meant that prison was only a secondary mechanism in responding to transgressive behaviour. Moreover, criminal behaviour barely pierced the consciousness of the political culture. The confluence of these social forces opened up the space for the development of more indulgent and pastoral forms of imprisonment.

## 2. Irish Historical Landscape

### The Irish State

Until 1922 Ireland was part of the United Kingdom. While Irish MPs sat in Westminster the history between these two nations was fraught with resistance, oppression and alienation. After a prolonged campaign of guerrilla warfare against the British in Ireland from 1919, the Anglo-Irish treaty was signed in December 1921 and Ireland became the Irish Free State in 1922. While Britain relinquished its control of a part of Ireland, the Irish made concessions, in particular allowing the British to keep the six northern counties of the island which became the British

political territory of Northern Ireland, often referred to as 'The North' (Whyte 1974). The new Irish government, and many governments thereafter, retained their hope of retrieving the North from the British and a strong nationalist streak persisted in Irish politics.

## The Catholic Church

Irish cultural, political and social life had been dominated by the Catholic church. In the 1970s Ireland was an exceptionally homogenous nation, with over 90% of people identifying as Catholic (Ferriter 2012:5) and almost all of those practicing rather than nominally Catholic, with 91 percent of Catholics attending weekly mass (Nic Ghiolla Phádraig 1986). We also need to think of the Church in terms of the power and control it exercised over Irish social, cultural and political affairs from the formation of the State in 1922. Successive government implemented policies which aligned with Catholic teachings, and on occasions they capitulated to the Hierarchy's oppositions to government policy.<sup>15</sup>

For example, when Irish political leadership sought to replace the 1922 Free State constitution, the Irish Catholic Hierarchy provided direct input.<sup>16</sup> The implementation of the subsequent 1937 Constitution declared a particular narrative and image of Irish life, giving the Catholic Church a formal seat at the centre of Irish life: it was recognised as having a 'special position' as the faith of the Irish people. The Church and the Government often supported each other, a relationship Inglis (1998:77) characterises as 'peaceful coexistence', in which each publicly upheld and supported the other (see also Larkin 1975).

The Church advocated an anti-statist view on matters of social and moral life, reflected in much of the contemporary political legislation, particularly on health,

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<sup>15</sup> There was often adherence to Church status and ethos, even if politicians did not agree with it (Inglis 1998:75).

<sup>16</sup> According to Whyte (1980:51) the original constitution was viewed it as a product of a bargain with the British and wanted to replace it with something 'indisputably Irish'.

education and family (Whyte 1980; Inglis 1998; Fahey and McLaughlin 1999; McDonnell and Alison 2006). The Church was against schemes which threatened to contravene its sovereignty over these matters. For example, the Catholic Hierarchy opposed what it felt were overly intrusive welfare programmes such as free access to health care for certain groups (what came to be known as the Mother and Child scheme).<sup>17</sup> Instead, they supported and contributed to the alternative 1953 Health Act; they supported the implementation of ongoing censorship with their prominent presence on the Vigilance Committee (sometimes referred to simply as the 'V committee'), a small group responsible for banning what was considered to be morally improper books, films and magazines deemed morally improper (Cooney 1999). Marriage and family were closely regulated, with total prohibitions on contraception and divorce and legislation banning inter-religion adoption (Cloatre and Enright 2017). Their power also extended into Irish schools, health, and social welfare which were largely controlled and staffed by the Catholic Church (Whyte 1980; Inglis 1998; Chubb 1992; McDonnell 2006 et al; McDonnell and Alison 2006). The weekly (sometimes daily) mass services also served as a mode of maintaining social control as priests had a powerful platform from which to preach moral and behavioural community conformity and loyalty to the family, reinforcing values and denouncing deviance from the pulpit (Nic Ghiolla Phádraig 1986). The confluence of mass, Catholic conformity, social control and politics are evident in the story of Mary Robinson, who was soon to be President of Ireland. Robinson, then a Senator, was denounced from the pulpit in the 1980s at her family Church for supporting the "anti-social" legislation of contraception. Ultimately the bill did not even receive a first reading in parliament as it was blocked by the Government. She has described the pervasive 'authoritarian orthodoxy'; 'the degree of fury and venom', and the hate mail she received in response to her political work which was perceived as an offence to Ireland's 'Catholic ethos' (Robinson 2012:72-73).

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<sup>17</sup> The Minister who had tried to implement the health scheme had to step-down as a result. In his parliamentary resignation statement, he was clear about the Church's influence upon the policy: 'the Hierarchy has informed the Government that they must regard the mother and child scheme proposed by me as opposed to Catholic social teaching. This decision I, as a Catholic, immediately accepted without hesitation.' (Dáil Éireann Debate 12 April 1951 Vol 125 Col 667).

There were two important consequences of this in relation to this study. First, Ireland was gripped by a censorious, conservative and even authoritarian approach to social life. Sexual and cultural repression, the absence of alternative ways of life, gave rise to – according to McDonagh – a ‘poorly understood distinction between culture and religion’ (quoted in Robinson 2012.; see also Inglis 1998). Second, the Church operated as a shadow authority structure in Ireland, and ‘while the rest of Europe secularized its institutions and culture the Irish commitment to religion was sustained and even intensified’ (Girvin 1986:62). Arguably, the state’s sovereign power was underdeveloped in comparison to other Anglophone democracies. In Ireland, the Catholic Church were a colossal power bloc (Inglis 1998), which controlled health, education and welfare. And while it supported the government it also advocated against any state intervention in its perceived social moral realm, in which the Church felt itself ‘responsible for the moral well-being of the nation’ (Larkin 1975:1274).<sup>18</sup> As a result of this division of governing power between Church and State, and the very clear anti-statism propounded by the Church, a political culture of non-interventionism and minimalism manifest inside the government. The state, its deployment of power, was curtailed and informed by its symbiotic relationship with the Church.

During the 1970s the Church’s power and status was subtly waning, however. In the face of chronic poverty, industrial and economic stagnation, the Irish government began to introduce new welfare provisions for citizens in the 1950s (Fahey and McLaughlin 1999). The Government also began to develop policies supporting industrialisation and modernisation (Inglis 1998). Then in 1972 the Church lost its special place in the constitution via referendum. There was also an easing of censorship laws (Chubb 1992; Whyte 1980); the lifting of a Church ban on Catholics attending Trinity College Dublin in 1970; and in 1972 and the Supreme

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<sup>18</sup> Though Whyte (1980) writes that this only occurred on a few occasions. Inglis argues that the indirect influence of the Church power was considerable, as displaying ‘religious capital’ was essential to advancing in Irish social and political life (Inglis 1998).



Court ruled that married couples should be allowed access to contraceptives (Ferriter 2012). There were changes afoot in the dynamics of Irish political and social order.

## Loyalty to Family and Community

The investment of the Catholic Church and the state in regulating contraception and preventing of marital breakdown as mentioned above, as well as preaching about the importance of premarital abstinence, were both underscored by the totemic image of the traditional family (Whyte 1980; Canavan 2012; Mohr 2017). When the Irish Free State government banned divorce, Cosgrave – the political leader of the government – stated that:

‘I consider that the whole fabric of our social organisation is based upon the sanctity of the marriage bond and that anything that tends to weaken the binding efficacy of that bond to that extent strikes at the root of our social life’ (quoted in Mohr 2017:222).

Like the Church, the centrality of the family unit to Irish social life was made official in the Constitution which declared: ‘The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law’. It went on: ‘The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State’. The constitution also declared women’s social role as domestic and familial and reiterated the prohibition of divorce (Seward et al 2005). This the Constitution shored up Ireland’s socially conservative national narrative (Berezin 1997).

In matters of education, the Constitution accorded primacy to the family rather than the state: ‘The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of

parents to provide...for the religious and moral, intellectual, physical and social education of their children'. In general, the privacy of the family was deemed paramount and the family unit was sacrosanct, and it was to be protected from state intervention (Kennedy 2001; Fahey and McLaughlin 1999; Mohr 2017; Seward et al 2005; though see Earner-Byrne (2017) for a class critique of this non-interventionist argument). The cultural image of the Irish family gave impetus to Irish political and Church activities. The common good of the nation was generally based around the family, which took precedence over the individual (McDonnell and Allison 2006; Lee and O'Tuathaigh 1982; Kennedy 2001).

Families were not autonomous units, however: they existed in community networks. Ireland was considered by historians to have communitarian class relations, which were less rigidly hierarchal, supporting that strong sense of nationhood (Coakley 1999:50-51). Chubb (1983) has written that paramount among the dominant traits in Irish cultural life was loyalty to family but also community and neighbours. Emphasising a similar point, O'Dowd has written that Ireland's 'sense of place, community, kinship and mutual aid' are what shaped Irish identity and life (1987:44). Even economic change during the 1970s was framed in nationalist rather than individualist terms. Left wing politics and trade union movements did not have a class based ideology and there was a general 'absence of class based cleavages' which allowed traditional communitarian values to prevail (Chubb 1992:33). The national question muted Irish class consciousness, creating instead a national 'culture of community' (Hazelkorn and Patterson 1994:52); social relations which continued into the 1980s (Fogarty et al 1984).

From the formation of the State until the 1970s the role of collective morality and the family were central to the Irish 'nation-building project' (McDonnell et al 2006:820). Community, the family and the nation were intertwined in the Irish imagination, and any political campaign for smaller group identity politics, such as class or gender, were rebuffed as threats to the interests of the community (O'Dowd

1987:45). Lee and O'Tuataigh (1982:15) maintained that 'no society in Europe so exalted the ideal of the family in its official rhetoric'.

## Crime and Deviance

The image of a cohesive Irish community was partially supported by Ireland's very low crime rates and the fact that crime was not considered a social problem – Ireland was described as a 'policeman's paradise' (Brady 1974:240). Crime was statistically low, but a broader perspective on deviance needs to be outlined in order to fully understand the penal landscape that subsequently emerged. While crime held little sway in the Irish national imagination there was a steady preoccupation with moral issues rather than legal transgressions. As O'Sullivan and O'Donnell (2007, 2012) have persuasively argued, fears about moral deviance and sinfulness were major social forces.

In an important work of historical recovery O'Donnell and O'Sullivan (2007, 2012) have illustrated the novelty of imprisonment in modern Ireland. They demonstrate Ireland's staggering 'carceral archipelago' (Foucault 1977) of largely Church run institutions, such as Mother and Baby Homes, Industrial and Reformatory Schools, Borstals, Magdalene Laundries but also state-orientated Asylums, which in 1951 held 1% of the Irish population (more than 1,000 per 100,000). At the same time, prison had a per capita use of 16.5 per 100,000. These were places for 'the difficult, the disturbed, the deviant and the disengaged' (O'Sullivan and O'Donnell 2012:5). The monopoly on legitimate violence was not entirely controlled by the democratic state, instead the penal culture prior to 1970 had cohered around matters of morality and deviance which empowered non-state actors. The capacity to punish, chastise, stigmatise and control deviant Irish populations was largely invested in the Catholic Church, with support from the state, community and family activities.

This level of incarceration beyond the state reveals a deep vein of authoritarianism in Irish political life – one which favoured moral institutions over governmental ones, and sought to suppress social transgressions and immorality rather than legal

infractions. In fact, while coercive confinement expanded in Ireland, the government was actually closing prisons before the 1970s (Rogan 2011). However, from the middle of the century state actors began to displace non-state actors in the confinement of Irish citizens (O'Sullivan and O'Donnell 2012). In the 1970s, the prison was slowly gaining more traction as a social institution. But its demoted position in the diverse network of social control architecture was long established.

## **Rural Fundamentalist to Burgeoning Modern State**

The image of Catholic and communal Ireland was founded upon and intertwined with the 'rural ideal' of Irish national life (O'Dowd 1987:43-44). Ireland was an outlier in the Atlantic Isles and Western Europe, as it had not experienced an industrial revolution (O'Connell 1999). This vision of Ireland has been characterised as 'rural fundamentalist'; it rejected industrial work and demonised urban secular life (ibid.; O'Sullivan and O'Donnell 2012; Commins 1986). The Irish state had tried, from 1922 until the 1950s, to make Ireland a self-sufficient rural Catholic nation of family-based farms (Fennell 1986:395; Fahey and McLaughlin 1999). Rural life was the idealised end-goal of the nationalist project. It was reported that prior to Ireland's liberation from British colonial rule, a free Ireland would have 'no Glasgows and Pittsburgs' (Padraig Pearse quoted in Fahey and McLaughlin 1999:122). In 1926, when Ireland was a newly minted state, only 32 percent of the population lived in towns, with only 13 percent engaged in industrial work compared to the 51 percent working in agriculture (Whyte 1974).

The 1960s and 1970s mark a period of transition, however (Girvin 2008; Ferriter 2005; Beatty 2013). Rural fundamentalism began to give way to new modernist ideas regarding economic development, which shifted the focus from a self-sufficient nation based on a network of small family run farms to international trade (Commins 1986). By the 1960s the Irish government was becoming more interventionist, and began to develop new economic and social welfare policies. At

the end of the 1950s the government moved away from its policies of agrarian protectionism (Kilcommins et al 2004; Fahey 2002) as a new 'pace of change accelerated from the late 1950s with a paradigm shift in economic planning and a policy focus on attracting inward investment and export-led development' (O'Sullivan and O'Donnell 2012:7).

Excitement around the potential of prosperity grew during the latter half of the twentieth century. The 1958 Government publication of the *Programme for Economic Expansion* was a seminal moment. It is widely considered to mark the beginning of Irish industrialisation as well as tentatively increasing governmental intervention in social and economic development (Chubb 1992; Breen and Whelan 1998; Commins 1986). By 1966 almost half of all Irish people lived in towns or urban settings, and the agriculture workforce had fallen to 31 percent of the labour force, while the industrial sector had increased to 26 percent of the work force (Whyte 1974). From 1961-1970 Irish industrial production began to expand, which saw the population migrating from rural settings to towns. Belatedly, thus, Ireland began to industrialise and modernise (Breen et al 1990) and declining agriculture was accepted as a consequence of Irish economic and social development (Commins 1986:53).

The 1960s also marked the beginning of an expansion of a government-supported welfare state. An old age pension, an unmarried mother's allowance and a children's allowance were introduced. While other European nations were facing financial adversity due to the oil crisis in the 1970s, in Ireland the welfare state was just beginning to flourish (Kilcommins et al 2004:283).<sup>19</sup>

Then in 1973 Ireland joined the EEC. Until that point Ireland had been largely insulated from Europe (Coakley 1999). Now Ireland was more exposed to

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<sup>19</sup> Kilcommins et al report that the in 1965 government spending in Ireland was 36 per cent of GDP but grew to 70 per cent by the 1980s and that welfare expenditure benefited in a strong growth over the last part of the twentieth century (2004:283).

international markets and modern ideas of industry, politics, economics and statehood. Ireland lagged far behind the rest of the EEC in economic terms (Coulter 2003) and was the first country to apply for aid from the EEC regional fund (Ferriter 2012). But Irish wage increases in the 1970s were unprecedented, and outstripped comparative EEC wage growth (Seward et al 2005). From the end of the 1960s, the economy grew at more than 4% per annum (Norris 2016:158). This was an era of promise and change.

## Emigration

The 'evils of emigration' was another critical political and social issue that shaped and regulated Irish life (Delaney 2000:4), described as the phenomena of 'the vanishing Irish' (O'Brien 1953). By the time the state had formed in 1921, Delaney argues, 'migration was an established stage in the life cycle of young Irish people'. This remained the case until the 1970s (2000:29-30), and 'growing up in Ireland meant preparing oneself to leave it' (Fitzpatrick 1984: 2), with parents often raising their children preparing them for emigration (Inglis 1998).

While always publicly interested in solving the emigration problem, Delaney has found that the Irish government did little to prevent Irish emigration, as it reduced the unemployment levels.<sup>20</sup> Though the flow of emigrants fell in the 1960s, emigration remained a 'structural feature' of Irish social landscape (Delaney 1998:46). Rather than seeing mobility as undermining Irish conservative and Catholic morality, these dynamics supported it, relieving the country of its morally wayward and economically idle citizens. Brewer et al (1999:177) suggest that emigration served to subdue crime rates as young adults left Ireland. Migration functioned as an important form of social control, maintaining the quotidian image

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<sup>20</sup> When WW2 broke out the British implemented an identity card system as a security procedure for people traveling into Britain. In response, the Irish Department of External Affairs began to issue the necessary identity cards. As the war worsened and France fell travel security in Britain was tightened; however, this began a period of cooperation between Irish and British governments, negotiating under what conditions emigration to Britain would be facilitated by the Irish government (Delaney 1998). Revealing the Irish dependence on emigration as a tactic against unemployment and stagnation.

of Irish social life as homogenous, Catholic and family-focused. Emigration and Irish mobility 'swept social problems aside' (Fanning 2007:1) and maintained the image of national purity. Besides economic reasons, however, Irish people also emigrated as a form of liberation from the moral rigidity of the Irish community and political life. Britain and other foreign countries offered the chance of a more intellectually stimulating and less deferential atmosphere (Chubb 1992).

Just as with other major social forces at this time, the 1970s also marks a brief reversal in the pattern of migration, with the population actually experiencing net inward migration for the first time: immigration was largely made up of returning Irish, landing back in a country then experiencing economic expansion (O'Sullivan and O'Donnell 2012).

## The Troubles

Although the 1970s was a time of economic renewal, there were problems that could not be ignored or deported. The violence and oppression in Northern Ireland began to escalate in the 1960s and into the 1970s as the social divide between Catholics and Protestants deepened (Whyte 1991). Catholics were subject to discrimination by the local government, leading to the emergence of a civil rights movement, which on one early occasion, October 5 1968, sparked a violent response by the RUC (Royal Ulster Constabulary). Shocking and graphic footage of the event led to an 'explosion of anger' among the Catholic community and has been seen by some as the 'moment' 'The Troubles' began (McKittrick and McVea 2000 41-42).<sup>21</sup> There were to be more protests which ended in conflict in 1969, such as a number of electricity and water utilities were bombed. Soon thereafter, the North began a 'descent into violence' as sectarian relations deteriorated into a sustained, violent revolt from 1969. The majority of casualties and of the destruction to lives, communities and homes were among the Catholic communities. There was a feeling among some Catholics that the IRA (the Irish Republican Army) were not properly prepared to

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<sup>21</sup> 'The Troubles' is the euphemism for the period of conflict in Northern Irish history.

protect the community against Loyalist and British incursions. In this context, a new and more aggressive IRA movement was born (ibid.:60) and a full scale and brutal civil conflict broke out.<sup>22</sup>

## Catholic Conformity and the Modernising Impulse

This section has sought to outline the major structural dynamics, cultural meanings and political outlooks in Ireland until the 1970s. The nature of Irish social life and political culture reflects the complexity and heterogeneity of any nation. The Irish state had promoted and supported pastoral values (Fahey 2002), imbued with an idealised vision of rural and family life underpinned by a conservative ideology. It was a society organised around collective national identity, shaped by moral prudery, religiosity and social conservatism. The dynamic between the Church and the state allowed the Catholic Hierarchy to wield considerable power and control.

As a result, until the end of the 1960s, Ireland was blighted by an oppressive social conformity. While crime was not a major social matter, deviance was – and a network of places for confinement operated to combat social non-conformity. Emigration and morality, rather than crime, were serious political issues (McCullagh 1996). At the same time, emigration also controlled and help alleviate any insurgent feelings or discontent about poverty and unemployment. It relieved the country of its wayward citizens as well as providing an escape route for those wishing to flee stifling social relations.

However, the 1970s was also a formative period in contemporary Irish social and political life. The ‘coherent vision of society’ (Fahey 2002:53) which had informed Irish governmental action began to change in the 1970s, due to Ireland’s economic

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<sup>22</sup> Hayes and McAllister (2001) have written of the extent to which the population of Northern Ireland were exposed to violence. One in seven people in Northern Ireland reported being a victim of violence. Another one in five had a family member who had been killed or injured. One in four of the population had experienced an explosion.



and political advances. The 1970s was a time of transformation and transitions (Ferriter 2012); what had been a very settled social order was slowly and steadily evolving (Inglis 2005).

We will return to these matters towards the end of this chapter. For now, we must move closer to the history of Irish political culture and the use of imprisonment – the development of which became embroiled in these historically embedded mores, power dynamics and the emergence of new political and social forces.

### 3. Ordinary Imprisonment Regimes

In the 1970s Irish prisons were managed by the Prison Division, a small centralised group of civil servants based inside the Department of Justice in Dublin.<sup>23</sup> They were responsible for just over 700 prisoners, about 500 of whom were adults. The majority of those adult prisoners were categorised as ‘ordinary’ prisoners, and were held in Ireland’s three adult prisons: Mountjoy (Ireland’s largest prison),<sup>24</sup> Portlaoise and Limerick. These prisons had little in the way of routine work, and there were long lock-up times with an almost total absence of programmatic prison activities (Behan 2018). While Portlaoise had a farm, sewing mailbags was one other activity available, and basic domestic chores were performed by prisoners. There was little to inspire in these old and dilapidated prisons, and the lack of systemic programmes and prison-wide activities persisted throughout the 1970s into the 1980s (Rogan 2011). Nonetheless, the 1970s also saw significant prison modernisation, when the character of Irish ‘ordinary’ imprisonment regimes changed and the routines within these prisons became more permeable, educative and supportive.

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<sup>23</sup> I will use the term ‘Department’ and ‘the Division’ interchangeably to refer to people who I spoke to who worked on or around these matters.

<sup>24</sup> Between 1970-1980 it held from 300 to 440 prisoners.

## Expansion

Prison numbers were historically low in Ireland, and they had been falling further through the middle decades of the twentieth century (Rogan 2011). The prison population began to grow in the 1970s, however, and by 1980 the number of adult prisoners had doubled in comparison with 1970. While the prison population was still strikingly tiny by international standards the relative rise requires a close investigation of the Prison Division's response to this sudden change. For the first time since the formation of the State the Irish government set about expanding the prison system. Four new adult prisons opened in the early 1970s – Cork, Arbour Hill, The Training Unit and Shelton Abbey, marking a remarkable expansion of prison space and infrastructure.

Rising prisoner numbers led to concern inside the Division, and there was a desire to ameliorate the new phenomenon of prison overcrowding (JUS/2002/2/66). Two new closed prisons, Cork and Arbour Hill, were established. Both were former military detention barracks. The pressure the Division felt to provide more prison space resulted in Cork (on the south coast) opening early in 1972, even though some wings were still being reconstructed. Instead of its intended capacity of 90 prisoners, Cork prison's initial population was 49 prisoners. The second prison, Arbour Hill, was opened in 1975, though it had a more specific operational designation as accommodation for long-term prisoners, which at the time meant two years or longer. Arbour Hill held between 40 and 90 prisoners during its first years. The regime at Arbour Hill also provided printing workshops designed to produce braille education materials (*Annual Report 1976*; Department of Justice 1981a).

Thinking about the dynamics of the imprisonment regimes rather than increases in numbers reveals a more complicated story than the alarmist one that tends to be summoned in response to a rapid rise in prison numbers. For example, in the 1970s women prisoners were held on a landing at the juvenile prison, St Patrick's, and creating a designated women's prison was foremost in the Division's expansion

plan. The conditions for women in St Patrick's were seen as 'old' and 'unsuitable for women prisoners' (TAOIS/2012/90/354). A site had been purchased in Dublin for the construction of a new prison specifically for women and juveniles, but the plan was abandoned after sustained local opposition. Shortly thereafter another site was purchased at Wheatfield in west Dublin. A new commitment and resolve was evident: 'having been forced to back down from an earlier site...there is no question of rescinding plans to go ahead with the above development [at Wheatfield], despite local opposition' (ibid.).

Until this time all of Ireland's prisons had been inherited from the British, and it was during this period of expansion that the government embarked upon the construction of the first Irish purpose built prison which would be named the Training Unit (*Annual Report 1972*). The Training Unit was developed with a very distinct set of criteria. Housing between 90-96 prisoners (serving long or short-term sentences) it was lauded as 'a fully modern environment' (*Annual Report 1976*).<sup>25</sup> The Division was explicit, the aims of the Training Unit were, first of all, to improve the employment prospects of prisoners via accredited courses provided by the Industrial Training Authority (known as AnCO) (Department of Justice 1981a:3). AnCO had only been established in the late 1960s by the government which was trying to support the development of skilled workers for new modern industries (O'Connell 1999), reflecting the modernising fervour. In addition, the Training Unit operated what was described as a 'liberal regime', intended to be less incapacitative. Within the Unit, the regime was designed to mimic normal working, living and domestic routines. It had an open ethos. Internally there was open association – meaning prisoners could move around the prison without supervision, and could wear their own clothes. Perhaps most significantly, many Training Unit prisoners went out to work during the day and returned at night.

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<sup>25</sup> The Training Unit was originally established in 1962 after a recommendation from a Departmental working group. Until the construction of the Training Unit it had operated as a regime within Mountjoy.

The fourth prison opened in the 1970s was Shelton Abbey, Ireland's first fully open prison for adults, with an average of 35 prisoners, opened in 1973. The building itself was a former stately home which had been acquired from the Department of Lands (Rogan 2011). Shelton Abbey was a grand country manor – which was referred to as the 'big house' within the Division<sup>26</sup> – and the building retained its historical name rather than being given a new carceral designation. The annual prison reports showcased the grandeur of the interior décor, impressive common spaces with high ceilings and chandeliers, the stateliness of the building's exterior and the extensive grounds. The regime for prisoners at Shelton Abbey was primarily oriented around renovation and repair of the building itself. The annual reports proudly state that the institution was 'in beautiful condition and the improvements are in keeping with such a lovely building' (*Annual Report 1979*:50). There was no apparent concern that this was too good for prisoners, or that such conditions would generate any kind of public outcry.

The benefits of Shelton Abbey lay in its use of trust: '[prisoners are] likely to benefit from an atmosphere of trust' rather than coercion or rehabilitation (Department of Justice 1983:15). Similarly: 'The fact that the prisoners are grateful for the trust placed in them can be seen from the diligence with which they approach their work and the very high standard achieved' (*Annual Report 1983*:21). The peculiarity of a prison system without trust was put explicitly in an earlier notation: 'Rationally, if iron bars, locked doors and constant watchfulness are necessary to keep a person in line even in prison, then he should never be released' (JUS 93/182/17 quoted in Rogan 2011:107).

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<sup>26</sup> The term big house here is a literal description and obviously means something significantly different to those big house prisons Simon identifies as having been closed prisons in the USA in the 19<sup>th</sup> and 20<sup>th</sup> centuries (2007:146-147).

## Rehabilitation

The concept of rehabilitation was formally attached to Irish prison policy discourse in the 1970s Prisons Act, which declared that among its tasks, prisons should also promote rehabilitation (Rogan 2011). The practical rationale behind the Act was to provide legislative support for imprisonment in places other than prisons, specifically, open centres. Thus from 1970, a new kind of confinement had statutory support in Ireland.

Yet concurrently, the Minister for Justice proclaimed the prison environment was 'basically unsuitable for encouraging individuals to become adequate and responsible members of normal society' (Dáil Debates, vol 247, col 101, May 26 1970). Rehabilitation had a more ambiguous role in the shape of imprisonment regimes. In an unpublished internal document, the emergent matter of rehabilitation was tackled directly,

'The perennial questions what is the purpose of imprisonment and this, what should the policy of "the administration" be is not one which the Department of Justice can answer readily and is, perhaps, not one that is for the Department to answer, or, at any rate primarily... The notion sometimes expressed directly or by implication, that a great deal more could be done to motivate prisoners and, as it were, morally sanitize them, if only the Department would bestir itself and take some, presumably self-evident measures, is grossly misleading' (Department of Justice 1984d:7).

Notwithstanding this, during the 1970s welfare support in prisons was expanded. For the first 40 years or so of the state, welfare support inside the prisons was mainly provided by the chaplains. In 1972-1973 the first Directors of Probation, Education and Co-ordinator of Work and Training and four full-time psychologists were appointed (*Annual Report 1973*) and the Probation and Welfare Service increased from eight posts in 1970 to 150 in 1979 (*Annual Report 1979*). The development of release, education, psychology, welfare and training allowed the Division to engage with prisoners with what they described as a 'more individual and personal approach' (Department of Justice 1984a:2). The job of Psychological Services was

focused on the assessment of prisoners so as to counsel them and 'assist them in coming to terms with their imprisonment and with life in the community after release' (Department of Justice 1981a:10).

Welfare services were thus not connected to criminal rehabilitation or reducing reoffending. Liam explicitly addressed this when describing his work in psychological services in the Division. Recalling that prisoners were understood and judged within a much fuller conception of their personhood:

'In the early days we were holistic and took the person in their totality, but in the early days the last thing you would talk about was the crime. It was the well-being, how were they getting on?'

### Permeable Imprisonment

Incarceration in Ireland had another important feature that was being developed during this time: the use of temporary release (hereafter TR). Prisoners were released for either short periods of time or fully released before their sentence was complete. TR included both 'special leave' and 'daily temporary release'. There were also mass releases at Christmas and Easter across the prison estate (*Annual Report 1976*).

#### Use of Temporary Release 1976-1980

Year	Daily Average Prison Population	Total Number of Temporary Releases
1976	1,049	1,252
1977	1,029	2,720
1978	1,179	3,587
1979	1,140	2,842
1980	1,215	3,525

*Source:* Annual Prison Reports and O'Donnell et al (2005)

A feature of the Irish release system was that the decision-making was not fulfilled by a parole board. While the Minister of Justice was formally charged with the responsibility for granting each use of TR, in reality the Minister was rarely actively involved. Instead, Prison Division officials were authorised to grant release (Department of Justice 1981a; Griffin 2015; Griffin and O'Donnell 2012). Ideally, TR was decided upon at monthly meetings in the prisons (weekly in Mountjoy) with staff from the Division, the Chaplain, a Welfare Officer and sometimes teaching staff present (*Annual Report 1976*).

These informal and individuated practices were perceived to be among the core strengths of the Irish penal system. At the beginning of the 1980s, a draft ministerial address, described the way release was organised as beneficial due to its 'unfettered discretion' which ensured individual cases could be addressed in a 'speedy, flexible and relatively unbureaucratic' manner.<sup>27</sup> In the perception of the Division, discretion kept the system fair and flexible: 'The system [of TR] has been developed gradually over the last fifteen years and it is fair to say that we now have a well-developed, flexible system which is geared to the speedy consideration of cases' (*Annual Report 1980:32*). The use of TR was seen as emblematic of the Irish way of imprisonment. When reporting back to the Department after an international prison conference in Switzerland, it was emphasised that no other country seemed to use release quite as liberally as the Irish prison system. It was concluded that the heavy use of release 'compared favourably' with elsewhere and that in this regard the Irish system 'was particularly sound' (Treatment of Offenders Minutes, 3 October 1979). Overcrowding may have been an international problem but the Irish system was felt to be superior because of how it arranged permeable imprisonment regimes (*ibid.*). TR was positively described as having seen a 'noteworthy increase'; in 1977, almost 3000 Temporary Releases were granted and they expected, and hoped, it would grow further still in use and 'variety' (*Annual Report 1977:7*).

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<sup>27</sup> This file has no formal reference as it comes from a folder in the Department of Justice storage rather than the archives and was in a series of files from this period, but the copy I had was without a specific date.

TR was a process shaped by informality, pragmatic need and personal discretion. Describing the main kind of insight used to make daily penal decisions, Seamus, who worked in the Division throughout this period, said that 'everyday you were dealing with human stories' of the prisoners. Prison Division officials had to carry out their work using their discretion on a case-by-case basis. This was acknowledged in official documentation and it was reported that: 'there was no set pattern in the granting of temporary release as each case was considered on its own merits' (*Annual Report 1979:46*). John, whose first job in the Division in the 1970s was to support the TR process, described it similarly, as something highly discretionary and based on the merits of each case:

[The Prison Division] was a very busy section because even then there was overcrowding. So, Governors were ringing up with lists of prisoners who maybe could be released early and that kind of thing. But also, there was, in those days, a structured approach to sentences; it mightn't be structured in today's terms. We used to go to review meetings in the prisons. Which kind of basically involved reviewing the sentences of prisoners. How are they getting on, should they be forwarded for temporary release? Should they be, was there any chance of them, you'd be checking with the probation and welfare officers. There was also liaison meetings with the various services, including the psychiatrists and other professionals. It's all kind of vague and in the past now. So what was it like to work there? It was fascinating. It was very interesting to be looking at reports from welfare officers or whoever, other professionals who were coming in for services, and make recommendations about how prisoners' sentences should be managed... There was a list up [of prisoners], we would basically try and make sure there was no adverse Garda report'.

Placing great emphasis on tools of informal discretion and the deference to the authority of the 'Garda report' Liam, who also worked in the Division, described its pros and cons as being either incredibly progressive or authoritarian:

'it was much more informal, there were no systems. They were much more dependent on the Garda view, [to LB] do you know the Garda view?...So, if you were [letting] somebody out, well what do the Guards think? And they used to have these comments from Guards. They used



to ring up the local Garda station and say what do you think of [this person] and they may say he's a bollix, don't let him out'.

There were few crimes which excluded a prisoner from being considered for some form of TR. Internal decision-making documents on release for the most heinous crimes illustrate the evaluative distinction between 'complicated' and 'uncomplicated' lifers. A murderer suitable for TR could be distinguished by a relatively straightforward appearing calculation. If it was, as they described, a 'once off murder (often with the family)' then they were regarded as an 'uncomplicated life sentence', meriting consideration for release. The converse of this was the 'complicated lifer' – someone who had committed murder as part of a longer criminal career, and thus presented a danger (Department of 1984a:1-6). In addition, when someone was released they were not subject to the kind of onerous supervisory measures with which we are now familiar. There was a relatively small group of probationary social workers who were tasked with supporting a prisoner with post-release employment or family matters, rather than recidivism. The sticky grip of the prison did not follow the prisoner out into the community. This discretionary and individualistic nature of penal decision-making was a key feature of Irish imprisonment regimes.

During this period, the Prison Division also developed the Intensive Supervision Scheme (established in 1979) and the Community Service Orders (CSOs), which they developed as a way to stem the flow of people being sent to prison (Treatment of Offenders Management Meeting, Minute, May 1979). Having been involved in planning these new penal practices, Seamus spoke with pride at how Ireland was among the first countries to introduce CSOs 'to stop people being sent to prison'. The CSOs were devised by the Division to address the rapid rise in prisoner numbers at the sentencing stage, but they were also developing the imprisonment regimes in a way which would increase the number of prisoners who could be released after sentence (*Annual Report 1982*). It was a highly permeable mode of imprisonment. Prisoners moved in and out of the prison more freely, or served a

much shorter sentence than the court had stipulated. In an inversion of the principles of confinement, it was during this time that release became the most consuming aspect of the work of managing incarceration, and featured among the central aspects of Prison Division work.

These prisons were only for 'ordinary' prisoners, however. Ordinary was a formal category within the penal administration. Informally, they were sometimes lightheartedly referred to as ODCs (ordinary decent criminals). The category emerged to set them apart from 'subversives', who were those prisoners linked to the Troubles in Northern Ireland.

#### 4. 'Subversive' Imprisonment Regime

As mentioned the outset, the 1970s was an incredibly tumultuous time in Irish history, with the violence and instability of the Troubles in Northern Ireland. Other new meanings of imprisonment – its functions, its capacities, its aims – developed at this time were the consequence of violent events and pressing threats to state security.

The Republic of Ireland was suddenly the site of what was known as 'subversive' activities, including a bombing campaign, the murders of public and political figures and Gardaí as well as the assassination of the British Ambassador in 1976 (See Appendix 2 for a fuller list of incidents). Ireland found itself in a state of 'emergency'. The Irish government took firm steps to quell and contain the dissident activities in the Republic and hastily mobilised a series of authoritarian criminal justice responses. In 1972, the government established a nonjury Special Criminal Court where cases of subversive violence were held before three judges.<sup>28</sup>

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<sup>28</sup> These extensions of state power during the 1970s were not newly invented but rather a reactivation of once retired acts and practices (Mulcahy 2002:284)

The Government also passed emergency legislation in the Offences Against the State Act and Emergency Powers Act of 1976.<sup>29</sup> Shortly thereafter Ireland formally declared a State of Emergency and derogated from the European Human Rights Act (Mulcahy 2002:284-285; Ferriter 2012:345). Criminal justice became a central tool in maintaining Ireland's national security and stability.

As subversives found their way into the prison system, that sense of emergency took hold there as well. The Prison Division was now faced with a new task: upholding state security. 'Subversive' numbers among the prison population continued to multiply during the 1970s, now formally categorised as 'subversive' prisoners.<sup>30</sup> Osborough described them as presenting 'an array of daunting problems: difficult to house, awkward to handle, not simple to occupy, not cheap to guard' (1985:187, quoted in Mulcahy 2002:290).

The Department was at the very least intimidated by the IRA's strategic capacity and destructive capabilities, describing them as 'highly organised and disciplined and well supplied with funds' (Department of Justice 1973:1-2). But they also felt frustrated by them. There were on-going hunger and thirst strikes by Republican prisoners, tactics deployed to coerce the state into assigning them the status of political prisoners (Ferriter 2012), which they were denied. The disruption tactics of paramilitary prisoners stymied penal modernisation (*Annual Report 1973:9*). The construction of The Training Unit was briefly discontinued for 'accommodation and security reasons' (*Annual Report 1972:9*). The IRA's campaign inside Mountjoy at the beginning of the 1970s was supported by public protest outside the prison (Mulcahy 2002). One Prison Division official recalled that the arrest of the IRA Chief of Staff in 1972 in Dublin generated a large public protest outside the hospital (where he had been moved after a three-day hunger strike) and a failed rescue by armed

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<sup>29</sup> The Act allowed a person to be detained without charge for up to seven days, as opposed to 48 hours.

<sup>30</sup> 'Subversive' became a category in Irish prisons during the 1970s, though had been used with less formality in the 1930s (Rogan 2011), though it has no formal meaning in law. Perhaps suggesting a turn of phrase which captures the paramilitary character of their criminality but as a formal category also does not betray the Republican currents in the Irish government by naming them as terrorists.

Republicans (Terry 2012:218; see also Ferriter 2012), suggesting at least some wider public support for the IRA. This created what was described as a 'siege' atmosphere inside the Division (John; Jim; Rogan 2011). John, for one, was reluctant to discuss this time at all. Giving this one short anecdote encapsulating his anxieties:

'I never felt fearful, just, you know, wouldn't be advertising where I worked. Close friends knew, but I wouldn't be advertising it. If I was in a taxi and I was asked where I worked I would have said the Department of Agriculture'.

The subversives were mainly held in Mountjoy until a major riot occurred there in May 1972. Organised by Republican prisoners, the riot 'lasted almost six hours during which several prison officers were held hostage and an enormous amount of damage was caused' (Rogan 2011:138; *Annual Report* 1972). The Division was beset by panic; one civil servant wrote of the time:

'Fires had been started, the doors of cells had been ripped off, toilets were being wrecked and some highly dangerous prisoners were roaming the prison and terrifying the ODCs (ordinary decent criminals)', it was what felt like a 'life or death' situation (Terry 2012:212).

Along with cell doors, the new dentist surgery, the plumbing, records, new cooking equipment, bedding, the school and library were all destroyed. The Division was under immense pressure but were also disheartened:

'The work programme of modernising the prison and providing new amenities which was in progress for some years was brought to a halt and much work already completed was destroyed. The efforts of the trades staff were concentrated for the rest of the year on repairing the damage caused' (*Annual Report* 1972:9)

Mountjoy now had significantly reduced capacity, and roughly 200 prisoners had to be dispersed throughout the system (Rogan 2011:138). Up to 40 prisoners, largely drawn from the subversive prisoners but also including some 'ordinary' prisoners, were transferred to the Curragh (which already held a small number of paramilitary prisoners), a military barracks which was operated by the Department of Defence

and therefore outwith the remit of the Prison Division (Mulcahy 2002). The use of the Curragh was a quick response by administrators in the Prison Division, and was given formal footing via the hastily passed Prison Bill of 1972. The Bill provided temporary legislative support for the transfer of civilians into military custody. This allowed the government to respond to subversives as a special class of prisoner, but it protected their public claim that subversives were indeed fundamentally 'ordinary'.

To those in the Division, the campaign of protest by paramilitary prisoners illustrated that prison was not secure enough for subversives. An internal report into security in 1973 expressed serious misgivings within the Department. Civilian prisons were seen as too permeable; structurally incapable of achieving maximum security. Even the Curragh would prove to have exploitable chinks. Soon after prisoners had been resituated there in 1972 seven subversives tunnelled out of the prison (Department of Justice 1973). Even more dramatically, soon thereafter three Republicans escaped from Mountjoy prison yard via a hijacked helicopter which landed in the prison yard (ibid; Lonergan 2010). Internally it was argued that the prisons had failed to prevent the escape because they were designed for ordinary prisoners, who did not require high security: 'It has all along been the view of those in the Department of Justice concerned with the prisons that civil prisons are unsuitable for holding members of the IRA' (Department of Justice 1973:1-2).

With state security at stake and Republican imprisonment registering on the public and political radar, the Division was faced with the daunting task of ensuring that escapes, hunger strikes and protest did not become a recurrent feature of Irish imprisonment. A new penal prescription was required for subversive prisoners. What developed was a 'two-tier' prison system (Lonergan 2010), which deployed 'reactive' military imprisonment for its subversive prisoners (McEvoy 2001).

## An Armed Prison

Prison was now charged with an additional mandate. With the urgent need to tighten control over the paramilitary prisoners and respond to insurgency, Portlaoise prison – where the regime was largely focused on farm work – was redesignated as the central prison for subversives (Mulcahy 2002:290). From November 1973 it was the ‘Security Prison’ with about 175 subversives and 40 ordinary prisoners (Department of Justice 1981a:3, 1984b). The walls of the prison had to be impenetrable to escape *and* invasion. Portlaoise exerted a new and strikingly authoritarian display of state power as the Irish army were appointed to guard the walls of the prison (Loneragan 2010:114), and often the Gardaí supported prison officers inside the prison.

But describing it later, Niall explained in pragmatic and understated terms why such drastic measures were justifiable. Paramilitary prisoners were different – subversives were ‘lethal’:

‘They required a different approach, you know, they’re a much more resourceful and dangerous group of people to manage...they can be lethal. If they get the opportunity they will act. So that kind of tended to shift a lot of emphasis to high security arrangements, and that affects people’s thinking in relation to prison... [Portlaoise is] run by the Department of Justice but the military has a presence there and their job is a military job, that’s clear. If there’s an attack on the prison, as there was, but if you try to escape they will shoot you, it’s a very clear message’.

At a time when state security was paramount, the use of military force on the outer perimeter of Portlaoise provided a visual reminder of its commitment to maintaining the authority of the State. The presence of the army was particularly striking because of the distinct relationship between criminal justice and weapons, as well as the proclaimed neutrality of the national Irish army.<sup>31</sup> Weapons may be a ubiquitous feature of American, European (and latterly) British policing, but the

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<sup>31</sup> Though neutrality was, it has been argued, bound to insularity, nationalism and sovereignty, rather than ideological principles of pacifism (Fanning 1982; FitzGerald 1998).

same is not the case in Ireland. The Garda Síochána (the Irish police) directly translates as ‘guardians of the peace’; one way in which this ideology manifests is that apart from a small number of specialised regiments, the Guards do not carry firearms (Connolly 2002; Conway 2014). Yet at Portlaoise military arms became a tool of incarceration.

During this period Portlaoise and not Mountjoy came into focus as – in Liam’s words – the ‘the centre of gravity of the prison service’; Portlaoise required constant vigilance due to on-going prisoner protest and escape attempts (*Annual Report 1975*; Behan 2018). In 1978, nineteen prisoners escaped when the perimeter gates were blown up. Reportedly, the escapees wore imitation Prison Service uniforms (*Annual Report 1978*:29, see also RTÉ 1974). Prison authorities discovered four ounces of explosive plastic gelatine during a search and more explosives were found in the heels of shoes sent in for prisoners. On another occasion, an explosion went off at the outer door of the recreation hall, and a steel tank was used to ram the side gate of the farmyard (*Annual Report 1978*). When Portlaoise became the subversive prison, it was reported (*Annual Report 1973*) to be full of tension and agitation, assaults, numerous subversive escape attempts:

‘The conduct of the main body of [subversive] prisoners during the year was poor. The following is a list of the main incidents. In January a cell bar was found cut. In February a Solicitor was discovered attempting to smuggle a document out of the prison concealed in the fly of his trousers. During the same month a number of Gardai [sic] and Prison Officers were attacked by a group of prisoners and on another occasion during the months there was a minor riot. In April escape equipment was discovered. In the same month a concerted effort was made by 99 prisoners to burn down the prison by setting fire to the bedding’ (*Annual Report 1976*:7).

Subversives protested against strip-searching, and staff brutality was alleged to be a regular feature of Portlaoise prison life. Bombs were found beneath the governor’s car and one prison officer, Brian Stack, was murdered by paramilitaries (Mulcahy 2002:291). The subversive regime was initiated by a state security rationale and

justified by fear and anxiety of probable violence. In many ways, the frontline of this war was, in the Republic at least, concentrated on the paramilitary imprisonment of Portlaoise.

### **‘The Guarantee’**

Behind the austere exterior of Portlaoise a more peculiar set of officially sanctioned, pragmatically developed but informal and sometimes surreptitious compromises evolved (ensuring their political deniability) after the initially fractious period during the 1970s. Subversives gained privileges that were denied to ordinary prisoners (Lonergan 2010:118). For example, they were allowed wear their own clothes. Trivial enough, but certainly a matter of serious contention for subversives, who wanted to distinguish themselves from ‘ordinary’ criminals. In 1978 two Republican prisoners, Rose Dugdale and Eddie Gallagher, who had a child together, were allowed to marry – becoming the first prisoners to do so in the history of the state (Ferriter 2012). Reportedly, at Portlaoise prisoners were allowed to order take-away food, which the prison staff would collect (Lonergan 2010). One interviewee, Niall, mentioned in passing that the subversives held military parades in the yard to mark Easter Sunday.<sup>32</sup> And those 40 ordinary prisoners who were also resident at Portlaoise played a particular support role within the regime: housed in a totally separate building they were known as the Portlaoise Work Party. They transferred there to provide the sorts of housekeeping services that the Republicans were not allowed to do due to security considerations, or simply were unwilling to do – ordinary prison work was the preserve of ordinary prisoners (*Annual Report 1976*; Mulcahy 2002; Lonergan 2010).<sup>33</sup>

Subversives represented a clear danger. Committed to escape and driven by a political agenda they had proved that even within the prison they posed a genuine

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<sup>32</sup> Easter Sunday of 1916, the Easter Rising, is considered to be the uprising which set in motion the series of events which saw the demise of British rule in Ireland by 1921.

<sup>33</sup> In exchange for their assistance in going to Portlaoise the members of the Working Party were given a greater percentage of remission.



threat to state security. This makes it all the more remarkable to discover that subversive prisoners were also granted TR. Lonergan, a former governor of Portlaoise and Mountjoy, maintains that subversives were in fact more likely to receive TR than ordinary prisoners. This was done slightly differently, however, using a system known as 'The Guarantee'. The Guarantee was an oral agreement of trust between the governor (and thus the Prison Division) and the official Commanding Officer, the 'OC' (reflecting the Irish: Oifigeach Ceannais), in charge of the subversive faction inside Portlaoise. The OC would 'give their word' that a prisoner would adhere to the stipulations of their TR, mainly the time of their return, and once given it was known that 'they always honoured it' (Lonergan 2010:119).

The OC/Governor dynamic became central to ordering life in Portlaoise (Behan 2018). This system worked because paramilitary groups were also allowed to maintain their military structure inside the prison. Within Portlaoise they were permitted to act as soldiers and were granted 'little fiefdoms', in which each Republican faction was allowed to colonise separate spaces. While they were publicly denied political prisoner status, the government could evidence its firm response to subversive threat, demonstrating the government's unwillingness to give in to paramilitary demands. But the informality and covert character of these arrangements clearly demonstrates the privileged political status of subversives (Mulcahy 2002:291; Terry 2012:156-157). As Pádraig added: 'there was no such thing as a political prisoner, they were ordinary criminals who had committed a criminal offence. Anyway, they were political prisoners!'

## 5. Pastoral Penal Culture

Ordinary and subversive prisoners were subject to different levels of security, but how they were both imprisoned can be characterised as *pastoral pena culture*. This definition is intended to capture the myriad and seemingly incompatible practices

which shaped Irish imprisonment regimes. Foucault's concept of 'pastoral' (1981) is hybridised here with the penal because it 'did not replace or exclude' the prison, rather it was 'integrated with it, often in an unsystematic and contradictory fashion' (Valverde 1998:213 fn20).

Firstly, pastoral imprisonment regimes were not addressing the wider social problems of crime. Pastoral power captures the individuated character of the imprisonment regimes. For example, regimented and rule bound parole lacked merit precisely because that approach prioritised the system to the detriment of the human need and the 'human stories', as Seamus put it, of the prisoners. The new prison techniques of psychology, training, the expanding presence of welfare officers and the importance of the chaplain allowed the prison to better engage with individual prisoners' issues and problems. Prison regimes attempted to address the needs of the prisoners, their well-being, job training and education. The regimes were designed to also encouraging prisoners' potential virtues, but also to guide their conscience about how to deal with life and imprisonment, rather directing them in how to desist from crime (Foucault 1981:238).

Second, Irish pastoral imprisonment routines were shaped by an 'indulgence', in which a more lenient form of imprisonment developed (Pavarini 1994; Melossi 2001). The new penal techniques developed during this time readily demonstrate this. The development of open and semi-open prisons, such as Training Unit and Shelton Abbey, were sites for a less total kind of social exclusion. In addition, the case-by-case system of deciding who should be released and why allowed for the imprisonment regime to curtail the court sanctioned prison sentence. A more systematic or overly bureaucratic penal intervention might have removed the possibility of this institutionalised indulgence. In Ireland, what was being designed was a more permeable and discretionary kind of incarceration.

Third, Irish pastoral imprisonment regimes bore an authoritarian ethos. The prison was also used to repress issues that threatened national security and political stability. The practice of subversive imprisonment, while being small and permeable, is an explicit example illustrating that the prison always has an important function in maintaining social and political order.

Pastoral imprisonment, with its systems of authoritarian control, individual support and permeable release, meant during the 1970s into the 1980s, Ireland had in practice a system of high and low security imprisonment that might otherwise seem entirely incompatible. But indulgent dimensions of pastoral imprisonment regimes also included a strain of authoritarianism, though implemented in a much more benevolent or 'soft' way (Melossi 2001:413). The centralised character of Irish prison power, controlled almost entirely by the Division, meant there were very few forms of redress or appeal against a decision to refuse to grant TR. The Division, and the Division only, were the prisoners' only source of social and penal salvation (Foucault 1981). The fate of their release, whether they were considered 'complicated' or 'uncomplicated', or if the opinion of a local Guard marked them out as bad, meant the difference between serving a very short or a longer prison sentence.

Fourth, while pastoral forms of incarceration share a broad objective with penal welfarism (to support the prisoner), a pastoral penal culture differs significantly in how the prison is viewed. While still accepting the broad social use of the prison as a sanction, characteristic of and central to pastoral penal strategies is an acknowledgment of the prison's destructive agency (Armstrong *forthcoming*). Pastoral imprisonment has a more sceptical view of programmes of prisoner reform. Rather than being a reformatory or correctional institution, prison is seen as an almost abnormal social site, as stated by the Minister.

## 6. Political Culture: Pastoral Conservatism

Pastoral penality in Ireland, with its contradictions of open and paramilitary penal developments, emphasis on release and scepticism about rehabilitation, were the direct products of the political culture – which existed in the consciousness of those within the penal state and who produced and maintained Irish imprisonment regimes. The threads of reasoning which emerged from Irish cultural sensibilities and political rationalities within the Department of Justice can be characterised as a *pastoral conservatism*. This particular political culture combined historically embedded cultural presuppositions with the new modernising outlook, the pre-existing restrained governing rationalities with traditional social images. These shaped the understanding of the penal state and feelings about the aims of imprisonment, ultimately directing the choices and actions behind Ireland's pastoral imprisonment regimes.

### Modernisation

As described at the beginning of this chapter, a modernising impulse had emerged in Ireland from the end of the 1950s. Those same ideas took hold in the Prison Division as penal problems were met with new and innovative solutions. This was most obvious in the justifications for the Training Unit. This first new prison was developed to create a pathway for prisoners into the new economic sphere of modern Irish industry that had emerged during the 1960s: 'In the training of offenders to lead better lives, the importance of job opportunity and job placement is of the greatest importance...which will enable the inmate to secure employment in modern industry' (*Annual Report 1970:14*). New social ideas were materialising in prison practices. The Training Unit was described, in Jim's words, as 'very progressive in terms of penal policy'.

In developing plans for the women's prison the officials responsible for buildings went on international research trips to Denmark (DFA/2009/120/200). The ambition in the design of the women's prison plans was recalled by John with excitement:

'[A]t the time we felt this was a totally modern prison. It was different to the Victorian radial design. This was maybe going to be the Brave New World of the prisons. It was designed one person per cell, loads of space, loads of workshops, and this could be the way the system could go, so that was an exciting time'.

Ireland as a country was evolving, and these prison developments were contributing to that 'Brave New World'.

The modernising zeal was also steadily reshaping the public presentation of the prison system. By 1976 the Departmental annual reports began to include pictures (which had not been the case in the 1960s). The images showcased the renovated units and improved conditions – homely bedrooms, a modern dental surgery, men playing on bright badminton courts, men at work, corridors with glistening floors and industrial workshops, etc. Based on these images, one is left feeling these institutions were hardly like prisons at all, with very little evidence of standard prison iconography, such as barriers, bars and cells.<sup>34</sup> The motivation was to give the public 'some idea of the present-day conditions' (*Annual Report 1977:6*). The 1977 *Annual Report* opened with a strong statement of achievement and a confident public pronouncement:

'Over the past decade there has been a quiet, relatively unpublicised, transformation in the Prison System...Every institution now has a bright attractive education unit and, where possible, new modern workshops have been provided' (p.5).

Here the Department sought to persuade the reader that interpretation of prison regimes should be based on the internal organisation of a prison, not just the material conditions. Seen in this light, they wrote, the prisons: 'may still look much the same from the outside but inside things are different' (*ibid.*). The Division was explicitly demonstrating to the public that the *thinking* within the Department, what

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<sup>34</sup> Which, of course, were still part of the Irish prison design.

they aspired to, was embedded in the new material of the buildings, and the routine of the regimes. These impulses are captured in this extended quote:

‘Side by side with the improvement in physical facilities there have been radical changes in outlook and in the management of offenders. Thus, for example, in every institution regular meetings of prison staff and the various groups who assist the Governor, e.g. Welfare Officers, teachers, psychiatrists, chaplains etc., are held to review the progress of prisoners and to draw up rehabilitative, including education and training, programmes. Prison Staff generally have been encouraged to adopt a new approach in the management of prisoners. Of particular significance is the development of the open centres and the Training Unit which demand of staff a quite revolutionary approach to the handling of those in custody’ (*Annual Report 1977:6*).

The Training Unit and Shelton Abbey were both produced as exemplary evidence of ‘revolutionary thinking’ and a new progressive ‘belief around prisons’ coming from senior civil servants (Liam).

The Division was aware that they were establishing a new kind of imprisonment in Ireland, and they confidently reported on a ‘very significant development in the treatment of offenders in this country’ (*Annual Report 1973:12*). The modernising impulse that developed in the Department was a motor for many of these penal reforms, but it does not explain all forms of ordinary imprisonment, however. As Garland (1985:163) has written, it is not enough to say that ‘Reform was in the air’. Rather, we need to dissect the anatomy of Irish political culture and examine how it shaped penal practice. It seems that the desire for modernisation engaged, rather than displaced, historically embedded humanitarian and conservative communitarian sentiments in Irish political culture.

### **Lenient Crime Sensibilities**

Among the key features of Irish 1970s penal modernism were its new open arrangements and release mechanisms. These practices of *pastoral penalty* were also informed by the more lenient and tolerant orientation towards most ordinary crime inside the Division. Such permissive use of release could not have been feasible

without the distinct absence of crime from the social consciousness. When we think of prison in terms of culture and sensibilities we see that in the Irish case, crime had a direct impact on decision-making by its peculiar absence. In the archives, reports and interviews, crime – that act which had resulted in imprisonment – was largely absent from these accounts, rarely invoking rebuke or blame.

When crime was discussed it was dealt with lightly. Jim recalled fondly and with considerable amusement how Prison Division staff held

‘meetings in each prison, meeting with the governors and staff and asking what we’d do with a prisoner. They’d say: “that guy is like a Fiat 127, he’ll be fine for two months and then he’ll break down again!”’.

This generous administrative strategy was not naïvely trusting, however, but ambiguous about crime, pragmatic about imprisonment and ultimately more tolerant (Pavarini 1994; Melossi 2001). In 1979 the Department advocated for an amnesty for 68 prisoners during Pope John Paul II’s visit to Ireland. While suggesting the release, they also ‘considered that it would be unwise to take the risk of releasing a large number of offenders during the first day of the visit when Dublin’s dwelling houses will be virtually empty and release on Sunday would pose staffing and transport problems’. Instead they proposed an alternative pragmatic suggestion that prisoners be released on the Monday, the final day of the Pope’s visit to Ireland (quoted in O’Donnell and Jewkes 2011:76-77).

These more lenient uses of imprisonment in Ireland at this time were also predicated on a related view that those people imprisoned were not inherently criminal. In the outline of the deliberations regarding ‘complicated’ and ‘uncomplicated’ lifers it is clear that even those prisoners who committed the most serious acts were not necessarily considered dangerous people. The prisoner was seen as potentially having legitimate and plausible mitigating circumstances. These crime sensibilities were caveated by other softening cultural currents within the

Division, however, such as poverty or complicated familial circumstances, which diminished a prisoners' transgressive character.

There was a deeply held belief amongst many Prison Division staff that individual crimes were rooted in social causes. The conception of the 'ordinary' prisoner tended to be defined first by Ireland's pervasive poverty rather than a criminal pathology. In conjunction with this, there was a sense of empathy. Many respondents emphasised the tragic and unfortunate backgrounds of prisoners, generally seeing them as victims of chronic economic deprivation. John recalled being explicitly informed of this cultural ethos on his first day in the Division:

'I remember talking to the Principal Officer and he emphasized a few principles to me, which stood to me. Which was the people you will be dealing with, i.e. prisoners, are people you've never come across before, they're from generally underprivileged backgrounds, they're people who haven't had the chances in life you had. And you know, you should bear that in mind in how you approach this work'.

This kind of compassionate sentiment was typical. Niall described people in prison with similar empathy, as those 'whose lives outside were absolute decimation and for whom prison was actually a break'. Another colleague in the Department, Pádraig, recalled as the 'down and out people' who filled the prisons.

This perceived adversity reduced the culpability of prisoners, rendering them subjects of sympathy as well as tolerance. Liam was clear that not everyone was in full agreement on this, however - but he and some other colleagues were motivated to continually campaign internally '[to] elicit a different perspective...the prisoner, their narrative, their history and the notion of socio-economic disadvantage', and to make sure that this vision was at the centre of decision-making. Jim felt similarly, arguing that during the 1970s and right into the 1980s, 'There was a sense of openness to do progressive things and I think it was based on how they [senior civil servants] thought about prisoners'.



This kind of tolerance might be expected in a country so demographically homogenous and with few hierarchical social divisions. While interviewees never made this link explicitly, it is plausible to make this explanatory connection; particularly, as many penal state actors' tolerant sentiment was also partially shaped by their own sense of identification with financial and employment difficulties. Several of the interviewees discussed getting a job in the civil service as a lucky break – a job for life in a country in which emigration was foremost among the chances for opportunity. Pádraig best illustrated this employment concern in terms that were pithy and explicit:

LB: 'What drew you to the civil service?

Pádraig: Well, God bless your innocence! What drew me into the service was that I needed a job and that was the only job'.

Ireland was poor and prisoners were seen as victims of circumstance; forces of chance and poverty, which many of the civil servants understood all too well. Three other interviewees told me similar stories, of how the civil service had saved them from a life working in a factory; while another person told of how it gave them a chance to return to Ireland from working abroad. Others had wanted to go to university, but lacked the financial means to do so, the civil service position was a way to do something interesting on a good salary. There was also the possibility of an alternative route to an undergraduate degree sponsored by the Department. The precariousness of poverty was therefore also part of many of these stories as well.

The penal sensibilities that prevailed in the Division were informed by social imagery of poverty, which marshalled tolerant justifications for more judicious uses of incarceration. Jim described a steadfast commitment within the Division to release prisoners who were felt to have been imprisoned unnecessarily, which he believed motivated even the most conservative civil servants. In going about the business of imprisoning, releasing, building and refining the prison regimes, there was an underlying recognition of prisoners' fuller social backgrounds. In Ireland,

when it came to the prison, the Government tended to 'rule through leniency' (Melossi 1994) because of a deeply felt sympathy with the prisoners' personal circumstances which overshadowed the view of a prisoners' criminality.

## Humanitarian Sensibilities

These lenient governing patterns were underpinned by humanitarian penal sensibilities. The term that people used to describe all of this thinking and decision-making was humanitarian. John, like others, was insistent on this:

'One thing I should have said to you is that one thing that I think that our system would stand up to scrutiny on, and reflect the philosophy that there was a humanity in the Irish system...there was an inbuilt humanity in the Irish system'

Others also stressed that there had been a 'humanity about the system' in this period (Liam). Staff in the Division generally saw prisoners as people – farmers, family men, tragic cases – rather than criminals. But they also understood the prison as individually and socially harmful.

One of the cultural foundations of Irish pastoral conservatism was a humanitarian ethos in relation to the prisons. Identifying a humanitarian disposition is different to just saying the prison system was broadly humane. Humanitarian penal sensibilities are a distinct outlook which seek to reduce the pains of imprisonment, motivated by 'Decency, empathy' and a respect for prisoners as people (Morris 1966:628). These feelings inspire the kinds of action which seek to reduce the pains of imprisonment (Garland 2013). The Division's actions: devising ways to release prisoners and shorten sentences, along with their understanding of the social and individually destructive capacities of the prison fit with the argument that humanitarian sensibilities informed Irish political culture.

In a political culture motivated by a humanitarian view there will be suspicion of the prison rather than the prisoners. Those in the Division often empathised with

the prisoners, shaped by solidarity and sympathy. But they also exhibited a scepticism of the positive claims of prison's productive capacities, and they were concerned by its damaging effects. Motivated by their humanitarian moral ethos, the Division was working to improve Irish imprisonment, but in ways which sought to reduce the pains of imprisonment where possible. For example, concerned that the number of long-term prisoners might increase, it was felt that the Division would have to find ways to reduce the destructive and dehumanising aspects of the longer prison sentences. Such long-term stays of incarceration would make people violent, suicidal or vegetative, they believed. Within the Division it was suggested, quite radically, 'The question of conjugal visits would assume a new importance if we had long term prisoners' (Department of Justice 1981b).

There was a curious juxtaposition in these practices of imprisonment. In line with these humanitarian sensibilities, prison was seen as a site with weak rehabilitation potential if all rehabilitation meant was to reduce crime, it was not accountable as a fixing institution. Yet, during the same period, the number and range of penal practitioners, such as psychologists, welfare officers and teachers, was increasing. These specialised agents were not designated with the task of rehabilitating criminals, however. Instead their job was to provide 'advice and moral support' (Valverde 1998:47) – as opposed to moral treatment. Instead of attempting to regulate prisoners' criminality, reconstituting them as better citizens, the state used these services to assist prisoners *coping* with the pains of imprisonment. As Jim described it:

'prisoners have these needs, so let's make life in prison bearable, it's nothing to do with rehabilitation. So, more training, education, psychology probation and welfare, and the emphasis was on the welfare side'.

Even psychology, that power-knowledge instrument so closely associated with prisoner reform, was described in terms of coping. Probation and Welfare officers' task was to 'try to assist them [prisoners] through counselling to cope with their problems, some of which may arise from imprisonment itself (especially family

problems)' (*Annual Report 1982:38*). Describing these ancillary prison professionals, Niall likened psychology to chaplaincy, a humane cushion to soften the blow of imprisonment rather than fixing people:

'meeting prisoners, discussing their problems, psychological stuff, you know psychologists play a big role, as do chaplains in the human relationships with prisoners and you know prisoners have all sorts of issues with their families, and which probation services guide, you know if they're short of money, if they suspect children issues and so on so that's where the psychological and probation services come in – keeps all that side of things, sort of prisoner focused'.

Irish political culture operated as it did because it recognised the 'destructive agency' of the prison (*Armstrong, forthcoming*), and where possible, sought to curtail it. This pastoral penal philosophy was not entirely taken for granted. It was the often passed onto to staff as part of the informal orientation; a way of thinking that should guide their actions:

'I think in those days there was a more liberal approach than there was in more recent times. I told you at the outset about the guiding philosophy given to me... it was all about prison was necessary as a sanction under the criminal law, within that then we should be trying to the best we can...prison as punishment not for punishment...[that was the] guiding philosophy' (John).

Reflecting on his colleagues' approach to their work in this period, a later staff member, Gerard, thought that there had been a peculiar 'distaste for the whole business' of imprisonment.

## **The Sanctity of the Family and Community**

But the Division was not just releasing prisoners in response to the pains of imprisonment. Entangled with their humanitarian and tolerant ethos was a conservative social conscience and a sense of the limits of political power. The ever-present conservative virtues of the stable family and the Irish traditions of community, so pervasive in other forms of legislation and social policy, also shaped normative understandings of the prison. The prison was a physical intrusion upon

the sacrosanct social unit of the family, thus the prison should be curtailed. Irish permeable imprisonment was firmly rooted in the socially dominant belief that family and the community were among the most important social institutions.

This rationale was the most dominant justification given for TR. When it was first introduced in the 1960s the Minister for Justice declared that the release arrangements would prevent 'the institutionalisation, psychological deterioration and disruption to family and individual life consequent on imprisonment', better to have the prisoner 'in his own milieu' (JUS 2005/12/6 quoted in Rogan 2011:109). In practice, this meant that TR for short periods 'was authorised regularly on compassionate grounds or for very important family occasions' (*Annual Report* 1976:13). A prisoner might also be granted TR shortly after committal if his 'presence in the home' was required (*ibid.*:8). For example, one prisoner was released to look after his family farm which was potentially being 'run down' while he was in custody (*Annual Report* 1979:49). The Division reported that it was gratifying to see an increasing number of prisoners receiving full TR before their discharge date because they had outside employment or to maintain their links with family and home (*Annual Report* 1971; *Annual Report* 1977). Release was developed in a manner which sought to support and maintain the sanctity of the Irish family unit:

'Outings for important family occasions such as baptisms, weddings, etc. are a regular feature as are outings on compassionate grounds in the event of the death or serious illness of a close relative...The temporary release system ensures that an offender can return to the family at intervals during his sentence' (*Annual Report* 1979:22).

Niall told stories of prisoners getting release to attend their children's communion, or even, on one occasion, a prisoner was release so he could watch his son play in an important Gaelic football tournament. The practice of offering amnesties for Easter and Christmas recognised that these were major family occasions in Catholic Ireland – during which the entire family would usually reunite, and in Ireland that

very often could include family members who were also imprisoned. Prisoners and their crimes were instead viewed within the social and collective forms of 'conviviality and the ethics of domesticity' (Carlen 1983:15). Crucially, prisoners were understood to still be members of society; their social identities were not overturned, and the prison was adjusted in ways to preserve those ties and obligations.

The generic idea of rehabilitation, namely to give prisoners opportunities and support, gained prominence at this time, and merged with this embedded local vernacular of family and community to create a distinct set of pastoral rationalities for prisoner recovery. Jim, among others, was adamant that while the Department had many flaws (too conservative and not ambitious enough), it was still the case that:

'the attitude to the prisoners was that we need to help these guys, not address their offending behaviour, not that narrow objective, we've just got to help them. What did we mean by rehabilitation? Maybe they're just better with their family'.

Ostensibly the prison was being modernised, but in fact the prisons were being adapted in a manner which reinforced the conservative heritage, cumulative social norms and values of the traditional Irish nation. Even in the extremely authoritarian prison setting of Portlaoise, a way was found to maintain subversives' familial bonds (more on which below). By releasing prisoners, the Irish were doing something more than reducing the prison population. The people who worked in the Department, the feelings they had about the imprisonment regimes, were motivated by a conviction of the superior power of the 'collective efficacy' of the family and community in responding to the waywardness of the prisoners. They were sure appropriate behaviours would be better reinforced within in the community and by the family (Sampson et al 1997), rather than in the prison. The prison interrupted rather than supported that vital social cohesion.

In an internal report, the aims of imprisonment rehabilitation were presented as a laudable but nebulous concept, one which they attempted to make compatible with their aspirations:

‘While “rehabilitation” is not the primary objective of imprisonment it is nevertheless an important and valid objective. It is intrinsically good and should not be abandoned simply because evidence does not prove that it is “successful”. What is to be the measure of success? Is it to be that the prisoner never again engaged in criminal activity, or is never again caught, or is never convicted again, or is not convicted again within a certain length of time, or engages in criminal activity less serious in nature than his original offence? What about the qualitative improvement in the prisoner’s approach to living, his relationships with family and friends, his involvement in community activities, his willingness to help and support others, his physical and mental well-being?’ (Department of Justice 1981a:7-8).

In this frank and straightforward report rehabilitation was deconstructed. The statement was not rejecting the possibility of rehabilitation, so much as decomposing it, trying to render it less excessively demanding and hence more achievable. Rehabilitation as reducing crime was perceived to undermine more humanitarian and more important achievements, such as personal development but also the collective goals of cultivating social morality in prisoners. In addressing the matter of rehabilitation, we observe the ways in which it was made sense of for practical use in Irish penal practice, thus illuminating some of the main aims and aspirations embedded in Irish political culture.

Political culture in Ireland at this time reflects to some degree the modernising penal advances elsewhere.<sup>35</sup> Matters of punishment and government are never entirely local entities. This account illustrates the process of reinterpretation of a universal idea, translated into its practical working context. Punishment and penal philosophy were understood by governmental actors in terms which are both local and particular, as well as global and generic (Girling et al 2000). The prisoners

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<sup>35</sup> Rehabilitation was still an on-going project in the 1960s. For example, the opening of Grendon in the England and the penal welfare developments in Scotland.

retained their identities as members of families and communities; they were seen as sentient social beings. In addition, crime was petty and had social causes external to the prison and the prisoner. How could those matters be addressed inside the prison, away from community and family networks? This confluence of modernising desires and criminological concepts, on the one hand, and the embedded communitarian and conservative culture on the other, fused such that the best prison programmes were those that strived to support prisoners' personal and moral development:

'to equip the offender with educational, technical and social skills which will help him to turn away from a life of crime, if he so wishes. However, even if the offender on release does not turn away from a life of crime, those services can be regarded as having achieved some success if they bring about an improvement in the offender's awareness of his responsibilities to himself, his family and the community' (*Annual Report 1982:29*).

The Minister for Justice framed the rationality for release and the community supervision scheme as being beneficial because it:

'obviates the need for rehabilitation programmes and lengthy schemes, which sometimes have low enough success rates for reintegrating prisoners into the community, because here the people are not in prison in the first place. They live at home. There is also obviously a great advantage from the cost point of view. It is now costing an enormous amount of money to keep a person in prison, on average about £400 a week. By using a community service order the cost involved is only £7 to £9 a week, which is a huge cost saving to the taxpayer. (Tuesday, 11 June 1985 Dáil Éireann Debate Vol. 359 No. 6.).

Here we see a utilitarian – but no less cultural – logic invoking the importance of the community, the superiority of the family home, further justified by the financial saving in directly dismissing the need for rehabilitation schemes. The minimum amount of state penal intervention was best for prisoners, families and taxpayers alike.



These thought processes which supported Irish penal indulgence, its rationalisation and implementation, reveals the more pastoral penal side of Irish political conservatism –illuminating the often overlooked humanitarian cultural frameworks that informed Irish political culture and punishment during this period. As John described it, ‘going back to the early days, there were people who were making decisions about prison releases and they always had the prisoners’ interests at the forefront of their mind’. Decisions on whether or not to release someone often depended on moral sensibilities and social obligation. Becoming a better family and community member was prioritised over what we would now describe as desisting. A moral social code was favoured over an academic agenda or political accountability (Blake 1999). Their primary objective was to bring prisoners back to the flock, to support or instil in prisoners collective Irish social norms of family. The logic underpinning Irish pastoral imprisonment regimes was to work upon prisoners’ familial and social bonds, their moral connections to the community, rather than treating their individual illegality or recovering them from criminality. That was who prisoners were believed to be by those in charge of imprisonment, and that is how they were inscribed into the imprisonment regimes.

There was something missionary in how the Division went about their work. They were creating prison regimes which promoted what were the most valorised aspects of Irish nationhood: community and family. This pastoral view was also evident in the lengthy diarised narrative style which characterised the annual reports throughout this period. Year in year out it was reported that some prisons and prisoners had good years or difficult years. The tone was more intimate and humanising as was the narrative, which exalted the personal success of prisoners and commiserated with tough times.

### **The Subversives: Authoritarianism, Ambiguity and Trust**

Within this modernising context, motivated by pastoral social goals, tolerant penal sensibilities and a conservative political agenda, was the development of an

altogether more authoritarian kind of imprisonment, one which expressed the power of incarceration. For authoritarian political rationality to be realised in practice, it must be seen as a legitimate form of reasoning within the minds of actors who occupy the penal state. But in doing so it will merge with other aspects of prevailing political and social culture, giving imprisonment regimes its often paradoxical character. In Ireland in the early 1970s, the development of Portlaoise was contingent on the state of emergency and the urgency to prevent conflict and disorder. But the peculiar character of paramilitary imprisonment in Ireland found ideational resources in other dynamics of Irish political culture. The IRA were treated in a manner that reflected the threat they posed to state and political stability. But their imprisonment also reflected recognition of the legitimacy of their political motivations.

Republican subversives seemed to hold a more ambivalent, and not wholly condemnatory place in the people's imagination, based on long-standing claims over the North but also more immediate concerns regarding the Troubles. In 1972 13 peaceful Catholic protesters in Derry were killed by British forces, an episode known as Bloody Sunday or the Bogside Massacre. The anger and outrage resonating from the incident was felt in the Republic. A protest in response to the massacre resulted in the burning of the British Embassy in Dublin on the 2<sup>nd</sup> February 1972 (RTÉ 1972a). At the same time, the Irish Government had an ongoing legal case against the UK regarding the torture of Republicans interned and interrogated in Northern Ireland – the first inter-state case to appear before the European Court of Human Rights.<sup>36</sup> The Taoiseach made a public call for the 'cessation of the harassment of the [Catholic] minority in the North' by British troops and policies (RTÉ 1972b). But there was also an ambiguity in the Irish position, which was underscored by the Arms Crisis. In 1970 a sum of government money intended for the development of aid in Northern Ireland was surreptitiously siphoned off by a number of officials, including sitting Ministers, for the purchase of

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<sup>36</sup> The court found that the treatment was inhumane and degrading but not torture (Bonner 1978).

arms from German dealers for Republican groups in Northern Ireland. Legal action was taken against the Ministers, which met with considerable public and political protest (Ferriter 2012:141-151).

Imprisonment regimes will generally have contradictory practices and strategies in simultaneous operation, reflecting the contradictory and ambivalent currents that constitute political culture and the nature of social relations and penal problems. The use of the army to prevent escapes at any cost and a discretionary code of trust to ensure subversives returned to prison is a most peculiar contrast in force. These aspects of trust reveal the 'cultural resonance' and 'emotional supports' which shaped prison practices in less rational ways (Garland 1990b:1). As Garland has written, 'if punishment is exclusively a utilitarian means of control, it would indeed be difficult to account for many of its practices' (ibid.). While the presence of the Irish army was a means by which to take command and exhibit control over a difficult prison population and publicly demonstrate severity; surreptitiously, however, other sentiments and ideas came into play.

The cultural sentiment which shaped the practice of paramilitary imprisonment – with its high security measures and discrete system of privileges – was the distinct historically embedded, though certainly not full-throated, nationalism. This was evident in the de-facto recognition of the IRA as an army. Pádraig explained the relationship with the OC in straightforward, pragmatic and realistic terms:

'You had a Commander, a general, or whoever he happened to be, and everything was communicated through him. He ran the show really. That was the only common-sense way not to have too much trouble'.

The pragmatism behind these informalities was best captured in this extended recollection from Niall:

'[The IRA] you didn't mess with them, they didn't get abused, they ran their own system, that's where we differed from the Brits. They took a view over in England, and we said this to them, these are not tales out of school, we said all of this to them. They took a view that you had to

maintain control, basically you have to man the prison, that they had to conform to prison rules. That it was wrong to allow effectively the military command structure to survive inside prisons, and that they should wear certain clothing and all that sort of thing. We took a totally different view on all of that. We took the view that if they stayed inside the wall we don't care if they wear civilian clothes we don't care or if they march around. With the IRA prisoners you dealt with an OC, with all other prisoners you go and talk to prisoners. But with the IRA prisoners you dealt with the Officer Commanders, they maintained the structure inside, and as far as we were concerned that was fine. The Irish took a totally different view on that and that's another part of history that could be looked at some time'.

LB: Why was that?

Niall: I think it was that we felt it was not, it was not as damaging as the British thought it was. The British I think felt it was like cocking their noses up at authority, that it was a bad thing to let them behave like an army. We just took a different view, so what?...I don't understand it...Sometimes arguments are made, and sometimes if they don't have substance – I mean, what does it matter if the IRA are marching around inside and having parades on Easter Sunday inside? Once they were inside and not outside, and we took that view. We also kept something that I don't think they had in the British prisons and that was the army on the wall. So it was very clear, if you stay inside then we don't have a problem with you, but if you try to go out we do'.

Niall thought the British worked against the IRA, using the prison to 'defeat terrorism' (McEvoy 1998a; McEvoy 2001). The Irish, in contrast, worked with them, actively engaging them as an army. In this case pragmatism worked in coordination with respect and trust and it was a major tool in maintaining prison order. As Niall said:

'The Officer Commander came and said so and so's mother is dying, he needs 24 hours and we'll guarantee he'll be back. In fact, a guy was left outside the gate one night, pissed drunk, because he had to make his time. They [the IRA] brought him back [laughs] and rang the bell.

LB: That's a lot of trust.

Niall: Oh, oh well you could, because they had a different system, a personnel system'.

Prison is always being modified to reflect the perceived character of the prisoner and the wider cultural and political norms. The peculiarity of subversive imprisonment was positioned along two key axes: authoritarian mentality and implicit respect. A kind of parliament style negotiation of sensibilities and rationalities – demonstrated by Jim when recalling the Portlaoise regime:

‘The mentality was, even with security, they saw that these guys had the best brains in Europe and that made them a challenge and the challenge was to keep them in, and above all else we have to keep them in – because there were some escape attempts – but if you can provide something, great, then do it. But security was above all, but if we can do anything for them you should, and that we should modify imprisonment as such’.

Descriptions of the subversive prisoners were couched in narratives which shared a general set of motifs, drawing upon references to army images: civil servants understood the IRA in relation to their order, their organisation, their discipline, their aims. Although the subversives had undertaken violent campaigns during this most turbulent era of the Troubles, they were accorded a subtle dignity and were, consequently, subject to a regime that pragmatically evolved to reflect precisely these seemingly contradictory sensibilities and strategies. The thing that unnerved the Department, the strategic capacities of the IRA and their unfaltering political motivations, were what inspired a degree of recognition. The IRA were not thugs or criminals. One official described the actions of the Republicans as having always been formally authorised by the IRA hierarchy. Their rebellion and protests were not wild and impulsive, but strategic, conforming to their army structure (Terry 2012). That sense that subversives lived by an established order yielded a practice of trust, evident in the guarantee scheme. Another important reference point was the IRA Army Council Code, a written document by which the IRA maintained its hierarchy, its order and its unity as an army. Prison Division officials often knew the code, quoted it; for example, they knew the IRA would not turn a weapon on a

member of the army or Gardaí and they had been able to 'trust' that the IRA would stand by this code (Department of Justice 1973; Pádraig; Niall; Terry 2012).

This was a time when the nationalist future the IRA was fighting for, the reunification of Ireland, had been embraced by many people across the political and social spectrum in Ireland right up until the 1970s.<sup>37</sup> The Government certainly did not support the IRA or their tactics, but the state acquiesced to them for the sake of social, political and penal order. But to treat them as such was not entirely pragmatic. The Government's treatment of the subversives was also reflected a tacit acceptance of the 'political character' (McEvoy 1998a) of the subversives' identity and their activity. Their treatment of subversives, even the very use of subversive as a distinct prisoner categorisation, was 'a mirror to the state's view of the conflict' (ibid.:1574). This is why the subversives were treated as *de facto* political prisoners.

Moreover, rather than work against the subversives' political identity, they used their identity as soldiers to find a way to give subversives access to TR, underscoring the importance of release and mobility in this period of Irish penal development. Subversives posed real risks. Yet, the Division also developed a system of trust with the subversives - trust tempered by fear, but trust and respect nonetheless. But within that state security context, they were still concerned with preserving subversives' identities as members of families and communities. Pádraig described giving parole to one subversive prisoner, an example which draws out the interlocking visions of the family and political actor:

'He was a soldier and he was fighting and the last thing he wanted to do was look for an extension of parole, but his wife was sick and he had six children and the neighbours were pressing him. Anyway, he was in and he got his extension'.

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<sup>37</sup> The violence in the 1970s dulled what had been longstanding irredentist aspirations. After the formation of the Irish Free State in 1922 the nationalist project was focused on restoration of the island as a single nation and the inevitable annexation of Northern Ireland, which was formally written into the 1937 Constitution which described the nation as 'the whole island of Ireland'. Moreover, survey data from 1972-73 showed that 42% of Irish people disagreed that the North and the Republic were two distinct nations (Coakley 1998:49-50; Hardiman and Whelan 1998).

## Penal Pragmatism

Finally, and particularly evident by the example of the response to subversive prisoners, Irish conservative pastoralism was underpinned by pragmatism: an adaptive approach to government and imprisonment which modified itself in response to changing circumstances. The practical character of pragmatism reflects its cultural context as well as the immediate demands of the problems.

Pastoral imprisonment regimes were not then the result of 'strategic omniscience' (Garland 1985:162), but realised in each TR decision, which were always dependent on the prisoner's perceived identity; realised in the material design and function of the new prisons; and reinforced by the development of a less intrusive network of support agencies. Prisoners remained members of families and communities, or else they had the potential to be part of the regular 'runways of society' (Goffman 1963). The discursive frame in which the prison was fixed was shaped by those social and cultural concepts. But the aims of imprisonment were also understood within the political paradigm: its within the state's conception of itself and the aims of social conservative outlook. The prison was a disruptive intervention which undermined privileged collective social norms and pushed the Irish state beyond the remit of its conservative and non-interventionist rationalities.

## 7. Prison: At the Periphery of the Social Landscape

A full appraisal of Irish penalty requires us to think about these matters at a broader sociological level, to observe the social landscape in which prison operated and the social forces which conditioned political culture. This political culture of *pastoral conservatism* and the concomitant *pastoral* penal practices, were contingent on Ireland's social control landscape. While the number of prisoners and prisons was expanding, it remained a peripheral social control mechanism. Ireland's

traditional conservative political outlook had religion and morality as its 'mainstay' (Freedan 2003), rather than legal concepts and order. Ireland's carceral archipelago of coercive confinement offers ample evidence of the primacy of other more explicitly morally attuned institutions charged with confinement (O'Donnell and O'Sullivan 2007; O'Sullivan and O'Donnell 2012). But even outside of these institutions, Irish collective efficacy was intertwined with religious welfare control (Beatty 2013; Ferriter 2009). A particular prescription of behaviour and values was being communicated, distilled and regularly reinforced through a web of other social relations – mass, school, the hospital, the media, family life, censorship, politics and legislation – stretching 'out over the country like a giant sacred canopy' (Inglis 2007:67).

In addition to religious welfare control Ireland also relied on the 'emigration culture' as a 'safety valve' (Fitzgerald et al 2008:51). The numbers of people who had been disenfranchised by the Irish dream of small farm rural living, who faced unemployment and limited opportunities, took to the boat rather than to the streets to protest. O'Donnell (2005) has suggested that this also suppressed crime rates, but it may have also been an alternative to the prison. Russell (1964:146) wrote that often a Garda or even a Judge gave a person with 'criminal aspirations' a choice: prison or the boat (quoted in O'Donnell 2005).<sup>38</sup>

Irish political culture of pastoral conservatism and its forms of imprisonment regimes were grounded in this wider social context. In a country that was otherwise often excluding and oppressive in how it enforced social conformity, how the prison operated was often more benevolent, mild and tolerant. The pastoralism of the Irish imprisonment regimes was not in spite of excessive and harsh Irish social control outlined at the beginning of this chapter, but was a result of it. Pastoral penal culture operated precisely in that form because of the extensive nature of

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<sup>38</sup> This remains a feature of Irish penal culture. In 2002 a convicted drug dealer receiving a suspended sentence on the condition that he left the country (O'Donnell 2005:118).



community discipline and Catholic social regulation which characterised Ireland's social landscape in the 1970s. There is no doubt that Irish imprisonment regimes were modernising and expanding. Their forms of pastoralism, however, the necessity and urgency around imprisonment and government penal control, was minimised by the wider Irish social context. The Division could generally indulge and develop ameliorative imprisonment regimes because imprisonment was peripheral, it was not the main coercive means of social control and, in addition, crime was not a major matter. Meaning the norms of the family and the community could prevail within the Division's penal preferences.

## 8. Conclusion

This chapter has sought to demonstrate the complex social conditions, cultural sensibilities, historical and political forces which shaped Irish political culture, giving it a distinct and contrasting character of humanitarian and authoritarian motives, modernising ambition and traditional conservative views. We saw how the forward-looking modernisation impulse and state security concerns that emerged in the 1960s engaged, rather than displaced, the embedded humanitarian and communitarian sentiment in the Prison Division. This, in turn, materialised in a set of imprisonment regimes which were simultaneously permeable and paramilitary, reflecting the diverse perceptions of the ordinary and subversive prisoners' personhood and the government's own sense of responsibility. Officials adhered to the law, but within that, they also tried to deploy measures which reduced not just the pains of imprisonment but actually truncated prison sentences.

However, this penal culture was conditional, dependent on a social control field which relied on the strength of Irish collective efficacy, Church control, and emigration to address any excess of social ills. Moreover, the view that acts of illegality were not so transgressive, and the very fact that crime was low, gave added cultural legitimacy to the Division's pastoral conservative political aims.

As a result of these social, political and cultural forces, this was a period of progressive penal reform. The Division hoped that the significance of the 1970s as a decade of development could be continued. It was stated that the '1980s promises to be another important decade for the Prison System' (*Annual Report 1980*). However, transformations in the organisation of the Irish social field, particularly the economy, began to alter and degrade, shaping a radically different and much more difficult future for Irish imprisonment. It is to the unanticipated erosion of pastoral penality that we now turn.



## Chapter Six

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### Pastoral Penal Culture Losing Ground

#### I. Introduction

In the early 1980s there was enthusiasm for pastoral penal change, but there was a reversal of earlier gains as Ireland entered a recession. Overcrowding in the prison system became severe at precisely the same time, and the Division lacked the financial resources to improve or expand the prisons. Crime also began to rise. These factors seriously undermined the prison regimes and the beliefs within the administration. This chapter charts the fraying of pastoral penalty – its assumptions and orthodoxies – which had governed prisons in Ireland from the early 1980s into the 1990s.

The first section of this chapter outlines the retrograde changes in the imprisonment regimes and the decision-making process behind them. This era was characterised by chaos, protracted struggle and panic that was experienced inside the Prison Division, all of which had consequences for imprisonment regimes. In some ways, the regimes became harsher; in others, even more porous and permeable than before. This, in turn, undermined both the Irish penal state and other pastoral forms of imprisonment. These changes ultimately made prisons more punitive. However, this was the combined result of macro-economic developments and a political commitment to pragmatism, rather than punitive intention.

Second, the chapter presents the conflict that began with the emergence of a powerful Prison Officers Association (hereafter POA). The POA did not desire to control the character of imprisonment. There was a challenge to the nature of Irish political culture, its authoritarian and centralised character, which demanded deference from low-ranking prison officers, who became increasingly resistant to managers.

Third, the chapter charts the rise of crime and social disorder, analysing the impact on penal sensibilities and thus the imprisonment regimes, preventing certain kinds of pastoral penal developments. This chapter adds an important dimension to the narrative of Irish penal history, showing how from 1980 to 1993 the view of the prisoner we saw in the previous chapter, as family man and community member, began to alter and diversify. Increasingly conceived of as potentially dangerous, needier, more recalcitrant, and incorrigible. The ordinary prisoner was no longer mostly framed by tolerance, lenience and hope. Prisoners began to exhibit new needs, ones which the system had not been set up to handle. Central to the aims of this thesis, this chapter further examines how broader social anxieties make their way into the material form of the prison and how the prison becomes swept up in debates about crime control.

## **2. Retrograde Regimes**

Ireland entered a period of economic decline during the 1980s. The promise of the 1970s gave way to the harsh realities of the subsequent decade, realities shaped by economic crisis. Unemployment rose to over 17 percent, mass emigration recommenced, the deficit increased, and the currency was devalued (O'Connell 1999). The number of people being committed to prison continued to increase into the 1980s as well, and there was an enormous daily struggle to manage the prisons. It became clear to the administration that the soon-to-be-implemented CSOs would not be able to alleviate the overcrowding problem as they had hoped. They

admitted now that: 'No substantial relief to our accommodation problem could be expected from the use of Community Service Orders which it was hoped to introduce in Autumn 1984' (Treatment of Offenders Management Meeting, December 1983). The Division now believed that they needed a 'near instant prison' to meet the demand for places. But in the face of major fiscal pressure, the penal state was now being denied any extra resources. The development of new penal forms and planning, for instance, were hemmed in by restrictive finances, and the Division was forcefully reminded of this by the Department of Finance:

'cost is a crucial issue' ... [new proposals would] 'be regarded as out of the question – unless they can be clearly shown to involve no extra cost' (emphasis in original JUS/2001/62/1).

According to Seamus, the most pressing matters of this era were a demand for space and an absence of capital: 'The biggest thing was the overcrowding. You couldn't do anything without the resources'. In an internal note, the Division described the consequences of their financial predicament:

'[We have] been managing the prisons on the cheap and at the expense of not only the review of prisons legislation but other crucial tasks too: for example, general inspections, preventive security inspections' (4 July 1984).

Lacking the finances to develop more concerted plans they developed a series of expedient expansions. There was no more time for planning; 'everything was ad hoc', according to Jim. Seamus told a similar story, describing how he would arrive into the office knowing things were spinning out of control: 'Every day you wouldn't know what to expect...[events] set the agenda'. The terms 'chaos' and 'survival' were frequently used:

'There was chaos, it was organised chaos...it was moving pieces all the time. Being run by a very small section in the Department...I remember going in in the mornings and you didn't know what was going to come at you that day, and that was the way it was every day. In terms of taking a longer term perspective, a lot of the time it was about surviving' (John).

A second wing was added to Cork Prison, while Loughan House, which had been a juvenile institution, was given a new operational designation as an open centre for between 50 and 100 adults. At the same time, the Department opened the Separation Unit at Mountjoy to accommodate the prisoners who were now being transferred from military detention in the Curragh back into the prison system. Here we see the familiar mix of high security as well as the open and small closed units typical of the 1970s.

Sewell has argued that in the study of history and transformation one cannot ignore the emotive currents that guide decision-making and action. He writes that 'high-pitched emotional excitement is a constitutive ingredient of many transformative actions' (1996:865). As mentioned in Chapter Three, operating under duress compounds strain and this kind of tension gives a new permissibility to previously unthinkable and unacceptable practices for imprisonment regimes (Bourdieu 1990:262). This was exactly what began to happen in the 1980s as the Department tried to curtail the chaos of the Irish prison system.

## **Doubling-up**

The first of these unthinkable changes was 'doubling-up'. Until 1983 Irish imprisonment regimes were bound to provide each person in prison with their own cell, as per the 1947 Prison Rules. Removing this entitlement was considered an uncivilised and inhumane development, as acknowledged in management minutes: 'Doubling up of offenders would be considered a retrograde step' (Treatment of Offenders Management Meeting, April 1980). Giving more prisoners early release using TR was seen as 'preferable' to doubling-up (*Annual Report 1983:8*) Moreover, the resistance to doubling-up was presented as a praiseworthy feature of the Irish penal practices (*Annual Report 1982*).

The continuing rise in prison committals, however, ruptured the boundaries between what had been expressly felt to be a detrimental change. There was an awareness that something, albeit drastic and unpalatable, had to be done: '[The] accommodation problem in the prison had reached almost crisis proportions. Harsh decisions would need to be taken if the situation deteriorated any further' (Treatment of Offenders Management Meeting, May 1982).<sup>39</sup> The anxiety and the demands of the system served to lift the threshold on these inhibitions, and doubling-up was now seen as an available option, albeit the worst case scenario: 'The "doubling up" of offenders offered a possible solution and must be seriously considered, despite the dangers inherent in this course of action' (Treatment of Offenders Management Meeting, October 1980).

By 1983, however, doubling-up had already become a *de facto* practice in Cork prison, and a prisoner there brought a legal challenge against the situation and conditions. The court found in favour of the government, but only due to a technicality. As a result, internally it was reported that they had now been forced to an impasse. The Department had to either eradicate *de facto* doubling-up or changing the Prison Rules to permit it (TAOIS/2013/100/311). Given the immediate emergency of rising numbers and potential future legal cases, the Department formally authorised accommodating more than one person per cell 'for as long as the accommodation continues to be insufficient' (Memorandum for Government May 1983). What had been a covert and resisted practice was now a strategic dimension of Irish imprisonment regimes and 'over-crowding received official sanction' (O'Donnell 2004b:252).

This is a serious moment in understanding the changing governmental considerations which underpinned imprisonment regimes. This change legitimised practices which would have increased the pains of imprisonment, making it a more onerous and difficult context for prisoners. As Tom lamented: 'doubling-up was the

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<sup>39</sup> They feared the overcrowding but also that doubling-up 'facilitates homosexuality' (TAOIS/2013/100/311)



biggest scourge...a disaster. No space, no light'. The punitive consequences of this new practice were illustrated by the Mountjoy Visiting Committee in their 1985 report:

'In May 1983 a statutory instrument was made allowing the prison Governor to permit "two or more" offenders to occupy a cell when he judged that prison accommodation was insufficient to allow single cell occupancy. This represented a most serious setback to the possibility of maintaining and developing a humane regime within the prison...This imposes additional strain/punishment to the basic penalty imposed' (p.47-48).

Many in the Division agreed with these sentiments. But doubling-up was an expression of the prevailing atmosphere of panic, and as a regime change, it was a pragmatic step to forestall legal challenge.

## **Wheatfield**

The second example of these retrograde, albeit pragmatic, manoeuvres was the re-designation of Wheatfield. A prison that had been long planned and carefully researched was opened in a whirl of panic. Developed to replace the old and outmoded women's prison, the anxiety about space and resources that pervaded the Department led to the redesign of long-term plans were remade in light of this new crisis. The prison was originally planned for 150 prisoners (juveniles and women); was reconfigured in 1985, it was intended to hold 144 women and girls and 320 juveniles (Dáil Debates, vol 359, col 107, 30 May 1985). When Wheatfield finally opened in 1989, it was a closed men's prison which held over 300 prisoners. Despite the promise of a new prison, however, Division officials predicted that Wheatfield would still not meet the demand for places (Treatment of Offenders Management Meeting, April 1984). This was a dramatic volte face, and was still not a solution to the Division's capacity problems.

## Shedding – A Rolling Amnesty

In the context of rising prison committals and lack of funding, TR was adapted to move people even more speedily through the prison system. This came to be the most significant practice in managing the Irish prison population from the 1980s, and continuing into the 1990s. TR used in this manner came to be known as ‘shedding’, in which prisoners were not just released for family occasions. They were instead being liberated to serve their sentence in the community in order to free up beds for new inmates. Shedding was distinctive because the release was rarely temporary. Previously, TR was achieved on a case-by-case basis, though was not entirely formalised – it became ad hoc in the 1980s, a different more crisis management approach within a similar informality. Rather than being individuated, shedding was a means to directly target the daily average prison population. It was used to permanently decamp individuals from the system. All that was required – usually – was for prisoners to sign-on at regular intervals at the Garda station or the prison. The 1983 *Annual Report* declared that shedding was justified within the existing humanitarian framework:

‘Until additional accommodation can be provided, the present practice of releasing some prisoners in advance of their normal release dates to make way for committals will have to continue. It should be understood, however, that the practice of releasing some prisoners early has been followed for many years for resocialisation purposes’ (p.7)

It was felt to be better to release people than risk acute overcrowding: shedding ‘has been accepted reluctantly as the lesser of two evils, the alternative being serious overcrowding’ (*Annual Report* 1982:5). Similarly, the Minister for Justice, speaking to the Prison Officers Association in 1983, justified the

‘extent of “shedding” ...[because] The alternative has been the sort of crowding that has been resorted to in other countries’ and ‘Up to now we just have not got enough space in our institutions to accommodate all committals in comfort’ (Minister of Justice Speech to Prison Officers’ Association, 25 May 1983).

The use of release was being justified ultimately as a means to maintain a semblance of humanity within the prison system within the stringent economic context.

Shedding was the practical compromise that made the most sense – i.e. the prisons must accept everyone sent there, but the Division could not incarcerate them for long, increasing the permeability of the imprisonment regime.

This practice also maintained credibility for the same reasons shown in the previous chapter, namely the widely held view that the men being released were not criminals. For example, Niall described the people who were ‘shed’, as more like nuisances, compelled by poverty and hardship, rather than a criminal compulsion. Prison would prioritise space for ‘real’ criminals:

‘You just had to get them out because there were no beds for people coming in. It’s kind of a fundamental of prisons that you take in from the courts, you don’t say house full. So you had to do that every day, and sometimes you’d be letting people out who maybe had come in that morning for things that, that’s why you have to look at courts policy and the judges. Sometimes judges putting people into prison for very little, I mean, the television licenses. And of course those people who were persistently refusing to pay them didn’t mean the judge was sending everyone without a television license, but there were people in prison who were not criminals at all. There were also another type of prisoner who unfortunately, a lot of those got out and that was people who were persistent offenders, they’re a different category, they’re a dreadful nuisance to communities and older people and so on. And some of them got out because their offences, they committed, were not so grave, knocking off handbags and that sort of thing. So you always had to keep room for the bigger players, the assault and battery people, the wife beaters who, you know, people who did real offences’.

Here the criminal activity is explicitly disaggregated from the prisoner, they were ‘not criminals at all’, and repeat offenders were mere ‘nuisances’. Moreover, the cultural codes and motifs which explained crime were those related to monetary matters, the TV licence, the handbag thefts, what one might consider the petty crime

of poverty. The judges publicly deployed the power to punish, following which the Prison Division discreetly deployed the power to imprison in a way that was highly discretionary and often, as evidenced by the latter quote, radically altered the sentence given. The judiciary in turn still tended to respect the Division's discretion (O'Malley 2006).

They also developed the more purposefully titled 'home-leave' which was described as:

'a form of temporary release, which was adopted largely as a matter of necessity because of the pressure on accommodation, has, interestingly, become reasonably "popular". even [sic] with some Gardai, [sic] who appear to consider that it affords a reasonable degree of control over offenders and it is, of course, one of the cheapest methods of keeping down the prison population' (Department of Justice 1984g:3).

Here we see the motivating mentalities of economic pragmatism and prison population management, and the cultural touchstones of home and family. TR was still divided into different categories such as Christmas and Easter leave; daily, short-term or weekend leave; renewable special leave; and, full TR. The latter was divided into those released under supervision of a probation and welfare officer and those who were released not under supervision. In 1988, the Department stopped officially recording the distinction between supervised/unsupervised release when, of the 1504 prisoners who received full TR, only 32 were placed under supervision. Renewable Leave was also essentially full release, and it was these fully released prisoners that made up the majority of TR. So, for example, of the 11,663 people who received TR in 1993, 7,335 of them were on Full or Renewable Leave.

Shedding was controversial, described as 'the most obvious and worrying symptom of the current chaotic state of the Irish prison system' (O'Mahony 1996:92). But between the pincers of low economic resources and high committals there was still a culture – albeit in a mutated form – in which prison accepted offenders, but

remained more concerned with release than punishment. Moreover, as seen in the previous chapter, there was an ambiguous view of prison rehabilitation and a belief that release was better than long periods of imprisonment.

#### Use of Temporary Release 1976-1993

Year	Daily Average number of prisoners	Total number of Temporary Releases
1976	1049	1252
1977	1029	2720
1978	1179	3587
1979	1140	2842
1980	1215	3525
1981	1196	3292
1982	1236	4850
1983	1450	4375
1984	1594	7238
1985	1863	5746
1986	1869	5685
1987	1943	4883
1988	1962	6018
1989	2067	5830
1990	2108	8095
1991	2141	9038
1992	2184	8974
1993	2171	11663

*Source:* Annual Reports, various years

This was not without its consequences. Despite claiming that shedding worked within their desire to keep the system humane, its corrosive impact on other advances in the regimes and programmes was acknowledged; a disservice to the progress that had been made:

‘The high level of early releases is a matter of grave concern both to the prison administration and to the Garda Síochána. On the one hand, unplanned releases disrupt resocialisation programmes for offenders and

have the effect of negating [sic] the significant advances that have been made over the last decade in the provision of education, work-training and other services for offenders who are now less motivated to make the best use of them' (*Annual Report* 1981:8).

Concerns were raised that education programmes were increasingly difficult to administer due to 'the level of transfers and early releases' (*Annual Report* 1982:21) and that fewer people were completing courses in the Training Unit or engaging with education because knew that they would be released without supervision in the near future (*ibid.*:24, 39). Gerard was in passionate agreement with this criticism, arguing that it impacted negatively on the prisoners and undermined the programmes:

'There was massive overcrowding, and shedding, it was chaotic, and people were left out at short notice with no preparation... it's very hard to have reformist intentions, say to get a prisoner through state exams, his Leaving Cert, get him some qualifications, get a job get a life move on, how could you do that if that prisoner would be the top candidate to get out that day?'

Shedding became so extensive it severely curtailed the Department's capacity to produce any long-term strategies. Plans for consolidating prison legislation and updating the prison rules were marginalised by the way the administration managed the system. As they reported in 1984:

'the work which employs the largest number of (junior) staff is the daily chore of sifting through the prison population to find "suitable" offenders for temporary release, "shedding" etc [sic] in order to cope with the pressure on accommodation...In practice it has been found that day-to-day pressure inhibit or preclude "long-term" projects such as the review of the Prisons Acts and Rules' (Department of Justice 1984c:12).

Shedding became the most dominant practice of both imprisonment regimes and prison administration. As a result, respondents spoke of how the nuance had been stripped from their discretionary use of release in order to keep the prison numbers at more manageable levels:

Niall: 'So a lot of the day was spent identifying who was going to be released this evening so that they can maintain control. The prisons were overcrowded so you had to everyday release ten or twenty people, maybe more. The Assistant Secretary, one of the things that he got every day was a list of names with offences...and saying: yes, yes, yes. Out, out, out'.

We might better conceive of shedding as a *rolling amnesty* which was organised on a day-to-day basis rather than en masse, in the same way amnesties were also used in France and Germany to relieve prison overcrowding (Nelken 2011:110). These retrograde regimes were a result of the Division having to 'muddle through' (Lindblom 1959), but apt as it is, that concept does not capture the emotional intensity of these decisions, nor the stress that was endured. Reflecting on how things were in the Division by 1990 John was solemn, stating that:

'nothing changed... the pressure on the prison system was unrelenting...'[We were] on the treadmill running a system, just running...we didn't have the in-built processes for reflection. There was no research capacity, there was nobody there, no system in place. What really, what we're doing isn't working'.

The pastoral political culture in the penal state under pressure, and found wanting by even its most dedicated advocates.

### 3. Authority Under Threat

By the mid-1980s, the Prison Division faced another serious issue. The POA had grown significantly in power and size during the 1970s and into the 1980s, as numbers of prison officers had grown during that period and they gained Trade Union status, allowing them to go on strike. By the 1980s, they had been identified in the Division as having 'a tendency to militancy' (Department of Justice 1984e:2). Ostensibly, the contention between the Division and the prison officers was that the latter's overtime bill had been growing and the state needed to curtail it. The POA engaged in unannounced strikes from the end of the 1970s,

demanding a Committee of Inquiry into the prison system, better working conditions, more staff, and increased pay and subsidies (Bray 2008) – a situation that worsened after the Government's 1982 pay embargo.

The punitive shift in the experience of imprisonment regimes during this period was, in large part, driven by the prison officers. There were occasions from the end of the 1970s into the 1980s where prison officers refused to unlock prisoners from their cells, banned visits, banned the supervision of education, use of workshops and evening recreation. An Irish Times article (Murtagh, 2 December 1984; Bray 2008) described the POA tactics as using 'prisoners almost as hostages in their war of attrition with the Department' (see Appendix 3 for a full list of incidents). Between 1981 and 1983, POA protests intensified as they rejected the Division's centralised authority.

Liam, like others, described how the Department lost authority to the POA: 'I think the Department lived in fear of the POA. And ministers lived in fear of the POA.' In 1983, the Government acquiesced and assembled a Committee of Inquiry into the Irish prison system, the first of its kind. In exchange, the POA suspended industrial action until the findings of the inquiry were published. It was these intractable industrial relations difficulties which gave rise to what became the Whitaker Committee, accorded a comprehensive mandate to investigate the prison system. Within the Division, however, people hoped the Committee would provide them with legitimate and objective leverage against POA dissent (AGO 2014/23/1103). The 'main purpose of the inquiry', the Division wrote, should be tackling 'costs, increased committals and pressure on accommodation. It is obviously essential to the secondary purpose of winning public support for the prison system as such' (internal memo, 16 August 1982).

The Committee was devised as a battleground for control of the prisons. A feeling evident within the Division:



‘it was in the Department’s interest to ensure that he [Whitaker] had ample material to work on from the start. Getting in first with a submission would give the Department a psychological edge over the other contributors, convince the chairman of our business-like approach and perhaps be instrumental in determining the direction the Committee might take’ (10 February 1984, Treatment of Offenders Division Management Meeting).

The Division prepared numerous research reports and papers for the Committee (Department of Justice 1984a; 1984b; 1984c; 1984d; 1984e; 1984f; 1984g). While the documents analysed here may not have been publicly available, they depict a Department with a sense of penological purpose and know-how. In these materials, they suggest that the Committee might investigate the usefulness of decriminalisation of homosexuality, drunkenness and the possession of cannabis as well as the validity of international practices such as the Swedish day fine, the possibility of weekend prison, greater use of TR, reducing sentence length and the overall number of people being committed to the prisons.

The Whitaker Committee released its report in 1985. Their report was rigorous and detailed and included the research material provided by Division. Its authors reflected much of what the Division advocated for and practiced, supporting the liberal use of release, the notion that prisoners were ‘ordinary human beings’ (Committee of Inquiry 1985:96), that crime had social causes. The prison itself was affirmed as incapable of tackling crime, but it was likewise stated that prison should have the capacity to ‘do something towards improving individual offenders’ (ibid.). They also recommended a host of measures to reduce the use of imprisonment which, if implemented, promised to remove 500 people from the prison system (ibid.112).

But it also told a much more critical story. The report included pictures cataloguing the dilapidated and grimy conditions inside the prisons, a very different visual story to what the annual reports had advertised over previous

years. The most damning part of the report was its verdict against the nature of Irish penal authority, which was deemed to be too centralised. Prison matters had, they wrote, 'drifted into the political sphere through the involvement of Departmental officials in such matters' as 'prison management and discipline' (ibid.:122). These were claims redolent of the POA accusations (and other people who made submissions to Whitaker, such as the Governors<sup>40</sup> and the Prisoner's Rights Organisation), and the Committee stated that it was 'satisfied' that this indeed was the case (ibid.:20). The prison system, they argued, rather than being squirreled away inside the Department, should have clearer public leadership with stated objectives and greater responsibility delegated to staff inside the prison (ibid.:126). In sum, Whitaker recommended that the control of prisons should be removed from the Department of Justice and instead devolved to an independent board.

Many of the humanitarian demands made by the Committee were shared with many staff inside the Division, to a greater or lesser degree. But what seems to have been an intractable point of conflict was the authoritarian and centralised discretion of the Irish penal state. Tom, who worked inside the prisons but had regular contact with the Division, supported the idea of the independent board in the 1980s as being part of a shift away from a more authoritarian kind of rule in Ireland:

'Governors were all fucking terrified of staff from the Department. They had awful power, the bastards. They could transfer you in the morning. You had no rights, no appeals, no rights. So if they didn't like you you were on the train to Portlaoise. We grew up in a society that was very subservient, the Church and all that'.

They POA wanted more money and to protect their overtime. Their protest was also a form of resistance against Irish authoritarian culture and the forms of fealty it demanded (Chubb 1992). As Tom described it, people were growing

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<sup>40</sup> Governors were not part of the POA. They were often engaged in a daily battle with them (see Lonergan 2010)

weary of the nature of Irish social and cultural authority in general and within the penal state in particular.

Inside the Department they also saw Whitaker and the problems in the penal system as being related to power:

John: 'The Department's reaction was that the Whitaker Committee was being simplistic in thinking the prisons board was going to fix this issue when the fundamental issue is about power.'

LB: 'How do you mean power?'

John: 'The POA exercising power...and basically putting the gun to management's head to say if they don't get ten extra people on duty or get extra overtime they're going to, they're not going to allow management to manage'.

Whitaker's findings and recommendations were felt to be against the Department, which ultimately undermined the credibility of the entire report in the eyes of the Government and the administration. There was anger about how the report portrayed many of the Division's ideas and aspirations as its own:

'The reality is that in many regards the findings of Committee endorse the policy already being pursued by the Government but without actually saying so. Indeed, the opinion is often created that the committee was breaking new ground' (marginalia, Memorandum for Government, 1987, Establishment of Prisons Board).

What had offended the Department most egregiously was the suggestion of removing power from inside the Government. The Department was not going to create a board; the concept of an independent board defied the conservative and authoritarian aspects of their political culture. For the Department, the existence of political prisoners was an unquestionably political matter. Moreover, and alluding to their broader political ideas, it was felt to be anti-democratic. But we might better understand this as a less egalitarian desire. A board would also dismantle the Government's more authoritarian character, diminishing its centralised power. The Department wrote in 1986 that the deprivation of liberty

was 'an area so fundamental to the way a democratic society organises itself' that it would be an error to remove it from the political sphere (Department of Justice 1986:2). Later in 1987 at a Cabinet meeting, the Minister for Justice raised the matter as the central contention, stating that 'the diminution of control by the elected Government of the day should be approached with great caution' (Memorandum for Government, 1987, Establishment of Prisons Board). Devolving the power to punish outside the state apparatus was unthinkable within Ireland's conservative political culture.

Rather than providing a way forward, the Whitaker Report ended up creating a stalemate between the POA and Department, with tensions remaining high throughout the remaining period of this study. Niall described how by the 1990s, 'Whitaker had further entrenched positions by this stage [the early 1990s]. And the spread of inertia'. However, the issues of penal power and governmental authority were now established as contentious political matters and, in addition, the Division had now been publicly undermined.

#### 4. A Prisoner with New Needs

There were other anxieties being faced by the Department when it came to prisons, particularly about the types of prisoners being received into the Irish prison system. Crime had peaked at an all-time high in 1983, a peak which reduced slightly through the rest of the decade, but then rose again until the mid-1990s (Brewer et al 1999).<sup>41</sup> The Government's panic was not exclusively about numbers (rising crime, rising committals), however. Punishment is always about people. The dominant governmental perception of the prisoner, so fundamental in giving precise expression to differing modes of incarceration, began to reflect the shifting dynamics of Ireland's social landscape. Because of a tendency in comparative

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<sup>41</sup> Though the rate of crime growth occurring in England and Wales was double the rate of the Irish crime growth (Brewer et al 1999).

penology to compare punishment using per capita imprisonment rates, there is sometimes a tacitly universalised image of the prisoner. The implicit assumption in these analyses of penal transformation or differences between prison systems is that the prisoner remains the same, it is the reaction to the prisoner, the sense of public fear and political anxiety, that changed. However, this is the result of the decontextualized perspective, which does not fully account for the changing penal and social problems that a government is trying to resolve (Hall et al 2013). Or how and why the prison is mobilised to address those problems (a point explored in more depth in Chapter Seven). However, the social changes of modernisation, polarisation and urbanisation imposed new barriers and brought new afflictions to the poor, particularly in urban areas. This ushered in new problems among the prison population. The people received into prison had new needs, new issues and more entrenched difficulties beyond the previous matters of unemployment and misfortune. As Seamus explained, the changes were social: ‘the prisoner and the prison changed because the world outside changed. You see the prison is a microcosm of society’. It was how those changes were perceived and acted upon, within the existing political culture, that resulted in further alterations in the imprisonment regime, and new images of the prisoner inscribed in new systems of intervention.

The prison system’s regimes were organised around helping prisoners cope, find employment, become educated, and be with their families. These regimes were not equipped for the more acute needs that prisoners increasingly presented. When drugs first began to encroach upon the prisons at the beginning of the 1980s (*Annual Report* 1982) there was a sense that this was not a penal issue. The drug related prisoner was not believed to be the type of problem citizen the Division was intended to manage:

‘The abuse of alcohol and drugs is on the increase. In particular there is a marked increase in the use of the “hard” drugs such as cocaine and heroin... The abuse of drugs and alcohol are victimless crimes and it was suggested that

offenders in these areas might better be dealt with at a detoxification centre' (Treatment of Offenders Management Meeting, October 1980).

This attitude recalls the claim outlined in the previous chapter, that corrective rehabilitation was not an organising rationality for Irish imprisonment regimes. This logic goes some way towards explaining the more relaxed view expressed in the above quote.

However, this complacent feeling did not last. By the mid-1980s there was an 'opiate epidemic' in Ireland (Dean et al 1985), and the number of opiate deaths began to rise in the 1980s (Kelleher et al 2005). Though this was generally seen as a Dublin problem (Butler 2002), more prisoners were presenting with opiate addictions. Compiling a sociological profile of prisoners in Mountjoy in the 1990s O'Mahony exposed the extent to which opiate addiction had impacted the prison system: 'From the point of view of the well-being of prisoners, the climate within Mountjoy, and the management of the prison, the increase in drug problems is without doubt the most far-reaching and important change' (O'Mahony 1997:161). O'Mahony charted the changing demographics of prisoner need. For example, prisoners in Mountjoy who used drugs other than cannabis rose from 37 percent to 77 percent between 1986 and 1996, serious dependency on hard drugs doubled from 31 percent to 63 percent.

**Number of Persons Charged with Drug Offences 1990-1995:**

Year	Offences
1990	2071
1991	3088
1992	3494
1993	3833
1994	4053
1995	4021

Source: Tackling Crime 1997a:88

As prisoners with addictions and related health needs became an increasingly significant cohort in the prison system, the logic of what sorts of imprisonment regimes could be developed evolved correspondingly, becoming more pessimistic. The reality of drugs atrophied some of the ambition, permissiveness and empathy of the previous decade. The benefit of a historical sociological approach is that it allows us to observe new practices emerging (and explain the conjuncture of forces, processes and events which gave rise to them), while also illuminating what practices fell out of favour, and why ideas lost their relevance. Respondents who were witness to and involved in these events recalled this transition, with Seamus stating that: '[Previously] the prisoners were more manageable...[then] the prisoner became much more dangerous. The gangs and then the drugs'.

Concerns were also raised about the ability to maintain the existing progressive regimes in light of the changing needs of the offender. The Training Unit's 'unique spirit, esprit de corps' was being eroded, the Division noted, because there were more prisoners in the Unit who were on drugs, meaning the Unit was increasingly for custody only. The Division duly stated that they had 'lost ground' with the Unit (Treatment of Offenders Management Meeting, April 1984). This pressure on the Training Unit was also related to the overcrowding crisis, which meant that the parameters of suitability collapsed when faced with the demands for space. The 1983 *Annual Report* stated that people were being transferred to the Training Unit who would not normally have qualified for it and staff found it difficult to cope as a result (p.13). It was suggested that the change in the ethos and organising principles of Irish imprisonment regimes was partially due to the changing nature of the offender, and the reduced 'quality' of the prisoner:

'there was not the quality of offender to turn back a number of years. We had to use the Unit to hold short-termers unsuitable for open centres...Of course the choice of offender would never be as good as before' (Treatment of Offenders Management Meeting, April 1984).

The 1970s had established a pattern in which open prisons and lower security regimes were a significant characteristic in Irish imprisonment. In this same rationale, efforts had been made at the beginning of the 1980s to secure another open 'big house' (*Annual Report* 1981:5) as a response to rising committals.

Acquiring large homes, such as Shelton Abbey, as a solution was seen as less viable by the mid-1980s. There was now an acknowledgment that the Division could no longer use prison in the same way because *who* was in prison had changed, making justifications for open regimes were felt to be less sensible. The empathy which had enabled pastoral forms of imprisonment in the 1970s took on a harsher tone: '[We] may be reaching the limits in our use of open centres – the hard core of the offender population is increasing all the time' (Treatment of Offenders Management Meeting, February 1984). Indeed, reflecting a growing animus in the Irish public for the 'drug addict' (MacGreil 1996)

Over time, a more diversified view of the ordinary prisoner emerged, one who was still vulnerable, sad, unfortunate, and poverty stricken but, now, by the 1990s was also understood as addicted and more unpredictable. There was a consequent waning of empathy. Like the prison reports from the 1970s, the later reports continued to have an informal narrative arc, revealing the fortunes and difficulties of the prison system. By the 1990s, however, these reports also suggested a growing antipathy towards some of the prisoners. The perceived social morality of some prisoners was felt to be changing:

'The problem of drugs also continues to undermine the prison system. Many prisoners use prison to get off drugs. However, a small hard core do everything in their power to continue their abuse' (*Annual Prison Report* 1993:37).

There were now prisoners who the Division believed did not wish to return to the fold of Irish community life.

By the 1990s, Irish prison system was fighting a new battle. In the 1990s, methadone had become a daily feature of the Irish imprisonment regimes. By June 1996 the



Training Unit was formally re-designated as a 'secure' 'drug free unit' (Alyward 2002:583; Department of Justice 1997a) for prisoners who either did not have a background in drugs or had stopped taking drugs. A detoxification treatment facility was opened in 1996 in the healthcare unit of Mountjoy, which had capacity for nine prisoners. The problem of drugs in prison were accepted as a distinct prison issue. Here, in the changing dynamic of imprisonment regimes – in the problems, and in how these problems were identified and assessed – a significant transformation in the ethos of the penal state. The communitarian and non-interventionist reasoning that had motivated the more reluctant approach to corrective welfare strategies had waned.

Crime and the prisoner were no longer connected simply to misfortune of poverty, but seen as a new social outsider: the drug addict. A social distance emerged between Division officials and some more socially excluded prisoners, creating a new social 'boundary' (Lamont 1992), rendering some prisoners' social history and background less relatable, less readily sympathetic, and sometimes more repugnant. These prisoners required greater forms of strategic intervention and control. By the 1990s there had been an erosion – though certainly not an eradication – of the social proximity and attendant attachment to the prisoner. The prison administration was not just addressing the prisoner numbers, capacity and overcrowding. The Division were now working with prisoners with greater collective needs, who as a socially excluded population required intervention— helping to illuminate the logic behind Ireland's interventionist regimes.

## **5. The Emerging Problem of Criminality**

Crime had been rising during the 1970s (O'Donnell and O'Sullivan 2001). The paramilitary prisoners, while still a cohort within the prison system, were largely contained within Portlaoise (Mulcahy 2005:291). Despite a break-out attempt in 1985 (Rogan 2011:160), they were quickly replaced by greater logistical concerns. The

binary categorisation of ordinary/subversive began to fade through the 1980s, unable to capture the diversity of new category considerations. In Ireland, there was a new urban crime problem: joyriding became, for a time, a huge public and political news story, and the prison was employed as an expressive political tool for crime control. Fort Mitchel, an island off the south coast of Ireland, and a former naval base only accessible by boat, was commandeered by Department of Justice for use as a prison in March 1985. The Department installed a new prisoner population while these buildings were still in a state of disrepair (*Annual Report 1985:15*). This was the first time the development of prison regimes was linked to crime. This prison catered for males between 16-25, an age category erasing the usual separation of juveniles and adults, a significant and serious development, but justified because this was a prison for urban 'joyriders', a new criminal category of prisoner.

Recalling the authoritarian atmosphere at the time, Jim was exasperated at what he described as the divisive law and order atmosphere:

'In the 1980s there was a moral panic. As far as I remember it was the Evening Herald [newspaper] lambasting crime and a lot of joyriding. Sean McDermott Street [inner city Dublin] and handbag snatching was seen as a big thing. The Minister for Justice, Michael Noonan's response was to open Spike Island and put the "young guerriers in there".'

This was a landmark moment in the transformation of how Irish imprisonment was governed. Spike Island was brought into use for the sole purpose of exclusion and punishment. John described his disapproval at the decision to open this prison, which he saw as a political intervention:

'There was a lot of just reacting to events, there was the joyriding problem and Spike Island was opened because the Department was told by the political system you have to find somewhere to put these troublemakers who were driving up and down and getting out of hand and Spike Island was the solution. And that blew up'.

Those final words refer to the riot that ensued shortly after the prison opened, and a fire destroyed much of the accommodation.

The Spike Island fiasco reveals a political concern regarding *certain kinds of crime* distinct because they were associated with *certain kinds of places* and *certain types of people*. These place-specific crime problems continued to percolate within the Department. The publication of *Urban Crime and Disorder* (1992) documented the shifting concerns about these new places and communities in the changing Ireland, what was again described as the new 'hard core' (Department of Justice 1992:23). The report was framed within a crime control paradigm. Bowden asserts that the state responded to this issue of place-specific crime problems by focusing on gaining 'sovereign power over newly urbanized space' (Bowden 2014:51). Spike Island was historically anomalous as a penal response to crime control; however, looking back John described this as the first signs of the erosion of Irish pastoral penalty: 'it got lost around the Spike Island time, it got lost'.

## Gangland Crime

In connection with urbanisation, poverty, and rising drug use in Ireland, was the emergence of organised criminal gangs in Ireland, mainly dealing in drugs (O'Donnell 2005:110). These gangs 'introduced a climate of violence and intimidation new to the Irish crime scene' (O'Mahony 2000b:23). The execution-style shootings between rival gangs became national news. Between 1972 and 1991 there were only two gangland-related murders (Dooley 1995:16); in 1996 there were eight (Dooley 2001:17). Even more troubling was the perceived impunity with which these gangs operated; gangland gun homicides tended to have a much lower detection and conviction rates. Of the 15 gang-related murders between 1992 and 1996, only three resulted in a conviction (Dooley 2001:16–17). Black writes that during the early 1990s the media instigated a moral panic, as newspapers discussed these 'untouchable' criminals (2015:403).

The opposition justice spokesperson in parliament, John O'Donoghue, described 1995 as 'the year of the criminal'. The new murder patterns were evidence not just of a crime pattern but also a signal of a changing Ireland. As he graphically illustrated, murder used to have a domestic or rural aetiology; now murders were the result of a more vicious urbanised Ireland:

'Until recently the State averaged approximately 20 murders per year and, while that was desperately tragic, criminologists considered it typical relative to the size of the population. The bulk of those crimes were rural crimes of passion or linked to feuds over land and families. In 1994 the number of murders was approximately 25 but so far this year the number of violent deaths had increased to 40.

It is fair to say that 1995 — the year of the criminal — has been marked by the emergence of gangland murders... Tragically, it is now a fact of life — a fact of Dublin underworld life — that criminals are settling petty feuds by murdering people' (Dáil Éireann Debate Vol. 458 No. 8, 28 November 1995).

**Number of Homicides 1961-2000**

Year	Total
1961-1970	131
1971-1980	292
1981-1990	294
1991-2000	439

Source: O'Donnell 2005<sup>42</sup>

It is precisely these feelings, irrationalities, crime sensibilities and emotions that we must take seriously if we are to explain the changes in the way prisoners and prisons were governed. Crime had been rising and newly emergent crime sensibilities were translated into actual penal practices via the rational assessments, power and resources available to *convert* those social sensibilities into penal practices. As such, it is the translation of cultural conceptions of crime within a

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<sup>42</sup> O'Donnell's original chart (2005), for reasons of analytical harmony, excludes the 33 deaths from the terrorist bombings in Dublin and Monaghan in 1974. I have included them in this 1971-1980 calculation.

particular social context and through a specific set of governmental actors and bodies which defines crime's influence upon imprisonment practices. This argument adds weight to the point that crime does influence imprisonment and penal politics (Garland 2001; Hall et al 2013), though not in a linear way at the level of aggregate rates (Lappi-Seppälä 2008).

The acknowledgment of crime as a new and serious social phenomenon was evident in the sort of value-laden descriptions of aggregate statistical crime rises offered by the Division: 'what is not brought out by examining the gross figures for violent offences is the fact that vicious crime is now more widespread' (Department of Justice 1994: 27). Increasing crime rates and violent crimes gave rise to new anxieties, raised questions about the role of government in addressing, ameliorating and controlling these issues.

## 6. Revolving Door

The use of shedding, highlighted earlier in this chapter, became more controversial in the context of rising crime, particularly the emergence of urban crime, gangland violence and drug addiction. There were shifting views of the prisoner as someone more dangerous and socially risky, which led to further criticism of the practice of shedding. It was in this context that shedding came to be seen as *contributing* to public disorder. The excessive permeability of prison regimes was increasingly connected to recidivism. This led to the third conceptual incarnation of TR: the 'revolving door'; a metaphor intended to capture the cyclical pattern of releasing prisoners who then reoffended, were re-sentenced, and perhaps shed again. The following quote from the Mountjoy Visiting Committee in 1988 captures the newly connected ideas of liberal release and social risk:

'It is quite distressing for us to have seen prisoners released knowing with almost absolute certainty that they would in a very short time assault, rape or possibly kill some innocent person. For ourselves, the

prison, and professional staff many of these crimes are predictable. Many could be prevented' (p.47).

Writing publicly about the factors contributing to the rising crime levels, the Garda Commissioner levelled partial blame at the use of TR (referenced in O'Donnell and O'Sullivan 2002:46). The revolving door 'attracted considerable public opprobrium' (Alyward 2002:575) and it became a target for political attack. At the beginning of the 1990s the government endured severe criticism for this penal practice from the opposition benches (Rogan 2011:13).

The idea of the revolving door captures an emerging connection between release and ideas of injustice in Irish political culture. Arguments mounted that the problem was now more than a lack of prison space, the use of release was accused of bringing the idea of justice into disrepute (O'Mahony 2000b:13). A former Prison Division psychologist denounced shedding as 'a travesty of justice...It is hard to imagine any policy better designed to subvert the intentions of sentencing and to undermine the authority of the judiciary' (O'Mahony 1996:92). New staff in the Division saw release as being 'grossly abused' (Gerard). There was a new diagnosis of the problem that needed to be addressed, namely *the abuse of state penal power*. The revolving door as a metaphor reveals some sense of prison's failure to contain and control crime and criminality. Thus, this was not just a failure of the prison system, but a failure of the government. The logic of practice – concerned with daily release and restrained punitive intervention – was increasingly viewed as perverse and the consequences of the state's inability to cope, as Cormac recalled:

'You had the revolving door and prisons couldn't cope and a big increase in crime and people going to jail and drug issues in prisons, and revolving door in the sense that prisons are not big enough to cope'.

As the pressure to stem the flow of daily releases mounted, there was a new struggle to open another prison. In 1992 it was announced that Castlerea, an asylum in the west of Ireland, would be converted into a prison. In the end, lack

of funding meant that the project stalled after the prison wall was built (Rogan 2011:182). In the same period, another set of plans for the new women's prison at Mountjoy were also cancelled according to Gerard. The Prison Division was being denied access to the resources required to extend the prison estate. Despite the crime problem, building more prisons was not a priority in Ireland.

## 7. Conclusion

The chapter has shown how the political culture underpinning pastoral imprisonment regimes came under challenge and how, as a consequence, the imprisonment regimes themselves began to alter accordingly. It was not only pressure on numbers that undermined the operating assumptions of Irish political culture. It was now perceived that the 'ordinary decent criminal' was being marginalised by a new 'hard core' group of drug addicts, gang members and 'real' criminals. It was no longer a matter of working upon and engaging with their familial bonds. A growing number of prisoners presented new problems, and this challenged the previous forms of prison practices and control. Pastoral support duly heeded space to detoxification and medicalization.

But what is evident here is also the resilience of the fundamental rationalities of pastoral conservatism, release was still among the basic working assumptions of the Division. Even in its hyperbolic form, the Division favoured using their power to establish a rolling amnesty to prevent even more overcrowding. Pastoral penalty continued to provide the ideas to solve the problems of the prison system, though those ideas morphed and mutated in the pragmatic process of solving those penal problems. That in turn, however, undermined the practices of pastoral imprisonment, accused of now turning the prison into a source of social disorder.

The metaphor of the revolving door described in this chapter suggests the dissolving bonds of social trust. The type of criminality prisoners was engaged in was less likely to be tolerated. Tolerance and leniency were increasingly seen as a social risk. Release went into overdrive just when the communitarian ideas that had supported permeable forms of imprisonment began to loosen. Shedding and the revolving door brought the issue of containment and penal confinement into contention, and not just the absence of space. It also illustrates that there was a greater unease regarding recidivism and the state's inability to control the emerging urban crime problem. These are important findings which help us explain the evolving nature of Irish penal culture. We see how Ireland 'edged, bit by bit, to a "law-and-order mood"' (Hall et al 1978:272) by the beginning of the 1990s.

Despite these penal, political and social predicaments changes in prison practices were generally incremental and pragmatic in this period. However, more dramatic and concerted transformations in the imprisonment regimes and prison administration were to come, which were rooted in the destabilisation of this period. The changes charted in this chapter gave life to a new and more explicit debate about the appropriate use of state authority in the management of prisons, prisoners and crime control – a debate which began to grow in prominence and intensity.





## Chapter Seven

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### The Sovereign Power to Imprison

#### I. Introduction

The previous two chapters have made a number of distinct claims that suggest that Irish imprisonment regimes were the outcome of political culture. This, in turn, was embedded in the social context and cultural fault lines of Irish life and contingent on the events as they occurred. As a result of these historical, social, cultural and political forces, prison in Ireland had generally been moderate and maintained a humane streak; despite the difficulties of the 1980s, release remained the favoured technique of imprisonment. Yet, if that is the case, then changes in the underlying social landscape can bring new political pressures, cultural conflicts and unsettle even the most accepted penal sensibilities. This chapter charts precisely this kind of social transformation as it occurred in 1990s Ireland, arguing that Irish social change ultimately expanded the responsibility of the Government and altered the meanings of Irish imprisonment.

The first part of this chapter provides an extended outline of the changing nature of Irish social and political authority in the 1990s, demonstrating that the social field in which prisons and Government operated was changing extensively.

The second section, using mostly interview material, captures the clashes regarding the fundamental purpose of both Government and punishment within the Department. Some wanted to reaffirm pastoral imprisonment, which had lost ground. Others saw it as a lost cause, too informal, naïvely optimistic and too individualised; Ireland was changing, crime was rising, the prisoner was no longer such a ready subject of empathy.

Changes that followed in Irish imprisonment and penal politics were not inevitable, but context and events also directed the course of action, providing the raw materials for those espousing a more punitive vision of imprisonment to make their case more persuasive. The chapter illustrates this by describing the huge public and political outcry after a well-known journalist was assassinated by an equally well-known gangland figure. This murder tapped into the existing social insecurities and anxieties about growing crime and changing Ireland. The analysis in this chapter argues that as a result of the combination of internal Departmental conflicts, social changes, and a signal crime in mid-1990s, there was the emergence of a new political culture of *sovereign authority*, which gave rise to new penal practices, characterised as *punitive imprisonment regimes*.

The evidence shows the cumulative impact this new political culture had on Irish imprisonment regimes. Incapacitation and control were the new imperatives of imprisonment, as well as an emerging belief in prison's rehabilitative capacities. The prison estate was substantially expanded and made far less permeable. More people were imprisoned for longer. Ireland's prisons underwent another phase of prison modernisation, but one shaped by punitive sensibilities and the expansion of political authority of the Irish penal state. In sum, there was a move from penal restraint to penal repression as the organising principles of state rationality.

However, these extraordinary penal and cultural transformations can only be fully explained when foregrounded against the social changes that were ongoing in Ireland. The traditional authority of the Church and the autonomy of the family had become undermined by forces of social modernisation. For the first time in its history, the State, and not the Church, came to monopolise the legitimate forms of violence. In line with these changes, and within the particular

context of events, prison in Ireland was reorganised as a tool of crime control, no longer on the periphery of social control machinery.

## 2. Shifting Authority, Power and Control

The 1960s into the 1970s marked the first in a small rise in Irish economic fortunes, although the 1980s saw a harsh reversal of these gains. By the 1990s, however, Ireland experienced unprecedented growth and the Irish social, political and cultural landscape underwent a remarkable transformation. The literature, the data, and documents from the 1990s are riven with stories of social revolution and breathless accounts of rapid change. The pace of Irish socio-cultural change by the middle of the 1990s seems to have been bewildering, and the 'miraculous' (Sweeney 1999) economic situation of the 1990s have dominated accounts of changing Ireland.

Ireland's agrarian and rural image had become a marginalised reality. From 1961 to 1991, agriculture gave way as the dominant industry as the rise in manufacturing and service industries continued to proliferate. There was also a growing number of people now with access to education (Hardiman and Whelan 1998:68-69). Another example of the move away from a traditional society was the shifting position of women in the Irish social order. By the 1990s Irish women were 'abandoning the notion that their lot in life is to get married, to get pregnant and to beget a large family' (Inglis 1998:238-239). One statistical marker of this change was the increased number of married women in the labour market. In 1961, a mere 5% of all married women worked outside the home, but by 1991, 37% did (Hardiman and Whelan 1998:69). That reality of the Irish family, an image so valorised and protected, was fraying, diversifying and rapidly modernising.

There was a sense of renaissance, Ireland – emerging from a long and stagnant history as an aspiring agrarian Catholic island (Keogh 1994:29) – now appeared on a global stage. This was the beginning of the 'Celtic Tiger', a time of unprecedented

economic prosperity. After being considered a 'semi-developed' (Ruane 2007:xi) and 'third world' country as late as the 1980s, the 1990s saw an average GDP growth of 7% per annum (Coulter 2002:3). Ireland was now in the throes of rapid modernisation and 'radical' social revolution (Crotty 1998:1). The ceaseless flow of people emigrating came to an end, and in 1996 Ireland began to experience net immigration (Central Statistics Office 2003). Another huge positive change was the IRA ceasefire of 1994. The ceasefire was broken in 1996, but restored again in 1997 (McEvoy 1998b). This period culminated with the momentous Good Friday Agreement in 1998. It has been suggested that the 1990s might have been 'the best of times' for the Irish people (Fahey et al 2007).

The literature is also divided on whether the social changes of this period were positive or negative. Coulter and colleagues (2003) have berated the undiluted optimism in analyses of Irish late-modernism. It may well have been a time of greater affluence but the spoils of economic success were unevenly distributed among different class groups. There were new opportunities for working professionals, particularly via increased education and access to higher paying occupations and greater disposal income. Ireland's advancing fortunes created a more professional class (Inglis 1998; O'Connell 1999). Ireland's once homogenous and horizontal social structure began to evidence division (Inglis 1998; O'Connell 1999) as 'The speed of change meant that many of the less skilled lost out in the process' (Hardiman and Whelan 1998:69). O'Connell (1999) argues that those who lacked the skills and educational qualifications to access the new employment marketplace were excluded from the lifestyle offered by the Celtic Tiger (such as those people displaced from indigenous companies by the influx of foreign and hi-tech industries (ibid.:220)). While both unemployment and long-term unemployment figures were plummeting, those who remained unemployed were an increasingly marginalised group, entrenching their social exclusion. While a newly empowered and financially endowed middle class may have been imbued with a greater sense of confidence by the end of the 1990s there was 'a marginalised

working class characterised by long-term unemployment, poverty and fatalism'; in this period, Ireland saw 'the emergence of an increasingly polarised society' (Hardiman and Whelan 1998:68-70).

Among the most significant of the changes during these years, was in the balance of social authority, which had been wicking away from the Catholic Church as it lost its status as a vital social institution (Ganiel 2016). Inglis (1998:13), in a compelling analysis, describes how the Church's grip on Irish institutional, moral, political and economic life 'helped maintain Ireland as a conservative, rural society and delayed its full modernisation until the second half of the twentieth century' (1998:13). As we saw in Chapter Five, the State had been pulling away from its symbiotic relationship which the Church since the 1960s. In the 1990s, the Church lost much of its social power and influence as a series of sex scandals, public revelations regarding clerical sex abuse and the export of babies for adoption (children born to unmarried mothers in Laundries and Mother and Baby Homes) – the latter presenting a particularly harsh example of the Church's control over citizens' moral conduct (Inglis 1998). The move away from religious social control is also evident in the demise of the carceral archipelago that had formed Ireland's network of coercive confinement, which had declined significantly from the 1950s, with the final Magdalen Home closing in 1996 (O'Sullivan and O'Donnell 2012). Church dominance of social control and penal mechanisms had dwindled and the State began to take its place as the central authoritative institution directing Irish social order. For example, Inglis maintains that during this period, in the 1990s, the social worker has taken over much of the power previously controlled by the priest in Ireland, like the right to knock to a home unannounced, gain entry and inquire about personal household matters (Inglis 1998:230-231; Skehill 2003).

The oppressive Catholic consensus that had coordinated Irish political and community life began to collapse. Inglis (1998) writes that the easing of community conformity and tradition heeded some territory to modernisation. For example,

divorce passed into legislation via a referendum in 1995 (only nine years earlier, in 1986, two thirds of citizens had voted against divorce, see Dillon 1998). Ireland was beginning to reframe laws in a manner which privileged individual rights over traditional religious doctrine (Dillon 1998). Contraception became fully legalised (Beatty 2013) and homosexuality was decriminalised in 1993. The 1990s was therefore a period in which changes in the law allowed a more pluralist lifestyle, that was less homogenously Catholic (Ganiel 2016).

One would not want to overstate this as a revolution in religiosity, however. Indeed, Beatty writes that: “‘Revolution’ is one of the more abused terms in Irish historiography’ (2013:116) because it overstates the 1990s social change as a total break from the past, particularly in relation to religious values. Irish people retained their faith, but lost trust in the social authority of the Church (Peillon 1998a:119). Though increasingly, secular Ireland remains a country committed to Catholicism (Hirschle 2010). As per the 2011 census, 84.2 percent of people in Ireland identified as Catholic. This was an evolution not in belief and religiosity but in social authority, in which the Church had lost its purchase as an important governing power bloc, and it no longer dominated the legitimate use of violence.

The shifting dynamics of morality and social control meant that Ireland’s social landscape was in the process of modernising as urbanisation and industrialisation accelerated, albeit considerably later than other Anglophone countries. In the 1990s, Ireland emerged as a ‘late moderniser’ (Tovey and Share 2003:42).

### **3. Cultural Conflict**

Life within the Division remained chaotic. Reflecting the changing socio-economic and cultural norms in Irish life a new ideational conflict developed within the Division. The reliance on TR – shedding and the revolving door – and conflict with the POA had brought the system into disrepute and it became the issue around

which the function of the penal state and imprisonment was debated. There was also a growing dissent in the Prison Division. Niall described the dissent in quite discreet and restrained terms, as a new superiority:

[T]here were certain, certain attitudes within, in the situation within. Now within there was a couple of [senior officers] and then staff going down the line...there was a clique, a small senior clique of more senior people. Who, who I think were, they were a clique and had a slightly superior approach to other things and there was a bit of resistance there to some things [we were] trying to do'.

People identified the period as a time of change. Those changes were largely defined in terms which evidence a shifting set of sensibilities and governing rationalities. Jim lamented the growth of a new law and order attitude in the office:

[S]ome [senior civil servants] were very gung-ho, they loved this kinda stuff. [Other senior civil servants] remained marginalised and would have had deep reservations about it all. There would be deep divisions'.

John also described a much starker ideological and cultural division emerging in the office. Saying that some people's views 'veered towards the primitive' and that 'people really had to work hard that the punitive reaction didn't take precedence over: we need to run a humane system here'.

A rationality of security was emerging, calling into question the legitimacy of the current practices of the Government. Why was energy being expended releasing prisoners rather than containing them? Gerard was vociferous on this issue:

[Y]ou lived with the risk all the time you were letting an axe killer out...But it made a travesty of the system and a mockery of justice because people weren't serving anywhere remotely like the amount of time they can serve...It was a mess. It was a shambles ... the system is too small to cope, we must build more prisons, we must'.



This encapsulates a new oppositional undercurrent which manifested in the 1990s, challenging the processes, aims and motivations of the Prison Division, both their pastoral conservative culture and their support of pastoral imprisonment. What is also evident was that this security position was rationalised by the image of the 'dangerous prisoner' – the prospect of the 'axe murderer'. Gerard, like others, saw release as dangerous. The use of release and reducing imprisonment, and the extension of Probation and Welfare and CSOs, were seen by some within the Division to be exhausted as potential remedies. The previous sympathetic sensibilities towards the prisoner, rather than the victim, appeared to some as offensively misplaced. Why should the background of a prisoner justify Ireland's rolling amnesty? Prisoners were criminals, as Gerard saw it. With an account replete with agitation, he described how the efficacy of the community needed to be protected from prisoners:

'[There were] people in communities who were being bullied and oppressed by criminals. Sometimes the narrative in the media about criminals is that they're the true victims, but I don't buy that. Absolutely, many of them have tragic histories but if you live in a high crime area, you're at the mercy of people, however sad their lives might have been, they are the oppressor. They're oppressing other people, and that gets forgotten. There's a lazy left-wing rhetoric that puts forward offenders as the real victims. But if you're living in a community where houses are being broken into all the time, old people mugged and there's, you know, all kinds of depravity around drug misuse in the neighbourhood that's a living torment to live in a community like that. And these people were truly their oppressors and we were releasing people like that onto the streets all the time and I found it appalling... They're involved in street crime. The system has silted up a little bit with lifers, but the majority of people were not in for that kind of sentence but they were very active criminals, burglars and you know, a burglar in a life time, a proper career burglar probably gets detected and convicted of one tenth of their activity, it's what they do, they rob houses, and they sometimes get caught, but most times they don't. So they were making, they were feeding into our crime figures in a big way. And even street level drug dealers are a scourge, you know, they're a serious menace to society'.

This graphically visceral account alludes to new understandings of justice, inclusion and exclusion, making it clear that the prisoner was being viewed by some, not as a

member of society, but as dangerously detached, a persecutor. To have a potentially 'dangerous' person in the community rather than the prison was morally wrong and harmful to neighbourhoods – neighbourhoods the Government should be protecting from the figure of the addict and the career criminal. The prisoner was no longer a trustworthy member of society; trust and tolerance for some came to be replaced by a sense of threat. Here we see a new strain of conservatism, one which was still focused on community integrity and family values, but the prison was now being invoked as a way to protect those conservative Irish touchstones – a major inversion from the earlier view that the prison interfered with community and family. This was a less inclusive nationalistic kind of conservatism. Political authority, it was argued, should use the prison to defend rather than protect or enforce Irish conservative communitarian hegemony.

These conflicting approaches led to what was described as 'an internal battle there about where to go with it' (Gerard), as the project of Government and the purpose of imprisonment now aroused debate and caused battle lines to be drawn. There was disagreement about who the prisoner was, how the prison should be organised, and what sort of responsibility the Government had in addressing crime – those fundamental features of political culture. John was more sanguine, describing this 'battle' as a series of heated family fights. However, these disputes were also couched in terms of morality and ethics, these issues may have been concerned with best practice, but that required a debate about the fundamentals of prison and Government: 'People on a personal basis didn't agree. And people were of the lock-them-up and throw-away-the-key. It's like families, there was some serious disagreements about philosophies'. Others spoke about these new conflicts as 'clashes' in which the individuals who were more steeped in pastoral mentality became side-lined and 'marginalized' because '[They] had very different attitudes to prisons and to prisoners and I think they had very different philosophies' (Jim).

Though a cultural divide was becoming apparent within the penal state, the penal sensibilities that buffered and motivated the system were diversifying and evolving rather than being outright dismantled, as shown in the previous chapter. The annual prison reports, as late as 1993, continued to present a more humane image of the prisoner. They continued to be structured as a more affective and diarised narrative of the prisoners and their successes, which remained largely distant from social and governmental matters of crime control. These narrative sections could go on for pages, depending on who had visited the prison (charities, writers, community organisations, musicians, visiting speakers) what had progressed in terms of maintenance, or activities (newsletters, annual sports day), and what sorts of activities the prisoners had been engaged in (community projects, work and training). They spoke of how prisoners felt, success remained amorphous, more abstractly linked to prisoners' personal achievement and development and the life of prison community rather than strategic ends of rehabilitation, deterrence or normalisation. Prisoners, for example, in Shelton Abbey were described thus: 'The vast majority of offenders appreciate the opportunity to serve out their time in this Open Prison. Consequently they take a keen interest in the house and grounds' (*Annual Report 1993*:23). While in Wheatfield '1993 was a special year for the Work and Training Area. It was marked by a succession of impressive achievements and acts of charity that helped people both inside and outside of the institution' (*ibid.*:31).

#### 4. Reaffirming Pastoral Imprisonment

It was during this time of conflict in Irish political culture that saw the publication of *The Management of Offenders – A Five Year Plan* (1994, hereafter *MofO*); as the first policy document with a clear strategy for Irish prisons, this was a seminal development. Niall described how it had been produced, a process in which he had direct involvement. *MofO* had the clear aim of setting the future prison agenda, but it was also an attempt to take control of the direction of the penal state and Irish

imprisonment regimes, which had been lurching from one crisis to another. This was the first evidence of a more strategic rationale emerging in relation to prisons in Ireland.

*MofO* was not ground-breaking in terms of ideas; rather, it was reaffirming. It reflected the political culture that had been dominant but was now under threat. The document was a means to publicly establish these penal sensibilities and rationalities as formal policy. Niall described it as reflecting: 'A lot of what I felt about prisons at that time was in that [document]'. Others, like Jim, recognised that this was rooted in a particular set of pre-existing penal sensibilities and logics, and saw it as an attempt to reignite support for that ethos:

'people in prison [are] as much sinned against as sinning...[given] the deprivation most of them are coming from. There should be minimum use of custody and minimum use of security and normalisation of prison life; now that's penal welfarism if ever there was. But you see some civil servants had that attitude and you can see it in the earlier document [*Statement of Objectives* (1981a)], and in *The Management of Offenders* in 1994'.

After the years of protracted panic, industrial disturbances and overcrowding the document was an attempt to reclaim as well as publicly assert the logic and conventions of Irish penal practice. For example, the view of the system's future success was described as regaining the view of the prisoner and resourcing the practice of imprisonment from the 1970s:

'In recent times the temporary release system under the Criminal Justice Act, 1960 has been devalued by the perception that it is used *only* as a means to reduce offender numbers. It is not widely known that some (though not as many as would be desirable) of these releases are supervised and that in the 1970's [sic] a temporary release system with supervision provided a flexible system of parole which offered scope for the management of offender in the community with little risk to the public and with very much enhanced prospects of leading offenders towards a more constructive lifestyle in the community' (emphasis in original 1994:39).

The 1970s here was represented as an important era with distinct imprisonment regime; when practice operated more coherently, and was shaped by clear objectives. Some civil servants desired a return to that enhanced release system in which 'those in prison remain valued members of society entitled on release to take a constructive place in society' (p.22).

In keeping with pastoral penal culture the future vision of prison propounded was one in which release remained absolutely central and which strengthened community-based social work, not carceral expansion. Such was the reluctance to increase the use of prisons that *MofO* advocated installing a formal cap on prison places, with a remit to build no more than 210 extra prisoner places. This suggestion was presented as credible because of that familiar idea that prison was inappropriate as a tool of social control, with rehabilitative capacities that were ambiguous at best:

'There have, on the other hand, always been questions about the long-term value of imprisonment as a means of social control, about the success or otherwise of prisons in diverting offenders from a life of crime and about the possibility of developing more community-based sanctions and measures' (ibid.:29).

As crime was increasing during this period, the cap proposed by *MofO* may seem radical, but viewed within the history of cultural practices that had characterised Irish penal politics – CSOs, TR, open prisons – it was perfectly aligned with a general penal parsimony, and the high threshold of for long-term incarceration (such as subversives) that had defined the style of thinking and shaped how prisons and prisoners were managed.

In *MofO* the prisoner was still an individual who exhibited a particularly unfortunate history, a set of individual circumstances and, importantly, a potential future:

‘The case of each offender usually presents a unique set of circumstance – up-bringing, family relationships, nature and circumstances of offence, willingness and capacity to make good’ (ibid.:40)

This document, while attempting to create historical continuity in imprisonment regimes, was also reflective of the context in which it was written; political culture must adapt to the problems its faces. *MofO* accepted that the public and the victim were new participants and active spectators in policy decisions. This reflected that a new disdain for the prisoner-as-criminal were forces which must be considered. It was accepted that there were a new set of obligations owed to the public for their protection. As the below extended extract illustrates, they were concerned about prison being seen as successful because it contained bad people:

‘While acknowledging the potentially harmful effects of imprisonment on the individual offender and sharing the doubt as to its prospects of producing any significant rehabilitative success in many cases, it has to be said that it is unlikely that the majority of people – especially those who have been victims of crime – would be inclined, now, to reject the value of the imprisonment option, or seriously doubt its value, on these grounds alone. It seems reasonable to suggest that most people, against a background where the viciousness of individual criminal acts has been the source of widespread revulsion, would tend to see imprisonment as a “success” once the offender is securely contained and thereby deprived – for the period of detention – of any further immediate opportunity of victimising his or her fellow citizens’ (ibib.:30).

At a time when the administration of prisons was chaotic and in need of some forward plan *MofO* seems to have been well placed to provide a set of directions and formal strategies to help alleviate the stress within the penal state. So why did this first strategy statement for prisons in Ireland become ‘shelved’ (O’Donnell and O’Sullivan 2001:31)? Researched ‘from the inside’ – from the voices and experiences of those who were there in this time, and set against a historical backdrop – we see that the ideas perused and formalised in *MofO* were also an object of ideological and cultural conflict. Strengthening TR and maintaining the prison population numbers as low as possible no longer grasped the imaginations of the majority of key agents of the penal state. As a strategy it

failed to convince and persuade those who were demanding greater incapacitative penal power.

The programme laid out in the document, rooted as it was in the pre-existing dominant logic of lenient communitarian sensibilities and pastoral practice, was not met with approval or support from all Prison Division colleagues. Tom described it in the most praising terms but was totally despairing when recalling how some colleagues rallied against it: '[*MofO* was a] tremendous document...[but] the number of fucking critics of that document, but the frustrating thing was not one of them wrote a line'.

One critic – and former Departmental psychologist – writing at the time, excoriated *MofO* precisely because of its restated commitment to the dominant logic of the 1970s, and as the continuation of an equivocating and dithering approach that had long defined the Department. In this light, it was viewed as no more than 'an unquestioning adherence to the status quo' (O'Mahony 1996:94).

*MofO* as a set of ideas now only represented one side in the conflict in Irish political culture. Others set themselves in opposition to the views espoused in that policy document. It was argued that pastoral imprisonment as a way of thinking and organising imprisonment was no longer practical. Gerard was clear that he perceived *MofO* as not 'realistic', and challenged the vision of what had previously been considered pragmatic:

[Pragmatism] means realism, being realistic. You have to respond to the world as you find it not the world as you wish it to be. A person who's in front of you might have had a tragic family up bringing but they've also offended grievously against society and probably represent a danger at the moment to society...It's like, you know, reality is at fault, [a senior civil servant] just couldn't live with the reality that you can't just turn a dial and tell the courts to stop sending people...it was a repetition of the same mistake and mantra...The mantra being cut the numbers and everything will sort ourselves out, we lock up too many people. Already in a country that was locking up less than

practically anybody else...We actually weren't locking up enough people appropriately'.

According to this divergent evaluation Irish imprisonment regimes were too lax, the use of the State's power too concerned with *releasing people* rather than *containing criminals*.

This was more fundamental, more ideological than a personality clash. While *MofO* was avowedly committed to reinforcing the existing penal logic, the forces from which this political outlook had drawn its strength and its common-sense appeal. The communitarian class relations and the attendant bonds of trust, the dominance of the family as a unit of social control, a marginalised but sympathetic prisoner, and the rationale of a state reluctant to directly intervene in the moral affairs of its citizens, had, by 1994, progressively diminished in a country rapidly modernising, becoming socially polarised as those bonds of collective efficacy softened (Peillon 1998a:117). However, many people in the Division remained committed to pastoral approaches to imprisonment and it could have gone on to find its resurgence, but events conspired to marginalise it as a form of penal politics.

## 5. Signal Crime

The reading of the prison problem in the Department had clearly become more fractious, the debates concerning the appropriate role of Government intervention, the justification on the limits of imprisonment were ongoing and the revolving door continued to undermine the legitimacy of penal authority. During these protracted difficulties a crime occurred that was felt to be so significant that something akin to a state of emergency was declared (Kilcommins et al 2004) in which crime, disorder, and political weakness, were seen as fatal causal factors.

Veronica Guerin, who was a renowned and well known investigative journalist writing about organised crime in Dublin, was fatally shot while sitting in traffic in



June 1996. The murder was an assassination organised by one of Ireland's notorious gangland leaders, whom Guerin had been reporting. That such an act could be organised and carried out was seen not as an anomalous tragedy but as the terrible culmination of a changing Ireland. At Guerin's funeral, the Archbishop of Dublin was reported to have told mourners that it was now 'time to reflect on the drift in the direction of our society and to ask how it may be halted' (quoted in O'Donnell 2005:106).

In the Dáil, Guerin's murder was similarly understood as a tragic event but also a crescendo in the longer historical social change: 'This event is an indictment of how crime has been allowed to grow rampant in our society for many years' (Dáil Éireann Debate Vol. 467 No. 5, 26 June 1996). Shortly thereafter, the Government was recalled from summer recess for a debate regarding the urgent crime problem, the 'assassination' of Guerin, and newly proposed measures in the battle against crime – including discussion of the use and capacity of the prison system.

The following quote illustrates the instant effect Guerin's death had on imprisonment, it released the sorts of resources that had always been out of reach to the penal state:

'Veronica Guerin, the day she was murdered we got a phone call from an official in the Department of Finance. [They] rang up and said 'how many jails do you want'? Her murder led to a total change about resourcing from the Department' (Gerard).

However, we must be careful not to think of this as being strategic action on the part of the penal state, shrewdly capitalising on Guerin's death. This was also a rupture in public sentiment, a feeling of panic in which the *moral* cultural consensus was perceived to be unravelling (Hall et al 2013), but also a pronounced sense of threat and *emergency* in regard to citizens' safety (Sparks 2006:40). Guerin's death gave a focal point for the absolutist and expressive feelings about a changing Ireland, tapping into a wider anxiety about social malaise and the changing dynamic of

social problems such as drugs, urbanisation (Holland 1997; Peillon 1998b), and the sovereign power of the State (O'Donnell 2011:78). It was a 'signal crime', seen as a manifestation of the now permeant categories of 'risky people, places and events' (Innes 2004:336) in Ireland. It was not that those proponents who had mobilised inside the Department and were campaigning for greater penal power simply convinced others of their political outlook. Rather, with the conjuncture of events and longer social change, they found their cultural schemas now 'fit' with Ireland's changing governmental environment; it was a circumstance brought about as much by the happenstance of events as by changing conscience of Irish political culture (Wilde 2004:579).

## 6. Sovereign Penal Culture

Subsequent to these events and the promise of financial resources, the Department entered a self-confessed 'process of change' (Department of Justice 1997b:161) regarding governing priorities and 'clarification of their responsibilities' (O'Mahony 2000a:7). These struggles reveal that more was felt to be at stake in the future planning of Irish imprisonment regimes. This was a 'period of transition'. It reveals 'the competing ways in which the 'penal problem' was variously formulated', along with the 'struggles and concerns which decided these choices and the wider issues which were seen to be at stake' in the various choices and tussles between 'old' and 'new' governance of imprisonment regimes (Garland 1985:4). Prison was now condemned as inadequate, and as Foucault once observed in France, this led to 'the search for effective, measured, unified penal mechanisms' (1991:81).

Under these conditions, Ireland's pastoral conservatism was finally marginalised, replaced by a new political culture, *sovereign authority*. This political culture was, first, shaped by a far greater sense of political authority. The Government was looked to as responsible for providing discipline and control in the face of social

disorder. The culture of sovereign authority permitted the State to intercede more directly in the transgressions of its citizens while maintaining order in Irish society. Of course, punishment is always 'an act of sovereign might' (Garland 1996:461). In Ireland, the Government had a new mandate: it, rather than the Church, community or families, must be at the centre of Irish law and order. Second, this political outlook was also motivated by a new antipathy towards the prisoner, informed by broadly similar conservative values, but which had now altered to support the belief that there was a greater distance between the offender and the community. This was a more exclusive kind of conservatism, in which certain people must be excluded from the realms of family and community. These were much more punitive sensibilities. Third, in these new cultural and social circumstances Irish penal culture became *charged* (McEvoy 2001), emblematic of past political failures and looked upon now for sources of security. This pattern of thinking and action is evidenced in detail in the section below.

## A New Governmental Authority

The Government's sense of authority, responsibility, and accountability, began to extend and become more prominent, taking over the space vacated by the Church in Ireland's landscape of social control. The 1990s was a time of fervent activity around planning, strategising and reviewing in a way that was more publicly visible, authoritatively engaged and expressing new collective passions. The organising rationale which framed the reports from the Department at this time was the rapidly changing Irish society. For instance, a report reviewing probation observed that many of the anxieties were concerned with the speed of social change in Ireland, a break from the past, which created new demands for state authority and control:

'Over the past decade, Irish society has experienced profound social, economic and cultural change. Much of this change has been positive. The rate of unemployment has decreased, enhanced employment opportunities exist for those with adequate credentials, and Irish society has become increasingly confident of its own capacity to determine its

future. For some, this rate of change has been bewildering. *Established sources of authority* in Irish society have been challenged, and in many communities, traditional values have been eroded which in turn places an extra burden on the State' (Department of Justice 1999:5, emphasis added).

Similarly, a Departmental report on homicide in Ireland from 1972 to 1991 opened by illustrating a dramatic scene of change, in which the basic tissue of Irish society had been altered: 'The last twenty years or so have seen drastic changes in the social fabric of Irish society' (Dooley 1995:5). These anxious expressions illustrate a Department now actively trying to keep up with a changing Ireland. The publication of a *Strategic Management Initiative* in 1996 (hereafter *SMI 1997b*) directly addressed its agenda towards what it saw as the 'changing world – an external challenge', in which it described the problems thus:

'The pace of change, worldwide, in all fields – social, economic, cultural, communications – has accelerated enormously over the past ten to twenty years. Some of this change has been positive, enlightened and clearly for the benefit of mankind. There is also, however, the negative side – social exclusion, inequality, selfishness, alienation – side by side with a growing incidence and viciousness in crime...The task of the Department of Justice is to try to meet this challenge' (1997b:166-167).

The Department's political culture, their habits of thought, their patterns of action, were adapted to Ireland's changing social circumstances and not just the Guerin murder. For example, the plethora of new documents, this newly emergent governmental print culture was intended to exhibit a new democratic, credible and assured political identity: '[This document] represents a new and fundamental change of direction for the civil service and more broadly for the public service...a time for constant assessment and reassessment of purpose' (Department of Justice 1997b:158). The new publications allowed them to do just this.

There was also a sense of *mea culpa*, the Department's traditional political culture was called into question, seen as no longer enough to satisfy the need for governmental change and open public dialogue:

'We recognise that, as an organisation, we have various shortcomings – not least in explaining our work publically. For one thing, we know that we are considered by some to be over-secretive and there is a view also that we are opponents of progress and change' (Department of Justice 1997b:160).

The document had among its central aims a desire to achieve greater public accountability, and gain public confidence, as they stated: 'We hope...[the *SMI*] will give a better understanding of what we do, our place in the overall law and order system and what our plans are for the future' (ibid.:160). This statement also openly declares that there is a clear and formal law and order system, over which the state was now claiming authority.

These forces of social change clearly impacted Departmental thinking, provided the grounding for a very different political culture, and set of penal practices by the end of the 1990s in Ireland. But it was not just that social change flowed through state agencies and actors – such forces are too broad and epiphenomenal to shape precise practices and technologies of imprisonment regimes and specific actions of the penal state. How these authorities perceived and rationalised these broader problems, how they conceived of the prisoner, the objectives of Government, and how these assessments reframed officials' sense of the rational aims of prisons set the scene for the dramatic change in Irish prison strategies by the mid-1990s. It was as Hall et al observed of the shifting hegemony and governmental apparatus in 1970s Britain, wider social changes in Ireland legitimated 'the recourse to the law, to constant and statutory power...it legitimated the duty of the state' (2013:273). The Government were explicit about this, writing that:

'The Department is at the hub of the law and order system...That is why it is now essential to decide what the core business of the Department actually is and to identify strategies best geared to secure effective discharge of that business' (1997b:164-165).

## Law and Order – Crime as a Governable Object

The Department, of course, had precedent in rapid and authoritarian reactions to threat, evident in their reactive paramilitary responses to subversive prisoners. But treatment of those prisoners was also tempered by how they were construed as penal subjects who had political, rather than criminal, intent and were thus also *de facto* political prisoners. In the 1990s, the vision of the prisoner and criminal, the cultural script and charged collective passions that surrounded those images, was more belligerent. There was a systemic targeting of crime which had not previously been apparent in Irish history. Like in *MofO* there was, they stated: ‘an escalation in the volume, sophistication and viciousness of crime’ (1997b:160). But the Government could no longer merely *tolerate* changing crime as a fact, the State must *act authoritatively*:

‘criminal elements are becoming more powerful, more callous, more vicious and there is an expectation that the institutions whose business it is to respond to that phenomena will perform effectively and coherently’ (1997b:158).

Just a week after Guerin’s murder the Proceeds of Crime Bill was proposed and five weeks later it passed into law (Kilcommins et al 2004:164). This established the Criminal Assets Bureau (CAB) which can seize goods believed to have been purchased with the proceeds of crime. There is no onus on the state to prove criminal activity thus reversing the burden of proof as the accused has to convince the court of their innocence (O’Donnell 2005:101). CAB was one aspect of the legislative activity which is described as the ‘1996/97 anti-crime package’. This included seven-day detention for those charged with drug-related offences, 400 extra Gardaí, and a radically curtailed bail law (Hamilton 2014b:35). These new legislative tools contributed to the creation of ‘a new practicable object of governance, a new field for authorities to know and work upon’ (Garland 1997:177), and new mechanisms to address the punitive requirements of the ‘hard core criminal’. But also, as Cormac put it, the 1996/97 anti-crime package was an extension of Government power in general. There was a new threshold of

credibility. The Government felt they had to meet the new objectives of being the central organising body regulating Irish life:

‘CAB was a big response to Veronica Guerin. There was a view that things were getting out of control and we need to take firm action. We needed to sort things and there was a public demand and if you don’t meet that demand the credibility of the whole system would collapse’.

The 1997 publication *Tackling Crime* (1997a) formally identified criminals as a distinct group who required new governing techniques. Most importantly this document was about invention, establishing a new State approach to governing crime.

It advocated new ‘guiding considerations’, including ‘rights’ which outlined a distinction between the law-abiding citizens and the offender. These rights evidenced the new dynamics of inclusion, exclusion and justice, and were advocated in favour of the respectable citizens. The below extract, which summed up these new rights, encapsulates the threat of crime and the prevalence of anxiety regarding the Government’s responsibility to protect people and maintain social order:

‘it is beyond dispute that society has the right to protect itself from the activities of criminals. The exercise of that right is a prerequisite for the maintenance of social order...[and while] there are various other rights which are not being addressed at this point – for example, the right of prisoners to safe and secure containment...the focus is on the position of the law-abiding majority whose rights are, without any justification, put in jeopardy day-in-day-out by a relatively small minority, some of whom will literally stop at nothing to achieve their criminal purposes’  
(1997a:13-14).

The idea of rights set out here shows a dichotomy between good and bad citizens; a vivid and anxious dramatization of the emerging social divisions in Ireland in which offenders were no longer considered to share in the same rights as fellow citizens. The greater sense of division between villainous offenders and the good

lawful public also recast the conservative sensibilities and assumptions about the primacy of family and community, which had previously motivated as well as tempered the use of prison. Such orthodoxies were directly addressed and reassessed – making clear that there had been a reordering of penal priorities and the conservative rationale within the Department:

‘While it is necessary to take account of the fact (well supported by research) that circumstances of their upbringing can have a significant bearing on the way on which people behave in later life and that offenders may advance arguments of this kind to explain their wrongdoing, this does not mean – even if the substance of the argument advanced is accepted – that the wrongdoer must automatically go free. The public is not obliged to carry the risk of attack simply because the would-be attacker’s tendency to misbehave has been exacerbated by negative personal experience or other personal failings’ (ibid.:13).

There was a governmental assessment that social ills were no longer a problem of poverty, but a lack of control and security. This was an explicit reversal of the earlier ethos identified in Chapter Five. As Jim so solemnly recalled, this was a period in which something more fundamental than the machinery evolved, rather, the pivotal conceptions of the person imprisoned shifted also: ‘We have had a punitive turn, in the way prisoners were seen’. An individual prisoner’s background and family circumstances could no longer justify that prisoners might ‘automatically go free’. Amnesties were losing their authority as a mode of imprisonment.

While *MofO* reaffirmed the existing order, *Tackling Crime* asserted a new culture of penal practice. This latter document was a declaration of intent, and one must avoid mistaking talk for action. But this talk, the very fact of the document, its new assertions and programmes sketched out were, to paraphrase Simon (2007:159), a reordering of prisons around the problem of crime.

In March 1997 the opposition party, Fianna Fáil, released an election manifesto (Fianna Fáil 1997a) and a policy paper, *Leading the Fight Against Crime* (Fianna Fáil 1997b), which rallied against the ‘cancer of crime’. In the lead-up to the general



election of 1997, Fianna Fáil were keen to mobilise fear of crime as a means to make political capital. Crime had not been an issue which had previously required Government intervention. Now, they wrote, 'Organised crime, once something we only knew through fiction and film, has suddenly emerged as a vicious reality in Irish society' (Fianna Fáil 1997a:9-10). Crime was a 'short-hand signal' to the public, 'tapping into powerful ideas' (Edsall and Edsall 1991:224) such as morality, conservative rural life, authority and quickening social transformation.

Just like in other Anglophone countries in the mid-1990s (Jones and Newburn 2007), Ireland's political discourse became inflected with 'zero tolerance' rhetoric. The power of zero tolerance as a political strategy – and indeed the choice and deployment of that particular slogan – drew its power from Ireland's changing social conditions. It was grounded in the emergent worries, historical values, and new political commitments concerned with tackling crime and punishment in Ireland. For example, the opposition's election campaign regarding crime was couched in terms which reviled the changing Ireland, the erosion of national communitarian values, and the rise of disorder:

'the task of the next government will be to use the human and physical resources in this country to confront the malaise of crime and to foster, in the Ireland of the twenty-first century, an environment in which the traditional values of community, compassion and caring can flourish. That task will not be easy...The social fabric of this country is being destroyed. The next government must wage war on the cause of that destruction. It must wage war on crime' (O'Donoghue quoted in O'Donnell and O'Sullivan 2001:32).

This illustrated that political capital was now being harnessed from crime and punishment policies and a general hardening in attitude towards criminality (O'Donnell and O'Sullivan 2001; Rogan 2011). While the stark and militaristic metaphors attached to the zero tolerance campaign are fairly generic, in Ireland it was being employed as a means to express a desire to protect and stabilise 'traditional' Ireland. Zero tolerance connected law and order and the prison with

conservative values, it was about safeguarding the sanctity of the community – the ‘fabric’ of Irish life – from drugs and crime. As a slogan, it resonated because its framing of crime as a moral crisis fit within these new social theories, rather than forced a change upon the collective conception of crime. It was a chastisement of pastoral forms of incarceration, now seen as inexcusably tolerant. Zero tolerance should be seen as an expressive political act which bespeaks a view of crime as ‘an urgent political priority’ (Garland and Sparks 2000:200). It was also symbolic of the changing relationship between the Government and crime control, and thus punishment, in Ireland in the mid-1990s.

## Policy Print Culture

A new strategic ‘mission’ for the Department was being publicly outlined. First and foremost, the mission was to protect ‘community security’, but it was also tasked to address crime and maintain the security of the State. No longer were they questioning the efficacy of the prison system, or of the Government’s capacity to reduce crime, or restraining the use of certain penal interventions. These areas were now within their new inalienable remit, publicly declared in the documents. The expanding capacity of the sovereign Irish government was partially achieved by a new print culture in the Department. The Department forewent their earlier ambiguity and the informality which had characterised their print practice. The annual reports, which were often published in arrears, had been the Division’s print practice. Often reports and reviews were kept internal, and never made public. However, within the new print culture, a slew of publications was produced. There were reviews of homicide patterns (Dooley 1999), probation and welfare (1995), evidence-based policy (Heylin 2001), a profile of prisoners (O’Mahony 1997), a review of the penal state itself (1997c), a strategy statement (1998), a report on communicative disease in prison (1993) as well as those mentioned above, such as *MofO*, *SMI* and *Tackling Crime*. These publications were an authoritative act, signs of

a new political culture establishing its governmental sovereignty over crime, social order and punishment. Within the documents there is a strong sense of a Government configuring its role in relation to these newly outlined problems. *SMI* (1997b) and *Tackling Crime* (1997a) were described as a 'mechanism through which' the Government themselves becoming more publicly accountable as a government (1997b:161).

These documents did more than declare a new authority. They worked as a new technology of rule over the penal state and as a cultural conduit, sending new messages and ideas to the imprisonment regimes. *Tackling Crime* (1997a), a self-professed 'first ever document of its kind', would guide 'the fundamental change throughout the criminal justice system' (p.5). It provided an assessment of the existing problem, as well as future goals and the strategies by which to achieve them. It displayed to the public the Government's strategic thinking. It revealed new governmental aims and provided a confident reassessment of the Government's abilities in the control of crime. The new character of government print culture shows their new activity, their sense of being engaged in the issues at hand, publicly accountable and evidencing their leadership. The content of these documents highlights their evolving understanding of the criminal population. But the very production of the documents as an authoritative act was also a statement of their growing power and control as a sovereign democratic entity. This was not simply the display of State power over law and order in the face of disorder, as occurred in neighbouring parts of the Anglophone world (Garland 1996), but was the first assertion of a State expanding, strengthening and legitimating its sovereign power to punish. This new political culture had profound repercussions; ushering in a dramatic reorientation of Irish imprisonment regimes.

## 7. The Promise of Prisons

During the Celtic Tiger Ireland was at once more prosperous but also more unequal and crime was rising. Modernisation was being politically and socially embraced, but a fear about disintegrating Irish traditions was pervasive. In this contradictory context, the prisons became a law-and-order tool to allay anxieties. The prison was now understood to be a vital weapon in the crime control arsenal. The Department described prisons, crime control and state responsibility as inseparable: 'The management of offenders raises major issues which are inextricably linked to the overall response by the State to crime' (foreword in O'Mahony 1997:5). Prison was now explicitly named, without its former qualifications, as one of the 'primary instruments employed by society to secure protection' (Department of Justice 1997a:14) and as a 'law enforcement agency' (ibid.:17). It was now a 'necessary action' for the Government to expand and develop this logic in the practical use and design of Irish imprisonment regimes: 'A major impediment to the effectiveness in the law enforcement system is the absence of an adequate number of prison places' (ibid.:107).

The narrative espoused in *Tackling Crime* was one of an Ireland in which the character and rate of crime had changed drastically, but in which the prison had hardly evolved at all. There was a certitude in this assessment, that prison had failed to meet the new needs of the growing crime issue and the greater demands felt by Government to respond. Previously the use of prison was tempered by a belief that it could cause greater damage to citizens who were imprisoned and therefore – as described in the previous chapters – the energies of the Department had generally been concerned with maintaining the flow of prisoners as best they could. The new assessment provided in *Tackling Crime* described a new history in which increased crime (rather than the increase in prisoners) was the dominant concern, Irish prisons must evolve to keep pace with this new reality.

Prison's 'capacity had constantly been eroded', the Government lambasted. The way the prison system relied on TR had, as they now saw it, 'the wider negative effect' which had 'the understandable perception in the community that the system is not coping with the crime problem' (Department of Justice 1997a:109-110). The cap on prison places as proposed in *MofO* was now gone. Prison's failings were assessed to be a lack of space but also, and this is a critical distinction, a lack of containment capacity. That is, prisons were not able to meet new standards of *confinement*. It was not just that there was not enough space for all the people being imprisoned, but the problem was now that Irish prisons also failed to literally hold those who were sent there.

Linking the governing of prisons to the governing of major crime released resources to prisons in ways that had previously been denied. It gave support to demands for more power to intervene in crime and to contain prisoners. This new political culture of a sovereign authority 'provided a basis for reworking the narratives and strategies of the prison' (Simon 2007:149). By July 1997 an 'accelerated prison building programme' was announced (Rogan 2011:186).

## **Prisons – Preventative Detention**

Prison could also no longer be justified as functionally distinct and autonomous from the other criminal justice institutions as it had been before (Department of Justice 1997a, 1997b). Prison needed to be allied with the crime control functions of other agencies, particularly the courts, who were given greater mechanisms of preventative crime control. For example, the result of a referendum in November 1996 which gave judges greater capacity to deny bail (O'Donnell and O'Sullivan 2001:33). Previously, due to a legal decision made in the 1960s (the O'Callaghan decision) bail could only be denied if a judge believed there was a risk that a defendant would either not be present for the trial or would interfere with a witness

(O'Donnell 2005:101). As Gerard recalled it, the Government had been failing on these new fronts of public protection and containment of the dangerous:

'We had extremely few people on remand because of the disastrous decision, the O'Callaghan decision, which was taken in 1966. That's a very important thing when you're looking at prison history, or penal policy, eventually we had to change the constitution to fix this. But in the 1960s, the decision's called O'Callaghan, the Supreme Court said that no court could take into account the likelihood to reoffend. That's a ground for refusing bail. This meant that people who were driving the growing drug problem in the streets of this city...Alright, so a lot of people who should have been in prison weren't. A lot of people who were in prison were minor league. But there was a growing number of people who had exhausted the bail system for years and years and had finally been put down for long sentences and they were dangerous criminals'.

Along with the now familiar baleful view of the prisoner, Gerard's analysis captures the changing tolerance for imprisonment, accepting an increase in 'minor league' offenders if it managed to address the crime problem. Prison in Ireland could, and should, provide preventative detention as the prison widened its net (Cohen 1985).

## **Prisons – Punitive Deterrence**

Among the new prescriptions accorded to prison, was an aim to address and punish the wider social issues with confinement. The 1999 Criminal Justice Act provided for mandatory minimum sentences (Campbell 2010), establishing a new punitive dimension and declaration to Irish imprisonment. At this time, Ireland had few mandatory sentences, instead privileging Ireland's independent judiciary (Bacik 2002; Hamilton 2014). The new Act, however, meant that those convicted of possession of drugs worth €13,000 or more faced a minimum ten-year prison sentence (Bacik 2002:351). Prison was now emboldened with a greater threat of punishment; it would deter drug-related actions, but also use harsher prison sanctions as a demonstration that governmental action was also on behalf of those

communities most afflicted by addiction, poverty and crime. As O'Donnell has written, 'mandatory sentences for drug offences were an attempt to reassure communities blighted by heroin abuse and infectious disease, and largely neglected by the state, that they had not been forgotten and that firm action was being taken on their behalf' (O'Donnell 2005:102). This legislation had an expressive capacity, communicating the new strength of penal authorities to wider society: not only can we confine our prisoners, but we can employ prison to exclude and punish the worst and for longer, without exception.

Similar to preventative detention the mandatory minimum sentences for drugs swept more people into the system, a practice which would previously have been viewed as unjust or unnecessary. Balancing these consequences Cormac reflected:

[Y]ou may have locked up [more people] on long sentences, people who wouldn't normally, like drug mules, but you did take out some serious drug dealers who wouldn't have been before cause it was too lenient, so it wasn't all bad, it had some benefits'.

This was a reversal of the older orthodoxy, the emphasis was now upon containment, reflecting a new 'threshold of tolerance' (Foucault 1991:83), justified precisely in order to temper previous carceral leniency.

## **Prison Works: Techniques of Intervention**

A further quite remarkable evolution in the dynamic of imprisonment regimes was a growing belief that prison practices could be used to reduce recidivism (Department of Justice 1997b:169). During the late 1990s, programmes focused on rehabilitation emerged. In the 2001-2003 Strategy Statement the new stated aims of imprisonment included supporting prisoners to 'address offending behaviour'. In this vein, the CONNECT Project was established in Mountjoy and the Training Unit as an 'action-research project' focused on 'reducing recidivism' (Alyward 2002:590) and encouraging prisoners to transition from custody, through training, to reintegration in the community (*Annual Report 1999-2000*). In many ways, this is the

sort of view that loosely underpinned the original development of the Training Unit, but the agenda of CONNECT was to *achieve rehabilitation* via vocational training (Lawlor and MacDonald 2001:23).

A review of the CONNECT Project stated that it 'required an enormous culture shift within the prisons. Actions required that the prisoner take ownership and primary responsibility for his/her own rehabilitation' (Lawlor and MacDonald 2001:206-207). The causes of crime were social and external but also, according to the evaluation, 'intrinsic' (2001:205). It was on this personal level that prison could now aspire to alter a prisoner's future behaviour. The irony in this case was that rehabilitation logic came to bear upon Irish imprisonment regimes not as a progressive measure, though it was presented as such, but through othering of the prisoner, a programme which acted upon prisoners as different from non-offending citizens. The criminal-prisoner informed the new operating logic of the regime, displacing the prisoner of poverty. This strategic regime was addressing 'core issues affecting prisoners including personal decision-making capacity' according to prison authorities (Alyward 2002:591). There were now Thinking Skills courses in several of the prisons (Cork, Curragh and Arbour Hill) which offered 'an offending behaviour programme delivered by multidisciplinary teams...The aim of the course is to equip participants with a range of problem solving skills and social skills' and honed in on 'anger management, evasion of personal responsibility and relapse prevention' (Alyward 2002:587). Additionally, a new Sex Offender Treatment programme was developed (Irish Prison Service Annual Report 1999-2000:17-18).

While rehabilitation was not the dominant operational motive across imprisonment regimes it was at this time that Irish penal culture developed a belief that prisons could reform criminals, a view that came to be institutionalised (which is of course later than other countries e.g. Foucault 1977; Garland 1985). But old and new rationalities of political culture mingled in these later imprisonment regimes. Perfectly encapsulating the ethos of humanity and helping as a subordinate to the



new concern for crime control and punishment. Cormac described the aim of penal programmes at the end of the 1990s in these dualistic terms: 'you're here to help prevent crime by helping people, it's not just to help people'.

## **Punitive Modernisation**

The shift in Irish political culture occurred during a time when Ireland's economy began to flourish. Unlike any time before, in the mid-1990s the Government had the capital to give material reality to their new political authority and cultural sensibilities. The promise of prisons then 'found its logic realized in physical structure' (Simon 2007:153). And so commenced a second wave of 'modernisation' in Irish imprisonment, a punitive evolution mainly emphasising new buildings and increased space.

For each year from 1990 to 1996, Ireland maintained an average prison population of 2,100; but by 1999, Ireland had 2,871 prisoners, five new prisons and severely curtailed use of TR. In 1996 the Irish Government re-commissioned the Curragh prison for the purpose of holding difficult prisoners and four other prisons were also newly constructed, which included the Midlands Prison, Castlerea, Cloverhill and the Dochás Centre for women.<sup>43</sup> Overall, this marks a dramatic expansion in the size of the Irish prison estate. But from the lessons learnt in Chapter Five, which charted the development of a pastoral penal culture, we should know that prison expansion is not necessarily a wholly negative development. Certainly, the building of the women's prison, planned since the 1970s, finally being built was a significant development. More space might have allowed increased room and capacity for welfare services, greater living comfort, improved sanitary conditions for the majority of people imprisoned, increased out of cell time, a chance to amend the 1983 doubling-up rule, a diversification of programmes and so on. However, the crime control rationale and the growing animus towards prisoners and offenders

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<sup>43</sup> Dochás is Irish for 'hope'.

were formalised in the more punitive dimensions which came to dominate imprisonment regimes.

The most striking feature of these newly devised imprisonment regimes was the emphasis on confinement. All the new prisons were closed prisons. Though the women's prison was organised in the style of houses – some with more liberal regimes than others – it was still within closed walls. Similarly, an open prison at Castlerea was established, but again, within a closed perimeter wall. These prisons mimicked earlier pastoral ideas of permeability but within the uncompromising context of tight secure containment. Cloverhill prison, also a closed prison, was the first designated remand prison. Cloverhill in particular marked a pronounced departure in the function and agenda underpinning Irish imprisonment regimes. Irish prison capacity was increased, but there was also a new energy behind developing means to hold people who previously would have rarely been imprisoned; prison now could now live up to its preventative ends.

The Training Unit was still an institution within the regime, but it was subject to a transformation in the new regime, taking on a graded status as a 'step down unit' (Irish Prison Service 2006:15) for those prisoners at the end of their sentence, it was no longer for any kind of ordinary prisoner. Shelton Abbey also remained a part of the regime, but what this pattern should make clear is that Shelton Abbey and the Training Unit's underpinning logic and their value-driven motivations had been marginalised. Irish imprisonment regimes now placed a greater emphasis on its architectural capacities to confine and hold dangerous people away from society. The below quote from John encapsulates precisely the nature of the change in the dominant governing sensibilities and ambitions in the mid-1990s in the Republic of Ireland. He describes the 1970s and 80s as a set of historical practices which were replaced by impulses that were rather more control-orientated, and which came to shape the very architecture of daily life for prisoners in this new era:

'[T]he old school, one prisoner per cell and so on. That was an exciting time and there was a commitment in those times to developing education and develop work-training. But that came into conflict with the other school of thought, you know, our main business here is just to contain them, and the pressure of numbers versus the amount of money that's going to be available to build prison ended up meaning they compromised, and Cloverhill was designed with I think the scope to accommodate two prisoners per cell'.

This comparative reflection perfectly demonstrates that imprisonment regimes – how people were imprisoned – is always rooted in schools of thought, ideational leanings and governing rationalities. While the pastoral regime may have had only limited funds, with them they developed the Training Unit, Shelton Abbey and Wheatfield (before it was re-designated) and increased the access to training, education, psychology and probation and welfare. Liam described how the new management styles and priorities of the late-1990s devalued these previous techniques in favour of security: '[Senior Management] wouldn't have seen therapeutic services as particularly relevant or positive, it was about secure containment'.

Punitive modernisation was not just about expansion. It was also interested in ending penal permeability. In 1995 21 percent of prisoners served their sentence on temporary release, by 2001 that had dropped to only 6% (O'Mahony 2002:550; O'Donnell 2004b:261). In 1999, the Minister for Justice announced that certain categories of prisoners would no longer be eligible for TR, such as those convicted for perpetrating violent acts against women and the elderly, serious public order offences and car theft (McCullagh 2002:599).

Kilcommins et al (2004:265), and O'Donnell and Jewkes (2011), have rightly suggested that the continued use of Christmas release is indicative of a humanity and trust that remained a current in Irish penal culture. But by the end of the twentieth century, TR operated in a more restrained version, a signal of the changing dynamics of imprisonment regimes and political culture. Irish pastoral

imprisonment regimes had been authoritatively and systematically revised. By 2000 Ireland's predominant form of incarceration was *punitive imprisonment regimes*: prison restraint, pastoral support and permeability were replaced by deterrence, exclusion and punishment.

## 8. The Reinvention of the Penal State

The new duty of the State was evident not only in the punitive turn in Irish imprisonment regimes, but were also reflected in the reconfigured landscape of the penal state and the new techniques of hierarchy. After railing against it, a Government decision was taken in November 1996, prior to the 1997 general election but only shortly after Guerin's murder, to establish an independent prisons board or agency (Department of Justice 1997c; Alyward 2002). This administrative development conveys the remarkable change in vision and direction of the penal state and an increase in power and resources; a moment which has not been singled out for analysis by other researchers. The logic was that change in the prison system would be better facilitated and strengthened by an independent agency. This meant that the Department, 'instead of being totally immersed in the day-to-day delivery of various services...will have greater focus on policy formulation, setting down and monitoring general performance indicators' (Department of Justice 1997a:17), becoming a 'policy driven organisation' (Department of Justice 1997b:179). In 1999, the Irish Prison Service (hereafter IPS) was established as a separate agency, though never on a statutory basis and therefore not independent of the Department – a pragmatic compromise between old and new political rationalities.

IPS was moved physically outside of the Department. After a review process Probation and Welfare also gained its own agency status, and a Parole Board was established. In addition, the Department of Justice became the Department of Justice, Equality and Law Reform in 1997, a declaration of their broader legal remit. A new political culture was now formally institutionalised in the political and

bureaucratic machinery of the penal state, which was now strengthened to address and maintain Irish social order.

The change in political culture was also evident in the material character of the annual reports. The lengthy narrative style of the previous thick annual reports (the last of which was in 1994) were gone, replaced by a slick, thin and corporate-style A4 brief. The difference in experience, population, programmes, initiatives and the general highs and lows in each prison was subsumed into a homogenous presentation, a system revealing its goals of uniformity in its drastically different style of presentation. As the first Director General of IPS wrote at the time a central goal was

‘to standardise the service we deliver. In our case to make consistent across the service our management of the staff who serve the organisation and the offenders who sentences we manage on behalf of the community. Standardisation is not just a commercial concept. Justice and efficiency alike are impossible without consistency’ (Alyward 2002:581).

Here the penal state was re-presented as a confident, strategic and competent bureaucracy. This was an enactment of the new culture in the penal state – a physical product declaring this as a Government that could now achieve and maintain the lofty goal of justice.

The Government’s new modern management techniques, its officious policy products, supported the repressive ‘closure’ of a new sovereign political culture and punitive penal consensus (Hall et al 2013). As the Director General described it, the prison was now seen as: ‘one of the essential bulwarks of civil society’ (Alyward 2002:579). By the end of the twentieth century incapacitation and control were the primary imperatives of imprisonment and the prison in Ireland had become more central to regulating Irish social life.

## 9. The Irony of the Punitive Turn

Irish political culture, its proclivities and sensibilities, changed dramatically during this period, evolving into a culture of *sovereign authority* and giving rise to what can be defined as *punitive imprisonment regimes*. Rather than being exceptional to the punitive turn, Ireland may in fact represent an exemplary case of the Anglophone punitive shift. More people were held in prison, not by accident but by design; the intentional result of the expansion of the prison estate and the curtailment of TR. But these dramatic changes cannot be fully explained by changes in political culture alone, for that we must adopt a broader sociological perspective. This will, however, problematize our capacity to denounce any place as punitive based on its imprisonment regimes, even in the case of Ireland where the prisons so clearly underwent a punitive shift. While prisons and political culture clearly became more punitive, what is an inescapable and fundamental part of this story is that during this period of the 1990s, Ireland had become a far less oppressive place, Ireland as a nation became less punitive in general.

The coming of late-modernity in Ireland, given its historical context, actually marked the acceleration of a progressive social transformation. The Church waned, because of scandal, protest and the influence of global ideas, markets and politics (Giddens 1991). In the 'depillarization' (Downes 1988, 2011b) of Irish social order, Ireland was being unmoored from the anchors of Catholic conformity and religious power. That contrast between a liberalizing nation and punitive imprisonment are in fact part of the same story. The changes in Ireland's imprisonment regimes, were so clearly negative – the prison lost something, its interpersonal nature, informality, its predominant humanity, and its inherent scepticism. However, Ireland's punitive prison turn and the felt imperative for governmental penal authority were the consequence of a much more progressive and positive social revolution in which (1) the Catholic Church had been de-institutionalised and the Government became responsibilized as the central organ regulating Irish social relations; (2) Irish citizens

were gradually released from the extra-legal threat of being moved outwith society, forgotten and denied, censored and prohibited in all sorts of oppressive ways and forced to emigrate; (3) but also, inadvertently – through changing access to opportunities of education, work and middle-class affluence – these modernising social forces created a more socially excluded class. A class-group who, subsequently, were then further excluded by the workings of a more extensive penal system. The conjuncture of these social forces – along with the rise in crime, Guerin's murder, and the negative perception of *de facto* prison amnesties – created the new conditions for Irish political culture, placing new demands upon it, giving rise to new penal problems but also social problems, which came to be addressed by the prison.

As those other forms of social control waned and the context of social problems coalesced, the Government's tool of the prison was modified, adapted and expanded accordingly to reflect the State's more central role in the changing organisation of Irish social and political order. The political culture which governed prisons was realised in the changing sensibilities and rationalities of those working in the Department and solidified and made visible in the new publications, but it was predicated on the state taking on the power to punish and to confine (O'Sullivan and O'Donnell 2012:257). Sovereign authority as a political culture was emboldened with a new social authority and governing power, rather than confronted by its limits and denying the crime problem (Garland 1996). Quite the opposite happened in Ireland. The Government seized upon the crime problem, materialised in the punitive adaptations of the prison, reflecting a new abiding sense of the Government's capacity to regulate Irish social life in a country moving away from a more informal regime of social control. Comparative criminologists interested in the prison and punitiveness often lament the rise in prison numbers and increased severity of penal measures, or laud the moderation and penal restraint of other jurisdictions (e.g. Pratt and Ericsson 2013; Cavadino and Dignan 2006). However, sociological and historical research reveals that judging national

punitive proclivities from the penal system alone defies our ability to understand prison's forms, its functions, social meanings and political objectives.

## 10. Conclusion

The changes in Irish political culture and imprisonment regimes at the end of the twentieth century were immense. The chapter has sought to provide a descriptive analysis of the changes in Ireland's political culture, showing in close detail the evolution from pastoral penal culture to sovereign authority expressed in punitive imprisonment regimes. The new Irish political culture marginalised pastoral techniques, which had favoured informalism and ambiguity. The culture and ethos of sovereign authority was realised in the new public declarations of power, criminal legislation, the emergence of a feeling of responsibility towards the health and security of Irish citizens and an intertwined anxiety around crime and social change. There was, however, also an antipathy towards the prisoner, demoting the once predominant empathy.

This chapter adds further evidence to demonstrate this thesis's central argument: that political culture shapes the practices of imprisonment. We saw that expanding prison places was not just about a pragmatic calculus regarding size and space. It was a concerted effort at changing the imprisonment regimes so that their walls were less permeable, that people moved less freely from prison back into society, that their exclusion and punishment could be more permanent and that the prison sanctions of the court could be better enforced. These changes converted the prison, re-coding and re-organising it as a law enforcement tool and a crime control mechanism.

But politicians and Government officials never fully control the process of penal transformation. In establishing a punishment and society analysis of Irish penal history, central to the aims of this thesis, wider changes in the Irish social



landscape are contingent explanatory factors in the punitive turn in Irish incarceration. As Ireland became a 'late moderniser', and the power of the Church and the perceived efficacy of the family dwindled the Irish political system was burdened with a greater responsibility for the maintenance of order and the protection of the well-being of its citizens. The Government faced unprecedented social pressures: to intervene, to protect communities from crime, to take control. It is in this social context, and considering the shifting Irish social structure and balance of power between institutions, that the prison became a more centralised dynamic of social order. The strengthening of prison's incapacitative function, its expansion, and its expressive punitiveness, was a reflection of these shifts in the wider Irish social landscape.

These social changes, events, historical influences, and shifting social authority bore down upon the sensibilities inside the Department and coalesced to solidify a new operating logic of sovereign authority. Taken together, the historical, sociological, political and cultural analysis provided across these chapters, culminating in a punitive penal turn, revises and extends the current history of Irish penal politics. This account moves visions of penal politics away from Ministers and steadies our focus upon political culture as a way of explaining how events and social conflict come to be realised in the material practices of imprisonment. This historical and sociological research strategy allows us to explain the punitive forms and social meanings of imprisonment in Ireland by the year 2000.

But this chapter also complicates the concept of the punitive turn. It has been illustrated here that such a clear and unambiguously negative shift in the Irish penal system was in fact also the consequence of a wider social liberation. The combination of historically researching and interpreting imprisonment from the perspective of key actors in the penal state, *and* also from the macro sociological view, tempers our ability to conclude that penal change in Ireland in the late

twentieth century was simply a punitive turn, truly reflecting the complexity of the prison as a political, cultural and social institution.

## SECTION THREE

### The History of Scottish Imprisonment and Political Culture, 1970-1995



## Chapter Eight

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### Paternalistic Liberals and Exclusionary and Disciplinary Imprisonment

#### I. Introduction

The three chapters in this section detail and analyse the history of Scottish political culture and imprisonment from 1970 until 1995, using archival material, secondary data and quotes from interviews with Euan, Henry, Philip, Douglas, William, Alistair, Robert, Adam, Ken, Derek and Peter. This chapter will first introduce the major cultural and social forces, political practices and historical events which were the central fault lines of Scottish society by the 1970s. It first explains the nuances of the distinct Scottish governmental apparatus. Then it outlines the character of the expanding social welfare field, the urban and industrial nature of Scottish life, and the class divisions. Poverty was a subject of social concern, but violence was also a serious issue, and the images of unrefined masculinity, hard men and gangsters, were prominent in Scottish cultural imagination.

Following on from this extended introduction, I will make three claims. The first is that Scottish imprisonment in this era can be defined as a form of disciplinary and exclusionary imprisonment. Its regimes were shaped by low skilled industrial work, prisoner progression, segregation, containment and security. The prison operated to discipline prisoners, incapacitate them, render them docile and gain the maximum amount of utility from them and the prison. Secondly, this form of incarceration was buttressed and reproduced by Scotland's political culture of paternalistic liberalism – a political outlook informed by liberal ideas of individual reason and responsibility, a reactive and coercive paternalism and cultural sensibilities of antipathy and fear. Finally, and more broadly, the prison was understood and operated as a site of exclusion and confinement. The prison was employed as a

central technique of social control, directly tackling petty crime and serious violence that blighted Scotland by fully removing non-compliant and recalcitrant social subversives from mainstream social life. Central to this thesis is the aim of historical recovery. These arguments will endeavour to reassemble Scotland's historical memory of punishment from 1970, and offer a new explanation for Scotland's austere and punitive forms of imprisonment.

## 2. Scottish Historical Landscape

### Scottish Administrative State

The Scotland familiar to most is post-devolution Scotland. A new devolved parliament was instated in 1999, though Scotland remains part of the UK, with Westminster retaining control of certain UK-wide legislative and policy matters. When Scotland became part of the UK in 1707, it retained its distinct legal and criminal justice system (it also retained authority of other matters, such as health and housing (see McEwan 2002:71)). While having been ruled by Westminster on many matters until the establishment of the Scottish parliament in 1999, criminal justice has always been a Scottish affair, organised and ruled by a separate Scottish bureaucracy and legislation (Midwinter et al 1991:11) – though legislative amendments needed to pass through the parliament at Westminster (Keating and Midwinter 1983).

In 1937 it was recommended that Scottish government departments be relocated from London to Scotland and in 1939 the Scottish Office – the equivalent to a Scottish Whitehall – opened in Edinburgh (Harvie 1977:51). The Scottish Office, based at St Andrew's House, was responsible for law, criminal justice, education, health, agriculture and fisheries. In the absence of a devolved government the Scottish Office became a powerful administrative apparatus (McCrone 2001:117). It is therefore suitable and appropriate to think of Scotland as a separate comparator

nation, particularly in relation to the prison system because this has always been controlled by the Scottish administration.

Over the mid-twentieth century, Scotland's administrative and governmental capacity was incrementally expanded (Harvie 1977:169), and a new 'development philosophy' took hold in the 1960s. The Scottish Office's new Development Department was charged with urban and economic planning, both of which were now undergoing a modernisation process (Gibson 1985:141-143). Between 1960-1975, Scottish governmental activity increased as strategic planning dominated, spawning new boards, commissions, plans and Bills (Keating and Midwinter 1983:157).

## **The Kilbrandon Philosophy**

During the 1960s and 1970s, the field of social work field was significantly and indeed radically extended. In 1964 the seminal (and now historic) Kilbrandon Report was published. The Kilbrandon Committee had been tasked with investigating juvenile justice. They suggested that, in Gibson's words, 'inadequate families' (1985:149) who were subject to multiple social work interventions were regularly appointed numerous social workers to assist with their different needs and issues. Kilbrandon proposed streamlining and expanding social work, and radically reorganising the juvenile justice system.

There were several important consequences of Kilbrandon. First, the 1968 Social Work (Scotland) Act identified children's misbehaviour as the result of social failure or familial difficulty (McAra 1999:366). A Children's Hearing System replaced juvenile courts in 1971. The Children's Hearings System was a forum for 'administrative tribunals'. These tribunals dealt with children who committed offences as well as children with a wider array of issues, such as truancy; not only crime. The Children's Hearings System addressed all cases as welfare cases. At

these hearings decisions were (and indeed, still are) made by a lay panel about the interventions a child needed, as opposed to deciding whether or not they were guilty or innocent (Asquith and Docherty 1999:245).

A second consequence of the 1968 Act was that social work gained new status and powers by making it a *generic* rather than specialised set of disciplines. As a result, probation was dissolved into general social work and moved into the new social work departments, which were transferred to the Education Department of the Scottish Office (Gibson 1985:148). The Kilbrandon Report and the 1968 Act reflected a widely held belief about 'the necessity for, and efficacy of, governmental activity' (Brodie et al 2008:701, referencing Stewart 2004) and a belief in the paternalistic state to create and support a more prosperous Scotland. Gibson described the 1968 Act as the single most significant piece of social legislation in Britain since the establishment of the National Health Service (1985:149). What Kilbrandon achieved was seen as a 'breakthrough' for a new conception of Scottish law (Harvie 1977:197). In addition, Kilbrandon was the first clear example of Scottish Office autonomy and policy distinction (McEwan 2002:72).

Kilbrandon has been considered the 'quintessential' penal welfare document (Garland 1996; McAra 2005, 2008). It became a cultural totem, a signal of a distinctly Scottish approach to social policy and criminal justice (Brodie et al 2008), in which social work and the welfare approach was favoured over criminal justice (Cavadino and Dignan 2006:206; Croall 2006; Duff and Hutton 1999; McAra 1999; Young 1997). The 'Kilbrandon philosophy' has become a shorthand for this among policymakers and academics (McAra 2008:489; McNeil 2005; Asquith 1992; Halliday et al 2009)

However, how Kilbrandon impacted adult criminal justice is less clearly understood, though there is evidence that it was not entirely positive. The discretion accorded to local governments to allocate funding to generic social work was subsequently criticised for creating an 'opportunity for the operation of the doctrine



of less eligibility' (Moore 1978: 39). In practice, adult offenders in the community were often side lined, with a decreasing number of probation orders given to male offenders after the 1968 Act was implemented (ibid.).

Writing on Kilbrandon goes beyond empirical research, entailing a distinct kind of enterprise, a sort of monument to the emergence of a 'New Scotland', shaped by presentist desire to establish the long and distinct history of egalitarian and communitarian civic values.<sup>44</sup> The Kilbrandon Philosophy and the Children's Hearing System are often invoked as cultural symbols. Providing what Lévi-Strauss described as 'a metaphorical representation of collective identity. Totems are central to the stories that cultures tell themselves about who they' are, but also who they were (1964, quoted in Stevens 2011:249-250). Retrospective praise for the Kilbrandon penal ethos is often intertwined with a feeling that Scotland had historically been distinct from England. These accounts emphasise Kilbrandon's success while downplaying the ways in which Scotland's social landscape of the late twentieth century was also shaped by class divisions and the distinct agony of Scottish deindustrialisation.

## City Clearances

Because of Scotland's nineteenth century industrialisation it had a predominately urban population, the majority of whom lived within the Edinburgh/Glasgow 'central belt' (Keating and Midwinter 1983). By 1900 40 percent of Scotland's population lived in cities, with more than half that number living in Glasgow (Harvie 1977). Glasgow had long been a subject of state concern, with inner city populations living in what were perceived as overcrowded slums. The housing

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<sup>44</sup> This presentist remoulding of the past is not confined to Scottish criminal justice histories. Clark and Gibbs (2018 *forthcoming*) write that the monuments erected to commemorate Scotland's industrial past often convey narratives of positive social transition into 'New Scotland', moving from industrial and working class to a 'brain intensive industry' and middle class society (citing Devine 2007). They critique how other associated 'academic accounts gloss over the reality of class conflict within Scotland'.

problem in Glasgow, while not unique in Britain, was among the most acute in terms of deprivation and overcrowding (Johnstone 1992:76). The city thus had long been a source of concern. During the first half of the twentieth century Glasgow had been subject to slum clearances and housing development projects (Damer 1989; Keating and Midwinter 1983).

After the Second World War, there were local government proposals that the population of Glasgow should be significantly reduced via relocation (Hutchinson 1996:58). Gibson (1985:141) suggests that there was an optimism about the potential of urban planning to help create a more prosperous Scotland. However, urban redesign and relocation – while explicitly concerned with improvement in living standards (Robinson 2010) – were also motivated by a desire for urban re-moralisation. Moving people and razing areas was a means to address the ‘social evils’ that were long associated with these places (Begg 1996:2).<sup>45</sup> As a result, there were extensive plans put in place to move ‘problem people’ and reorder these ‘problem places’ during the 1950s and 60s (Damer 1989; Pacione 1995).

The new ‘overspill estates’ and high rise flats which were built experienced problems from the start (Damer 1989:51), and living conditions often remained substandard (Craig 2003: 49). These schemes, while certainly offering housing capacity, often failed to develop the necessary amenities such as schools, shops, pubs, recreational facilities and transport links. Issues of exclusion and crime were exacerbated at these new housing schemes, which had higher rates of deprivation, male unemployment and infant mortality than the places they had replaced. By the 1980s these ‘peripheral schemes were themselves to pose some of the most severe social, economic and environmental problems faced by urban policy’ (Keating 1988: 24).

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<sup>45</sup> Begg argues that housing in rural areas of Scotland was equally as poor as the urban slums.

## Industry

Glasgow was also a thriving social hub founded upon heavy industries (Harvie 1977:109-110). As well as being an urban nation, Scotland was also home to the heavy industries of steel work, coal mining, shipbuilding and rail works, which provided a major source of employment and shaped both the cultural landscape and the national image. At the beginning of the twentieth century 10 percent of the Scottish work force was employed in a coalmine – 13 percent higher than the British average (Perchard 2013:82). Tens of thousands of people were employed in railway engineering and at the beginning of the 1950s Scotland had 12 percent of the world's shipbuilding industry (Harvie 1977:174), giving Scotland a different and less diversified economy than England. The heavy reliance on industry had cultural as well as economic consequences, forging the national Scottish trope of male culture attached to heavy industries, what Perchard calls Scotland's 'industrial DNA' (2013:83).

## Masculinity and Violence

While Scotland already had a reputation as a violent country (McAra 2008:485), violent crime and offending had been increasing throughout the 1960s (HC Deb 26 March 1968 vol 761 cc1330-77). While violence was a pervasive national stereotype, there was generally a distinct regional understanding attached to this image. Gangs were synonymous with Glasgow from the 1920 and 30s (Davies 1998, 2007a) and the city has been described as 'Scotland's Chicago' (Davies 2007b), associated with the 'archetypical construction of masculinity in industrial Glasgow' (Young 2007:71). Fears regarding crime and social disorder had a localised character, with certain urban and poor areas believed to have cultivated an alternative and disturbing 'moral economy' (Thompson 1971).

Deviance and crime were increasingly associated with some of the 'overspill housing estates' (Bartie 2010:395), many of which were now seen as 'delinquent

areas' (Armstrong and Wilson 1973), with their own 'ecosystem' perpetuating a more acute poverty (Begg 1996:161). The culture within these estates did not just invoke violence but also, according to Damer, was perceived to instil drunkenness, anti-social traits, fecklessness and immorality in its residents (1989:52). To speak of life in many of Glasgow's overspill estates in the 1970s was to describe dystopian places besieged by deprivation, unemployment, vandalism and serious crime, as 'an atmosphere of decay and poverty' made these housing schemes 'notorious' (Begg 1996:154, 158). This was part of Scotland's 'urban predicament' (ibid. chapter four). The problem of crime came to be seen not as structural inequality but 'the alleged pathology of its tenants' in certain difficult estates (Damer 1989:12).

Scotland also had some of the highest homicide rates in Europe, comparatively high rates of male victimisation, high rates of weapons used in attacks and more people dying from 'hitting and kicking' than in England and Wales (McAra 2008:486). Again, Glasgow was seen as presenting a perturbing picture, with the city's high homicide rates linked to 'pockets of extreme neighbourhood deprivation; a culture of knife-carrying amongst young males; sectarian/football violence; organized crime and gang culture; and a heavy drinking culture' (ibid). However, Armstrong and Wilson (1973) and Bartie (2010) each pointed out the discrepancy between the cultural image of Glasgow violence and the empirical reality. Knife crime and violence were rising in all of Scotland's cities, including Edinburgh (Leyland 2006). There was a contrast between where violence was believed to be and the statistical reality of the rise in violence. This speaks to Scotland's class conflict and entrenched social division between respectable groups and problem places.

By the beginning of the twentieth century, the image of the Glasgow hard man began to permeate the cultural imagination. 'A cult of toughness characterised' those men working in Glasgow's heavy industries (Johnston and McIvor 2004:138). There was an engrained cultural image of a Scottish masculinity – this 'hard man' characterised by toughness and endurance (e.g. McIlvanney 1975, 1985). As well as

violence, with famous tales of Glasgow gangs (McArthur and Kingsley 1935), stories of men's work as dangerous and competitive (Moffat 1965) and a masculine 'convention to appear crude' and always willing to 'exchange fun for fists' (Kirkwood 1935). This was a cultural stereotype which came to permeate the image of the prisoner as well (e.g. Boyle 1977, more on which below). A macho culture of heavy drinking, smoking, gangs and violence was perceived to be part of Scotland, but particularly Glasgow's, distinct historical and cultural development (Damer 1989:170; Bartie 2010:385).

### **Scottish Decline**

In addition to the difficulties of crime and deprivation, British heavy industries suffered a sharp reversal in fortunes in the 1960s. The post-war years witnessed a period of massive technological innovation, shifting demand away from Scotland's industrial specialisations. These changes heralded unemployment throughout the 1970s and into the 1980s, the scale of which turned this from a regional and production matter into a serious Scottish national crisis (Pechard 2013:86; Harvie 1977:174).

This was a fractious and difficult time for Scottish society. The loss of work was compounded by the disruption of settled communities through city clearances, making some formerly close networked groups less cohesive. Perchard (2013), referencing Sennett, describes this as a 'corrosion of character'. There was anger in the coal mining communities as hard men became 'broken men' (Perchard 2013; for a personal and political reflection see Reid 1976). Unemployment in Scotland increased from 7.5 percent in 1979 to 15 percent in 1982. By 1971 34.5 percent of men were unemployed (Carstairs and Morris 1989), one in five Scottish people living in poverty by the end of that period, and an even larger number of people were existing on the margins of poverty (Norris 1983:29).

## Sick Scotland

The legacy of the shifting economic and social order after deindustrialisation had a serious impact on income inequality, social exclusion and chronic illness in Scotland. Connected to this decline and structural inequality were Scotland's mortality rates, which have been higher than the British average, a gap that increased from the 1970s. McCartney et al (2012: 459) suggest that 'the most plausible explanations' for the rise in Scottish mortality between 1950 and 1980 'link to particular industrial, employment, housing and cultural patterns', what others have called the 'aftershock of deindustrialisation' (Walsh et al. 2010). Throughout the 1980s, mortality rates related to suicide, alcohol, drugs, and violence increased, but most acutely in Glasgow and the surrounding west of Scotland (McCartney et al 2012).

From the 1970s Scotland contained 'some of the poorest parts of the UK...[and] some of the lowest life expectancies in Western Europe' (Campbell et al 2013).<sup>46</sup> Scottish mortality rates began to negatively diverge from their English and Welsh equivalents in the 1970s, particularly for Scottish men, and that this pattern diverged significantly from Scotland's mortality rates in the early 1960s which had been broadly similar to the British average. Scottish health inequalities contributed to an expanding social division between class groups, an invidious physical distinction between the poor and the non-poor. By the 1970s Scotland was confronted by the problems of high unemployment, low income and poor health (Hutchinson 1996).

## Scottish Social Anxieties and Aspirations

This extended historical introduction provides a backdrop which is rarely presented

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<sup>46</sup> In recent years this has now become known as the 'Glasgow Effect', where the mortality rates in still considerably higher in Glasgow than it is in other equally deprived post industrial British cities, such as Liverpool and Manchester (e.g. Reid 2009; Walsh et al 2016)

in Scottish penal history. Almost no other European countries experienced the increase in economic inequalities on the scale of Great Britain in the 1970s, with Scotland containing 'some of the poorest parts of the UK' (Campbell et al 2013:184) the impact of economic changes were disproportionately felt there (Carstairs and Morris 1989; Fraser and Sinfield 1987; Mok et al 2012).

Crime, poverty and social (particularly urban) disorder became serious and intertwined social and governmental issues. The consequences of these forces contributed to a rise in mortality rates, new anxieties about crime, violence and gangs; social polarisation around poverty and the existence of stigmatised groups and areas. It is this context from which this chapter now begins to reconstruct the historical dynamics of Scottish penal culture from 1970 to the beginning of the 1980s. This wider set of social relations will be shortly readdressed in order to help explain the nature of Scottish political culture and imprisonment regimes, details of which we now turn.

### 3. Imprisonment in Scotland

#### Administration and Expansion

The Prison Division operated in the outskirts of Edinburgh in a separate office beyond the hub of St Andrew's House in city centre Edinburgh.<sup>47</sup> The Division was not a policymaking unit, but rather a practical and reactive administrative operation. Part of its administrative work included ad hoc amendments to the 1952 prison rules – a process of tweaking which responded to the contemporary needs of the system, the staff and the prisoners. This included such disparate matters as food scales, onion rations, delivery drivers' pay, holiday pay rates, prisoners' earnings, officer uniform rules, censorship, visits etc. The Prison Division compiled copious addenda and rule adjustments which were dispatched to prison governors via

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<sup>47</sup> The Prison Division was also sometimes known as the Prisons Group, referring to it as a collection of administrative aspects. Throughout, and for the purposes of consistency, I will refer to it as the Division.

circulars and standing orders. These administrative concerns dominated their work, particularly as prison social work and probation had been transferred into the local authorities and release was decided upon by a separate Parole Board.

Larger scale policy changes were often the result of a desire to keep pace with prison policy in England and Wales. While the Home Office did not direct the work of the Scottish Prison Division, they were nonetheless influenced by its English counterparts, keeping an eye trained on English penal innovations and advances. For example, the security classification in Scottish prisons was an adoption of changes recommended by the Mountbatten Report (MacDonald and Sim 1978:7), even though that report was concerned almost wholly with England. They relied on the Home Office for smaller insights too. Rather than attend international seminars, they would await the report from the English team who attended (HH57/1742/125). They often followed the small changes in policy that occurred in England and Wales too, such as Governors' right to reply to media requests, their responses to dangerous prisoners, the role of the Prison Inspector and changing prison censorship (HH57/1961; HH57/1794). The Prison Division in the 1970s had an administrative ethos, meaning they maintained the prison order, monitored its provisions, and altered rules and practices as required.

Managing the prisons had become increasingly demanding by the 1970s. The prison population had grown in the previous decade: in 1964, Scotland had 3,250 prisoners, but by 1971, the daily average number of prisoners had risen to 5,338 (*Annual Report* 1971:1). By 1983 they were responsible for over 5000 prisoners and thirteen institutions for adults, with a fourteenth prison under construction.<sup>48</sup> With the number of prisoners rising rapidly the Division reported that it was 'alarming' that 'Two out of every 1,000 of the whole male population of Scotland are now in

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<sup>48</sup> The annual reports list 12 adult prisons with a 13<sup>th</sup> under construction. I include the Barlinnie Special Unit separately as it had its own governor and was autonomous of the main Barlinnie prison. More on which below.



custody in a penal establishment at any one time', which was a 'higher proportion than in most other Western countries' (*Annual Report 1971:1*).

By the 1970s, one of the main priorities of the Prison Division was to expand the prison system so that it could meet the needs of the courts. This was done by allowing multiple prisoners to occupy a cell and devising a prison construction programme aimed at keeping pace with forecasted growth of the prisoner population (*Annual Report 1972:20-17*). The Division had a budget of £30 million to build three adult prisons and an institution for young offenders. By 1978 the Division aimed to provide an extra 3,000 prisoner places (HH57/322/52). Of the three adult establishments one (HMP Shotts) would hold up to 1000 prisoners. The other two would be built for a population of 500 each (HH57/322/60). Greenock, a young offenders institution, was also being converted into a prison for 180 males (*Annual Report 1980*). Two more prisons, Dungavel and Cornton Vale, both opened in 1975. The latter was a female-only prison for 220 women and girls (Carlen 1983) and Dungavel was a medium-security prison for 150 adult men. While expansion remained the Division's central prerogative, it was severely curtailed when Britain entered a recession in 1973, due in part to the decline in traditional heavy industries and the oil crisis. As a result, the planned 1000-person prison, HMP Shotts, had to be built on a phased basis. In 1978 phase one opened, a drastically smaller 60 place unit.

## Health and Hygiene

A routine concern for the Division was the monitoring of health, preventing the spread of diseases within prisons and treating prisoners with chronic illnesses and addictions. During the 1970s they promoted abstinence from alcohol, drugs and cigarettes to prisoners, and were concerned with the 'hazards of venereal disease' and personal cleanliness (*Annual Report 1970:16-18*). Prisons regularly welcomed in Alcoholics Anonymous and in 1971 a small alcohol treatment unit was opened at Low Moss prison (*Annual Report 1971:13*). These, often short-term, prisoners were

not being subject to punishment, but prison care, as it was referred to as a medical control regime of 'penal medicine' (*Annual Report 1982:20*).

The Division was concerned with the prevalence of 'mental disorders' among the prisoner population. These were described as prisoners who exhibited nervous disorders, neuroses, or were emotionally disturbed or mentally unstable. Among the mundane routines of Scottish imprisonment was the treatment of these various vulnerable and disordered groups (*Annual Report 1981:19*). Within the broader remit of psychological disorders, the Division was also preoccupied by prisoners with 'personality disorders', and distinct from other kinds of perceived incapacity of other 'disordered' and sick prisoners. It was explicitly stated that personality disorders 'do not come within the definition of mental disorder', particularly as their main characteristic was 'disruptive behaviour' and violence (HH57/1794). Each year thousands of prisoners were reportedly diagnosed with these pathologies.

### **Prison Industries**

Among the most important dynamics propelling the daily regimes of Scottish imprisonment was industry. Only a small minority of prisoners worked outside the prison (0.5% in 1978 *Annual Report* p.14). Most prisoners worked within the prison and were involved in textile and manufacturing – which included making and repairing mailbags, producing goods from canvas, mat making, net making and mattress making – as well as domestic work, such as cleaning, working as orderlies, working in the library. A small number of around 100 prisoners were involved in trades such as carpentry, plumbing, painting, plastering and labouring. Full employment for all prisoners was a key aim of the imprisonment regime (*Annual Report 1985:5*). The prison system was seen to have failed the prisoner 'by the waste of their [the prisoners'] own resources during imprisonment' (*Parole Board for Scotland Annual Report 1972:15*).

Prison industries were not aimed at 'capacity building' (Garland 2013:501). Prison industries were also a cheap and effective means to keep prisoners usefully occupied (*Annual Report 1972:14*), to 'counter boredom' (*Annual Report 1970:12*), stimulate industriousness and prevent prisoners from 'idleness' (*HMCIP Annual Report 1981:12*). Prisoners would not rest, loll or lounge while imprisoned. Prison industry was lauded because it provided a systematic and simple template for prisoner control and prison order, contributing to 'the efficient management and control of prisoners and prisons by providing a stable and regular routine' (*Annual Report 1985:5*). To increase the rehabilitative capacities of prison industry, the Division acknowledged that the forms of industrial labour would have to be better aligned with outside job opportunities, but within the prison system low-level factory work was over emphasised (*Annual Report 1972:17*). The heavy reliance on industry prioritised utility over welfare. Low and unskilled work activities were largely organised so as to maximise the utility and output of 'inmate labour' (*Parole Board for Scotland Report 1972:15*).

The ideas of utility were so deeply ingrained that an increase in the prisoner population was also viewed positively, resulting in increased productivity because, as they described it, the prison now had 'a larger workforce' (*Annual Report 1972:16*). Thus when there was a small reduction in prisoner numbers in 1981 it was reported that: 'it caused short manning on lines of production' (*Annual Report 1981:14*).

The rehabilitative agenda was, essentially, subordinate to the economic and utilitarian penal rationality:

'modern industrial work under enlightened conditions gives no worse a result in terms of positive rehabilitative benefit than other more expensive forms of institutional treatment. Well organised and well managed prison industry can be carried out for up to 8 hours a day at virtually no cost whatsoever to the Exchequer and, in some cases, at a significant profit. The cost/benefit to society as a whole therefore of expanding and modernising prison industries is an important factor

which deserves special consideration in the overall planning of treatment programmes' (*Annual Report 1974:13*).

The Division monitored the 'value of work done', calculated via output of products and the financial value of goods produced by prison industry (*Annual Report 1970:12*). Using these figures the Division tracked, compared and reported the annual sales turnover per inmate. Each Scottish prisoner had an equated economic value, and it was that which the Division monitored and actively sought to stimulate via imprisonment regimes.

### Security as Classification

While almost all prisoners were workers, they were categorised into discrete security classifications which distinguished them in terms of danger and risk of escape:

Category A: Those who if they escaped would be highly dangerous to the public, the police or the security of the state;

Category B: Those prisoners for whom the very highest conditions of security are not necessary, but for whom escape must be made very difficult;

Category C: Prisoners who cannot be trusted in open conditions but who do not have the ability or the resources to make a determined escape attempt;

Category D: Prisoners who can be trusted in open conditions (MacDonald and Sim 1978:8).

Adult prisoners were categorised as either short-termers (sentences less than 18 months) or long-termers (sentences of 18 months and above, including indeterminate sentences). The majority of the average daily prison population in Scotland was made up of adults, about one-third of whom were long-term prisoners.

### Long and Short-Term Prison Population: 1973-1975

Year	Daily Average Prison Population	Average Daily Short-Term Adults	Average Daily Long-Term Adults
1973	4951	2042	1176
1974	4689	2078	1123
1975	4810	2257	1126

Source: Annual Report 1975

### Induction

The 1970s Scottish prison system of the 1970s was preoccupied with the long-term prisoner and had several special systems set-up specifically for them within the regime. Upon entering the prison system, long-term and life sentence prisoners were assessed by the National Classification Board (a mix of Governors, Chief Officers, social workers, industrial managers and specialist officers) who tested them on skills such as cutting joints, arithmetic, IQ etc. (McNeil 1988; Adler and Longhurst 1994). This process was used to identify whether the prisoner would accept and settle into their prison sentence or if they were likely to be disorderly. Those long-term prisoners deemed 'trainable' were sent to Perth or Edinburgh. But if the Classification Board deemed the newly incarcerated person as recalcitrant, or if the prisoner refused to be assessed then they were immediately identified as a disruptive prisoner and subjected to a much more austere regime (Coyle 1991; Scraton, Sim and Skidmore 1988). In that way, Scottish long-term imprisonment was organised hierarchically.

Underpinning the hierarchy of Scottish imprisonment was a distinct pattern of movement known as progression: long-term male prisoners were moved around the prison in a system intended to work as a rational system of reward and punishment. Once assessed and allocated the long-term male prisoner would enter the routine of industry. However, it was unlikely a long-term male prisoner would complete their sentence in one prison. Speaking from his experience working inside the prisons and the

Division, Derek told of how the imprisonment regimes were organised around circulation, which progressed long-termers through their prison 'career path'. Progression occurred between what were considered 'mainstream' institutions. Ideally, a long-term prisoner would spend time in different prisons as they progressed towards the end of their sentence. But a prisoner could also be downgraded and returned to a lower establishment as punishment. Penninghame open prison relied less on 'physical restraints' of discipline, control and security, instead:

'Formal controls are replaced by a high degree of personal discipline and if it becomes apparent that an individual is incapable of exercising an acceptable level of control, he is transferred to another establishment' (HMCIP *Report on Penninghame* 1982 p.15).

Misconduct could be punished by extreme downgrading to more austere prison settings, and there was the risk of being segregated outside the mainstream system.

It should be noted, progression was always for adult male prisoners. After Cornton Vale opened, very little time or energy was spent developing women's imprisonment. As Alistair described it, he thought the Division saw Cornton Vale as 'the bee's knees' and that they were absolutely astounded by Pat Carlen's (1983) critique of Cornton Vale.

### **Segregation – 'psychopaths' and 'pests'**

Scottish imprisonment had 'deep end' institutions that existed at the bottom, and even outwith, the mainstream prison hierarchy; these were what Sparks has termed '*termini*', the lowest points 'on an ostensibly rational system of incentives and sanctions' (Sparks 2002:559, original emphasis). Dangerous, non-compliant and disruptive prisoners were an accepted reality of Scottish imprisonment and thus necessitated permanent facilities of exclusion and segregation (HC Deb 15 July 1982 vol 27 cc468-70W; *Annual Report* 1985:16; *Annual Report* 1980:23; Coyle 1987).

Peterhead maximum security prison was the 'end of the road' (HMCIP *Report on Peterhead* 1981:4); it represented extreme confinement, a 'place of internal exile' (Sparks 2002:576), providing extra 'security and control' for those prisoners serving long-term and indeterminate sentences (HMCIP *Report on Peterhead* 1981:3).

Peterhead was a notorious prison for notorious prisoners. Its role was described thus: 'to assist other establishments by holding those prisoners viewed as most disruptive' (SPS 1990a:21). Prisoners who were deemed to be of 'Peterhead classification' (Coyle 1987:145; Scraton, Sim and Skidmore 1988:255) had been identified as requiring extra penal incapacitation and exclusion:

'at any one time, Peterhead contained a very mixed group of prisoners including maximum security prisoners, prisoners who presented management problems, and a wider group of inadequate, often disturbed prisoners' (SPS 1990a:21).

The Chief Inspector described the incendiary atmosphere at Peterhead: '[it] experiences an uneasy calm which can erupt into violence without warning' (HMCIP *Report on Peterhead* 1981:3-4). Throughout the 1970s the prison endured intense bouts of prisoner resistance such as rioting, roof top demonstrations, escape attempts and hunger strikes.

Peterhead itself required greater exclusionary measures to maintain its own internal order. Working inside the prisons at the time, Alistair outlined the predicament. Inevitably some prisoners would never accept the authority of the prison and the legitimacy of their sentence. Thus the prison authorities required a means to both punish and deter prisoner disorder:

'[Peterhead] was the end of the line, and once you were there, there was nowhere else to go, and once you take hope away – you know the usual argument...if you create the end of the line, you need an end of the line at the end of the line. So what [the Division] did they created the cages in Inverness'.

More restrictive segregation existed in the form of ‘the Digger’ at Peterhead (Sparks 2002) and ‘the cages’ at Inverness (Boyle 1977; Wozniak 1989), developed for prisoners deemed to need ‘complete physical separation from the normal prison routine’ (SHHD 1971:13). The segregation ‘cages’ at Inverness opened in 1966, providing a short, sharp, shock type of penal deprivation (HH57/1794). Its ‘basic philosophy’ was ‘that any prisoner who showed that he was violent, subversive or recalcitrant could be sent to the unit at Inverness until such time as he demonstrated his fitness to return to his normal prison classification’ (SHHD 1971:4).<sup>49</sup>

Segregation was, first, a form of punishment. No matter what, there would be serious consequences for prisoner misbehaviour. Segregation provided extra-physical constraint and degrading rituals. Later critics at the time described how prisoners segregated at Peterhead would stand

‘naked before prison officers in a ‘cage’ 9 feet by 6 feet the prisoner underwent a full body search three times each day. The solitary confinement and personal humiliation of the cages represented the ultimate loss of dignity for any individual receiving punishment’ (Independent Committee of Inquiry 1988:29).

These units were about exercising total control over prisoners, managing their time, space and bodies. Its aims also included behavioural modification as the prisoner, would ideally be returned to the mainstream with a more compliant disposition.

In 1972 there was a particularly violent incident in the cages. A prison officer lost an eye, other officers were stabbed and two inmates were seriously injured (HH57/1742), which led to the temporary closure of the unit. Scotland had only abolished the death penalty shortly before these incidents in 1965. Without the

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<sup>49</sup> These were relatively small numbers in comparison to the size of the rest of the system. But nonetheless a regular feature which was relied upon.

Year	Number of Prisoners	Avg Length of stay
1968	32	2 months 3 weeks
1969	17	4 months 2 weeks
1970	11	3 months 3 weeks
1971	14	2 months 1 weeks
1972	17	2 months 3 weeks

source: HC Deb 24 November 1978 vol 958 cc756-7W



threat of execution, the Division had been adjusting the imprisonment regimes to meet the perceived potential dangers of the long-term prison population (Cooke 1989a). Confronted first by these troubling incidents, as well as Scotland's rising murder rate, visions of a new breed of prisoners with 'nothing to lose', the Division had the residual feeling that in abolishing the death penalty the Scottish penal system had lost its most serious deterrent (HC Deb 26 March 1968 vol 761 cc1330-77). In this context of desperation, there was a small but profound innovation in Scottish segregation regimes in the early 1970s. The cages had not brought a reduction in prisoner misconduct, and that 'crisis of violence' opened a window of opportunity for more radical solutions (Nellis 2010). St Andrew's House intervened, establishing a working group on The Treatment of Certain Male Long Term Prisoners and Potentially Violent Prisoners. Their job was to explore the possibility of another alternative regime for the endemic problem of unrelentingly disruptive prisoners. The working party argued that without the death penalty the work of prison officers had become more dangerous (SHHD 1971:3). They suggested a new segregation unit for the most violent prisoners (HH48/100/34), to provide intense support for those 'very few inmates [who] manifest any signs of violence' (SHHD 1971:2). Their report suggested a therapeutic model of incarceration (Circular No 73/1973), inspired by prisons such as Grendon in England (Stephen 1988). As a result, the Barlinnie Special Unit (hereafter BSU) opened at Barlinnie prison in 1973 in what had been the women's prison, but which had been unused.

Recalling the discussions in St Andrew's House shortly after the opening of the BSU, Henry described what he sensed as innovation born of desperation: 'The Barlinnie Special Unit was conceived of because they didn't know what else to do with these people'. But this small unit quickly became a radical and bold penal departure for Scotland. Holding up to eight men, some of whom were already renowned as among Scotland's most dangerous prisoners. While the BSU was part of Scotland's segregation network, its internal regime was far from segregative. The BSU returned autonomy to prisoners, allowing them and the staff to evolve into a

single 'community' rather than maintaining the distinctions between officers and prisoners. Everyone engaged in a democratic kind of governing arrangement which centred around weekly meetings. At these meetings, any member of the community (prisoner/officer) could be requested to take a place in the 'hotseat', where he could be subject to questioning from the rest of the group (Sparks 2002; Boyle 1977). As a result of the community meetings the prison rules were amended at the BSU. Together they decided to relax censorship outwith stipulated prison regulations; they allowed the free use of workshop equipment and telephones; and in a highly symbolic act, the group decided to remove the door from the punishment cell. The internal regime of the BSU was less regimented, unconcerned with industrial training in favour of the arts (Nellis 2010). This was also undoubtedly a more permeable prison. Prisoners moved in and out of the prison with greater freedom, and also enjoyed liberal visiting regimes including visits in their cells (HC Deb 13 February 1978 vol 944 cc5-10W). The BSU became a celebrated unit (Sparks 2002), and with some of its prisoners – particularly Jimmy Boyle who produced a biography and sculpture while at the unit as well as Larry Winters, who published poetry – gaining a kind of celebrity status as they and the unit entered the Scottish cultural imagination.

The BSU was also controversial. The media refereed it as 'the Nutcracker Suite', 'Butlins for prison toughies' and 'Porridge with cream' (Cooke 1989b). The Unit also gained a wide audience of admirers, it became symbolic of what prison could achieve. It demonstrated that the worst and most dangerous of Scotland's criminals were not beyond redemption, as one politician characterised penal practice in the BSU: 'The Barlinnie experiment was, and is, based on the premise that lifers and other hard nut offenders will respond positively to being treated like human beings' (HC Deb 12 February 1980 vol 978 cc1493-502). The BSU was perceived to have been successful at civilising Scotland's most recalcitrant citizens. But, as the latter quote identifies, the BSU began as an 'experiment', an exception to the normal prison regime (13 February 1978 vol 944 cc5-10W) – a status which it always maintained

(Sparks 2002). The BSU was pioneering – and it was anomalous. The unit never sat comfortably within the Prison Division. St Andrew’s House had maintained a policy of protection over it according to Henry, who said they were to leave the unit be without too much oversight, having been told ‘don’t de-mystify it if it works’. It was, as an official described in it 1980 ‘developed “apart from” rather than “part of” of the prison system’ (Working Party on Alternative Regimes 1985:11). Within the prison system, however, people were, according to Coyle, embarrassed by its academic and public success and notoriety (Coyle 1987).

However, a demand for segregation units did not dissipate after the creation of the BSU. The BSU was not the only separation unit opened in the 1970s, concerns regarding the need to expand segregation continued into the 1980s. Calls were made by the prison officers to have the Inverness Unit reopened, which happened in 1978, only six years after it was mothballed. In justifying this decision, the Secretary of State described the cages ‘as an integral part of the prison system’ for prisoners who would ‘not respond to normal measures of management and control’ (HC Deb 24 November 1978 vol 958 cc756-7W). In June 1982 construction of a new unit within Peterhead commenced. This was called the Ten Cell Unit, access to which was granted by the governor of Peterhead. According to the Under Secretary of State for Scotland, the unit would provide ‘facilities to deal with prisoners who require, for whatever reasons, to be removed from normal circulation’ (Working Party on Alternative Regimes 1985:14) and was thus not quite as punitive or austere as the digger or the cages. Concern over security and segregation also led to the establishment of The Working Party on Alternative Regimes (hereafter WPAR) in 1982, who were to investigate the problems with the mainstream prison regime for long-termers, and explore possibilities about the future use and need for segregation units. The WPAR were interested in ‘(1) psychopaths with a repetitively violent disposition, (2) pests to the administration/subversives and (3) prisoners in need of protection’, though the first two groups were their priorities (HH57/1794).

While the BSU presents a remarkable moment in Scottish penal history, it should be seen as part of this network of segregation. All prisoners held in the Ten Cell Unit, the BSU, the cages and the digger were all beyond the mainstream prison system. As Derek described it, a prisoner in the BSU was considered 'out of the system'. Other interviewees who worked inside the prison system and the wider criminal justice field at the time described BSU prisoners as 'stagnating' (William; Alistair). Segregated prisoners could not progress until they returned to the regular hierarchy of the mainstream prison system (Sparks 2002; Bottomley et al 1994). To progress – and thus be released – prisoners had to re-enter the mainstream prison regime, a reminder that even the more innovative unit, such as the BSU, existed to keep people out of the mainstream. The ideal dynamic of Scottish imprisonment regimes was to encourage long-term prisoners to circulate, to travel upwards through the prison hierarchy. While the BSU was far more progressive than other types of deep segregation (and maybe even mainstream imprisonment), it was not progression.

## Progressing

One could ascend upwards along the prison hierarchy, towards open prisons like Penninghame, which had room for 74 inmates, or to a Training for Freedom Hostel (hereafter TFF). Dungavel prison had an important function in the ladder of progression. It was described as a midpoint between an open and closed prison (though this description was more symbolic, given its high walls, and 'standard security fence' (HMCIP *Report on Dungavel* 1981:1). Dungavel was for long-termers nearing the end of their sentences, who had been recommended for progression based on low risk of disorder and escape. TFFs were the final step on the ladder of progression. There were 8 TFF places in Aberdeen, 16 in Edinburgh and 11 at Perth. These prisons were described as 'a necessary step on the road to liberation on licence' (HMCIP *Report on Penninghame* 1982:3).

Prisoners who reached Dungavel, Penninghame or a TFF could potentially enjoy greater freedom. They could attend evening classes in the community or work for

an outside employer and the majority would receive five days leave for Christmas. Nonetheless, a rational and regulated system prevailed, in which a prisoner had to maintain good behaviour within a stipulated timeframe before release was permitted. For example, if a prisoner had progressed to Category C in Shotts and had served four months under that category, they were then permitted an afternoon home visit every three months (*HMCIP Annual Report 1985:6*). That leave was still largely escorted, even from the open prison at Penninghame and the 'semi-open' Dungavel (*HMCIP Annual Report 1985:6; HMCIP Report on Dungavel 1985*). The prison kept its grip on a person as they were slowly being released back into society. This 'support' was considered optimal on the grounds that it helped prisoners better 'contribute positively to local life and, equally important, the community itself may be better protected because the ex-offender under supervision appears less likely to offend again' (*Parole Board Annual Report 1980:11*)

To progress in prisons, it was 'not enough to simply conform to prison rules and regulations' (*Parole Board for Scotland Report 1972:12*). The prisoner had before him the opportunity to graduate up the prison hierarchy and, ideally, in the process learn to master the self-control of 'personal discipline' and adopt more socially acceptable behaviours (*HMCIP Report on Penninghame 1982:15*). The prison rules were external constraints, but to progress the prisoner had to internalise these as a set of individual behavioural rules. As the Parole Board reflected in 1974,

'A man's behaviour in prison...[is] usually to a considerable extent in his own hands. He can see prison as a challenge and decide to make use of such opportunities as it provides, or he can simply conform and pass his time quietly' (p.6).

In these prisons, a new emphasis was placed upon training prisoners to be responsible. For example, the 'principles' of the regime at Dungavel were 'designed to encourage individual acceptance of responsibility appropriate to life in the community' (*HMCIP Report on Dungavel 1981:12*). Further along the progression ladder at a TFF, personal responsibility was not just instilled but tested:

'The purpose of the Training for Freedom Scheme is to provide conditions in which an inmate's ability to live in the community can be tested while he is still under sentence, and to ease his transition to normal life in the community on his release' (*Annual Report 1978:21*).

Progression was an attempt to 'train' prisoners to be responsible by moving them – literally (through progression) and metaphorically (the process of socialisation) – towards a better prison with more privileges and, as part of that, 'becoming reasonably responsible citizens' (*Parole Board Annual Report 1972:12*). The expectations of responsibility were inscribed in these regimes, such that 'responsible citizenship' was the central motif of progression (*Annual Report 1971:22*; HMCIP *Report on Penninghame 1982:3*).

Discipline and control were maintained in these more open prisons through the threat of downward progression, sending a prisoner back to the institution from which they transferred (HMCIP *Report on Dungavel 1981:6*). It was considered that 'The greatest controlling factor in an open institution is the sanction of being returned to closed conditions' (HMCIP *Report on Penninghame 1982:14*). Discipline, training and control in Scottish imprisonment regimes were thus connected to prisoner mobility.

## Parole

For prisoners to begin to move out of the prison prior to their official release or remission date they required parole. For Scotland parole was a relatively new innovation, a product of the 1967 Criminal Justice Act which stipulated that only those serving over 18 months were eligible for early release (McManus 1999:231). A prisoner was considered for parole after completing one-third of their sentence or serving one year, whichever period was the greatest in length.

The entire process was a staged series of 'screenings' (*Parole Board for Scotland Report 1979:14*). Each prisoner considered by the Parole Board would have an individual dossier compiled by prison staff and social workers, containing a plotted history of

their criminal and social background, a review of their conduct on any previous supervision in the community, details of the current offence, comments or observations made by the Judge, and insights into their domestic life and how they had responded to imprisonment regime. But the most vital concern was public safety, and the risk of future offending was paramount for the Parole Board (*Parole Board for Scotland Report 1972:9*). This data would then be examined by a local review committee who would determine whether or not to recommend the applicant to the Parole Board, which then ultimately decided whether a prisoner would be recommended to the Secretary of State for early release.

In 1979 it was reported that the Parole Board recommended that 72.8 percent of applicants receive parole, a total of 236 people (*Parole Board for Scotland Report 1979:7*). This represented a high rate of parole success. But if we look at this figure measured against the entire number of parole eligible prisoners what we see is that in fact 29.5 percent of prisoners eligible for parole were successful in their applications.<sup>50</sup> This demonstrates that in Scotland that parole was a cautious and stringently regulated process.

For those who did receive a release date, the Parole Board would recommend a series of preparatory steps, which would expose a prisoner's 'weaknesses and strengths' (*Parole Board for Scotland Report 1972:9*). Having progressed to this stage, any evidence of misconduct or doubts about 'their suitability for release' would mean that a prisoner's parole date could be withdrawn and they would descend back into closed conditions (*ibid.*), a reminder that parole was 'a privilege to be earned' (*ibid.:12*).

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<sup>50</sup> I calculate this by using the figures from the 1979 Annual Report. This calculation commences at the very beginning of the parole process, including the 764 eligible prisoners plus a further 36 people considered by the parole board (so, 800 people) and the final figure of 236 who received parole.

## 4. Disciplinary and Exclusionary Penal Culture

I define the characteristic forms and practices of Scottish imprisonment regimes from 1970 into the early 1980s outlined above as *disciplinary and exclusionary penal culture*. Focused firstly on discipline, Scottish imprisonment regimes ensured prisoners obedience using ostensibly rational penal circulation, observation, the threat and use of segregation, the incentive of parole and a graded hierarchy of prisoner categories.

First, mapping the practices of progression makes it clear that it was not just each individual institution which disciplined and trained prisoners. Progression and downgrading, was fundamental to rational disciplinary logic of Scottish imprisonment regimes. Armstrong, citing Deleuze, writes that circulation ‘is not merely the means of getting from one disciplinary enclosure to another, but contains the essence of social control itself’ (2015:11-12). Progression was fundamental to the regime, rather than merely getting a prisoner to somewhere where penal aims could be achieved. Progression represented the ‘calculated combination’ of prison forces which were believed to be ‘the highest form of disciplinary practice’ (Foucault 1977:167). The logic of this form of imprisonment was manifest in the animus felt for the BSU across the prison system. It was seen as a potential ‘incentive for bad behaviour’ and that there should be ‘no carrots if good must be emphasised’ (original emphasis HH57/1622). The BSU transgressed the logic of disciplinary circulation of Scottish imprisonment regimes.

Second, and relatedly, was the aim of utility (Foucault 1977:25), which rendered prisoners biddable and productive through the discipline of industry. In the 1970s, prison regimes in Scotland had ‘labour requirements’ (HMCIP *Report on Penninghame* 1982:16). Factory labour in Scottish prisons was intended to use the prisoners as a resource, as the Division reported, ‘to make economic use of the considerable labour force which the prison represents and which ought not to be



wasted'. Thus the administration managed the prisons to be 'as profitable as possible' (*Annual Report 1972:14*); the prisoner was constituted as part of the prison's 'efficient machine' of industry (Foucault 1977:164).

Third, the dominant operational goals of disciplinary and exclusionary imprisonment were generally penal rather social, to create well behaved prisoners by instilling in them the 'instinctive habits' of prison obedience and self-control (O'Malley 1999:176). Imprisonment regimes were largely designed to efficiently support security and containment, rather than rehabilitation or personal improvement.

Fourth, these historical Scottish imprisonment regimes were also characterised by penal exclusion and retribution, what was described by a senior civil servant in charge of criminal justice as a 'humane' form of 'restrictive retributivism', which meant that the prison sentence was the ultimately the fair and rational result of the legal system (Cowperthwaite 1987:4). The primary objective of the prison was to house prisoners for as long as the court had stipulated, providing their due punishment. In this way, the prison was a servant of the criminal justice system; its fundamental purpose was exclusion and deprivation of liberty.

Fifth, and by contrast, some prisoners were subject to a kind of confinement that was concerned with neither rehabilitation nor punishment (O'Malley 1999:177), but with containment and exclusion, providing prison health care for those habitual but low level criminals. Specifically, those prisoners subject more to health interventions.

Finally, disciplinary and exclusionary penal culture was informed by a public safety agenda. The prison served to keep those who posed problems for social order out of social circulation through careful and tightly measured parole process and restricted use of temporary release.

Together, these features capture the bleakness of Scottish prison practices during the 1970s-1980s, arguably, so often side-lined in the memory of Scottish cultural distinction which there is a duty to remember, (what Ricoeur (1999) calls the *devoir de memoir*).

## 5. Political Culture: Paternalistic Liberalism

The character of imprisonment in Scotland in the 1970s into the 1980s can be defined as uninterested in rehabilitation, hyper-vigilant on security, fuelled by an unquestioned belief in the necessity of an ever expanding prison estate, shaped by an industrial quality and concerned with disciplinary circulation of prisoners. Having recovered the distinctive patterns which constitute Scottish disciplinary and exclusionary prison practices, how can we explain the commitment to its underpinning penal principles? I argue that Scotland's distinctive imprisonment regimes were based in the preoccupations, sensibilities and objectives of Scottish political culture of *paternalistic liberalism*; a distinct political outlook which combined otherwise contradictory components of political thinking and cultural meaning.

### Liberal Aspirations

The imprisonment regime's aspiration for the prisoners to achieve good citizenship and personal control were rooted in the 'key requirements' of liberalism, emphasising freedom, individual responsibility, rationality, independence and good citizenship (O'Malley and Valverde 2004:27).

These liberal ideas provided the accepted logic behind the progression system, particularly in the use of upward progression, becoming more prominent in the open prison settings. Long-termers who were progressing through the imprisonment regime to parole demonstrated they understood 'the idea of good citizenship' (Parole Board Report 1974:7). The 'new found freedom' in the higher

tiers of the prison regime, 'far from being a soft option imposes responsibilities requiring personal decisions' (HMCIP *Report on Penninghame* 1982:3). To progress meant the imprisonment regimes raised their liberal expectations. The prisoner in the open prison or TFF was expected to demonstrate responsibility and sensible personal judgement.

Within the penal state it was felt that some prisoners could be literally 'trained for freedom'. Those who could cope had, as Derek described it, right type of disposition, which enabled them to adapt to the responsibilities and expectations of freedom:

'Sometimes they were happy to be sent back [from an open prison] because they couldn't cope...I think most prisoners would have adjusted, human nature makes the best of a bad job...But some couldn't cope with the freedom'.

The ideal outcome of disciplinary progression practices was not just reduced crime and better prison behaviour. It sought to instil a liberal rationality of 'self-determination' which was believed could be encouraged in a small number of prisoners (HMCIP *Report on Penninghame* 1982:3). Theoretically, progression and Training for Freedom were 'institutions which would encourage the internalisation of liberal democratic values, the creation of individuals who would learn how to rule their selves' (Dumm 1987:6 in Melossi 2004:86). However, self-control was an ideal but marginal expectation in Scottish imprisonment. The penal state did not view the majority of prisoners as capable of this kind of inherent liberal rationality because of the cultural and social specifications which shaped the penal state's understanding of the prisoner. As the Chief Inspector for Prisons wrote, when a prisoner was 'exercising a personal choice on most occasions', it was likely 'a relatively new experience' for the prisoner (HMCIP *Report on Penninghame* 1982:10). Prisoners were perceived to be people who had not been inculcated in the ways of socially acceptable behaviour. The prison was not engaging prisoners pre-existing liberal disposition, but the regime sought to implant it in prisoners. We cannot fully

understand prison practices by looking at political ideas alone; we must also examine how liberal ideas fused with cultural sensibilities and anxieties.

## The Feckless: Drunk, Diseased and Disordered

In Scotland, justifications for disciplinary and exclusionary imprisonment regimes were also reflected a dismal and hopeless view of the prisoners. There was a sense that prisoners, first, were Scotland's most chaotic, sad and disorderly citizens. Respondents provided straightforward descriptions – lacking in either heightened emotional sympathy or open disdain, offered as flat facts – of the prisoner as generally incompetent: 'The majority are feckless, they don't know how to organise their life, they've never known any better', according to William. What was described in one correspondence (24 November 1983, HH57/1794) as 'high grade defectives': someone who was not 'fully aware of, and responsible for, their actions' and likely had a 'below average IQ'. A similar observation was made by Douglas, who said that 'the majority of the prison population are...the poor, the feckless etc., as you know, the illiterate'. I took the comment 'as you know' to refer to what was perceived to be my expertise as a person who researches prisons. Here Douglas appealed to that position to locate his perceptions within a broader framework of irrefutable social reality.

The image of the feckless prisoner was pervasive, and was implicit in the specific metrics presented on prisoners' health, which focused on the high rates of disease and morbidity that were plotted, typified and materialised through the annual report statistics of prisoner ill-health. There was a strong emphasis on venereal diseases, self-inflicted injuries, injuries by other inmates, drug dependence, alcoholism, diseases of the teeth, and lice or infestation. This array of disease and

disorder were a vivid and stigmatising statistical outline (Goffman 1963) of the type of penal subject with whom Scotland contended: contagious, infectious, and morally weak. There was an implied narrative that the causes of prisoners' disorders were somehow internal. Prisoners then did not just need to be cared for and treated; they also needed to acquire this sense of personal responsibility. Prisoners should be taught 'the principles they would need to observe if they were to lead more successful lives after liberation'. When it came to the provision of health, hygiene and mental health 'treatment and education cannot be sharply separated' (*Annual Report* 1970:18). The perceived identity of the prisoner as unstable, dysfunctional, maladjusted and lacking rationality emerged time and time again.

But matters became more endemic and problematic when it came to prisoners who suffered from 'disorders affecting the mind' (*Annual Report* 1972:21). This disordered prisoner haunts the annual reports. Many were described as suffering from neuroses or personality disorders (*Annual Report* 1978:17). A personality disorder, however, was explicitly defined as a non-medical issue (HH57/1794) and it was rarely required that these prisoners were required to be transferred into medical settings. In 1978, 2,872 people in prison had problems of the nervous system, 12 of whom had a 'mental deficiency' and only 10 were diagnosed with medically recognised psychoses which required a transfer to a hospital. Otherwise, prisoners' mental disturbances were often 'not treatable in a mental hospital' (*Annual Report* 1983:3) and in 1983 the Division wrote that prisoners with 'treatable mental illnesses are not kept in penal establishments' (HH57/1794). A memo described the problem as 'the critical dividing line between treatable and untreatable' (ibid.). Criminal acts were themselves believed to 'frequently' be the result of 'some personality defect or disorder' (*Parole Board for Scotland Report* 1972:10), meaning that 'severe emotional problems and very disturbed personalities' were presented as endemic and pathological problems in the Scottish prison population (*Annual Report* 1982:19) which made prisoners 'unpredictable' (HMCIP *Annual Report* 1986:15).

The other prisoner who demonstrated habitual rather than serious criminality, and with whom the prison system continuously contended, was the inebriate. This was certainly not an exclusively Scottish problem, but it was believed to be more acute there (Moody 1979). In keeping within the liberal outlook of the political culture, the alcoholic prisoners were generally perceived to be those who lacked the will power to resist the temptation of overindulgence: 'The relationship between over-indulgence in alcohol and the offences committed by those sentenced to custody has long been recognised' (*Annual Report* 1980:3). The Parole Board lamented the situation for these prisoners, writing that they were 'simply irresponsible under the influence of drink' (*Parole Board for Scotland Annual Report* 1972:11). The alcoholic prisoner lacked self-possession and self-control, and found himself continuously churned through the system in a cycle of short sentences.

The inebriate prisoner placed special demands upon the system. Here we see the first streak of Scotland's 'coercive paternalism' (Conly 2012, 2014), which viewed prisoners as individuals who had sacrificed their autonomy by a living a life marked by poor choices, thus justifying, even demanding, extra-state intervention without question. The view was that given that the medical and personal needs of this prisoner cohort, that the cost of keeping them in the community was high, and the chances of them remaining sober and out of the way of the law were low, prison was necessitated as the last resort for these sad recidivists. The prison served as a coercive social service for those beyond the help of non-coercive services: 'The prison Service [sic] will continue to have an important social role to play in the care of this vulnerable group of offenders' (*Annual Report* 1975:20), and that for alcoholic prisoners the prison was 'a social as well as a medical service' (*Annual Report* 1982:20). Despite the intervention of 'penal medicine', it was felt that 'in so many cases' patients would 'rapidly lapse from grace on release and return again and again to the care of the Prison Medical Service'. The succession of crime and punishment here was presented as a cycle of addiction and carceral social welfare.

Prison was thus for the prisoner who had nowhere else to go, for whom the prison was required as a social and personal, rather than punitive, intervention. These prisoners may seem unworthy of imprisonment, they explained, but 'in many cases [there is] no alternative to confinement' (HH57/1794). Containment and exclusion in prison was the last resort.

Many of the prisoners were understood to have highly dysfunctional emotional and cognitive capacities which rendered them beyond the spectrum of normalcy; Scottish prisoners were not like the average Scottish citizen. The manner in which the prison regime diagnosed, plotted and categorised prisoners as diseased, alcoholic and disordered was a reflection of Scotland's liberal and paternalistic political culture – which itself was also a reflection of the embedded problems of a deindustrialising economy and a society in decline. These were moral diagnoses as much as they were medical diagnoses. These categories, evident in the interviews, political publications and reports, did not generate or inspire sympathy, but evoked unworthiness, connected to how those many short-term prisoners were often observed to be (stereotypically) sad rather than bad. These people were imprisoned because they had failed at the art of self-control. This view was made evident when Peter spoke about the problematically high rates of Scottish imprisonment and the perturbing use of prison sentences for petty crime. He concluded with some exasperation that the fault was not with the criminal justice system, but in the failure of individuals to grasp alternatives:

[Sheriffs] will say, because I've had many conversations, tell me what I should do when a man, to whom I have given community service because you encouraged me to do that, comes back for the tenth time having the same thing, or having failed, or alternative or community service and hasn't turned up to do it, what am I meant to do? And their only answer is, and there aren't alternative answers, but their answer almost eventually has to be to put him in prison, you see. And, that's, that is their answer, it is quite a difficult one to counter really, if somebody is completely failing then the only answer to carry on putting them on probation, but it can lower the public belief in probation if a person is out,

as it were, on approval and they're carrying on shoplifting... I think the Sheriffs, they're always being put upon, and they are sending too many people to prison but I can see their point of view they have to come up with, and we having been trying this for a long time, to try and come up with other ways to stop people reoffending...and prison for certain people who have to send them to prison, I mean murders and very violent people need to be in prison, but minor dishonesty, but then what do you do with the people that carry on?'

High prison populations were perceived to be the result of the prisoners' prior unwillingness or inability to desist. The intervention of prison exclusion was required because many Scottish prisoners were 'perceived as failing to use available opportunity for advancement in the various approved runways of society'; showing 'open disrespect for their betters; they lack piety; they represent failures in the motivational schemes of society' (Goffman 1963:171). In Scotland this paternalistic outlook tended to exclude or deny social inequality as a cause of crime, allowing the prevailing discourse to focus on personal failure and its consequences.

Once imprisoned these short-termers found themselves in a routine that was marked by the often mundane regime of industry. It was noted that it was neither necessary nor plausible to make imprisonment regimes more specialised precisely because most prisoners lacked the capacities to engage with more autonomous and diversified regimes: 'the great majority of prisoners remained an unleavened mass in the middle, undistinguished for any practical purpose' (HH57/1742). By the end of the 1970s, key actors within the penal state were reported to believe that the nature of Scottish imprisonment was shaped by 'a loss of faith in the effectiveness of treatment of any sort' (Department of Justice 1981).

This dysfunction was among the 'practicable objects' of the prison system (Garland 1985:95). As Carlen (1983) wrote with such force and clarity of Scotland during this period, these dysfunctional citizens ended up in prison not because they are morally unworthy of social welfare support but because they were believed to lack the 'moral *capacity* to respond to welfare intervention or medical treatment' (ibid.:183



original emphasis). Prisoners were presented and reproduced as 'disordered', 'untreatable' and 'as being beyond the remit of the treatment agencies, without hope and beyond recognition' (Carlen 1983:194). This captures the tension in Scottish penalty between the 'practicability' (Gordon 1991) of the prison and perceived intractability of the prison problem. Scottish imprisonment regimes bore an implicit sense of failure, whereby containment rather than reform was the primary purpose. By and large, prison was necessary for those many irresponsible and dysfunctional Scottish citizens who were marked out as beyond rehabilitative programmes. What they required was basic medical treatment, containment, habits of regularity and, if necessary, repeated exclusion from society.

Coercive paternalism asserts that the state can intervene if its actions will help the subject or citizen live a better life (Conly 2012). However, in the context of Scottish imprisonment the prisoners were generally believed to be hopeless and incapable of exercising their autonomy in a socially acceptable way. The deprivation of liberty was accepted as an unfortunate but rational mode of damage control. The best that could be hoped for was to confine them in prison as often as was necessary. This governmental disposition was best summed up by Henry who, from his position inside the Scottish Office: '[we] were trying to save people from themselves'. These visions of the penal subject as a failed person, as someone who had through their own actions forfeited their liberty, were materially constituted in Scottish imprisonment regimes. As a result, it was considered to not be 'necessary, or indeed possible, to think in terms of positive treatment towards rehabilitation in custody for all inmates'. For those short-term inmates and 'others serving longer sentences....The prison service's role...is primarily therefore one of containment and physical care' (*Annual Report* 1971:2). Among the meanings of Scottish imprisonment was the need to incapacitate and control a population of 'lifetime clients' who while not necessarily dangerous were social failures, and therefore must be 'maintained securely at the lowest possible cost' (Simon 1993:259).

## Pathologisation of Place

However, it is clear from the description above that forms of imprisonment were also concerned with violence and danger. The prospects of prisoners being dangerous, as well as disordered or hapless, were connected through a web of social narratives and cultural imagery from which Scottish imprisonment regimes drew their degrees of legitimate force and common-sense justification. Prisoner disorder, fecklessness, petty recidivism and recalcitrance were seen as 'symptomatic of a dysfunctional cultural milieu' (O'Malley and Valverde 2004:35).

Serious crime and violence loomed large in the imaginations of penal state actors. Murder rates increased fourfold between 1950 and the 1960s, compared with England and Wales where there was only a twofold increase (Smith and Young 1999). Examining crime sensibilities more specifically, however, we see that the way crime was understood had a specific influence in giving meaning to certain kinds of prison regimes, which were produced partially to solve certain kinds of crime and social problems.

It was felt that the worst and most endemic crime and disorder tended to belong to the 'central slum parts of the city with a long-established reputation for containing a disproportionate number of habitual criminals, prostitutes, drug addicts and the like' (SHHD 1975:10). While the proximate causes of crime were understood as individual, the *particular places* in which such social circumstances prevailed were often framed by fear and antipathy. These places were described with florid, paternalistic and often unsympathetic detail: 'gardens strewn with refuse and broken glass, vacant houses boarded up, gang slogans on the walls of properties, neglected pets etc...These are the characteristics of areas which contribute disproportionately to crime' (SHHD 1975:11). The descriptions of these areas verged on the dystopian, as communities of drunkards, people living in self-made wastelands, who had high mortality rates and even higher unemployment: 'the cultural setting, in which the overwhelming majority of violent offences occur, is

itself characterised by the acceptance not only of heavy drinking but also of violent behaviour' (SHHD 1975:17). During the 1970s, Henry said people's concerns were honed in on 'the problems of violence in Glasgow'. The following quote from Robert, a senior criminal justice practitioner, illustrates that these problems were not a mere statistical matter but a 'felt imperative' that was abundantly evident, a kind of sensory assault:

'[In] Glasgow the jury trials all seem to be more serious. And we have two heavy duty guys from the west of Scotland and I thought we [in Edinburgh] rarely get guys like that. And they had suits on and they looked like ancient boxers. I rarely see people like that. So there is a significant difference in that. I think the other thing I did see that shocked me...this tribalism and all this display of bigotry. I was just horrified...And it was a kind of uneasy co-existence. Very little coming together'.

For Peter, who worked inside the Scottish Office, the shock of Glasgow became the inspiration to work in public policy:

'I decided I wanted to work in public administration really, partly because of what I saw in Glasgow there seemed like a lot, you know, a lot that needed to be done...Glasgow was in a bad way then. All the ship yards were being closed down, unemployment, poor housing. You know being brought up in Edinburgh, you know, you can see what it's like, and being in Glasgow you saw something quite different'.

These places inspired anxiety precisely because they were seen as communities with a persistent brutal streak, a cultural proclivity for violence and a tolerance for crime and cruelty in general:

'there was a degree, a threshold, I still think there's a different threshold between Edinburgh and Glasgow. Edinburgh are more fussy and more likely to call the police...in Glasgow where there is probably a lot more inherent violence, and something happens in your garden and your house and they get slashed in the face, but I'll not bother calling the police. But when the police are called it's usually serious' (Robert).

This quote explicitly illustrates that it was not merely crime, but the quick resort to brutality, which was perceived to be part of the routine domestic life of Glasgow. Violence could erupt in 'your garden' or 'your house', an 'inherent' aggressive impulsivity simmered below the surface of normal social relations in those kinds of places. Euan, who worked in the criminology research division of the Scottish Office, was a more critical respondent, identifying anxious feelings that contributed to this paternalistic sentiment. He described an information-gathering trip to one of west Scotland's poorer and more marginalised enclaves where some colleagues did not want to venture too far as they were afraid of 'the natives'. A similar sentiment was also expressed by Philip when he described the work of criminal justice and social work in Scotland: 'that was what Scotland was like, you've got a tough job with a tough population'.

These place-specific narratives delineated a sharp line between respectable and disreputable classes. For government actors, prisoners were not one of them; they did not share values, views or manners. It was believed that many prisoners were drawn from places lacking in 'community spirit and social controls' (SHHD 1975:25). The most effective form of prisoner rehabilitation, it was suggested at the time, would need to 'liberate the prisoner from the effects of the social, educational and emotional conditioning which have rendered him unable to function effectively and acceptably in our society' (*Annual Report* 1971:20-21). It was not just that a prisoner had transgressed the law, but they also existed more permanently outwith 'our society'.

Glasgow rested in the political cultural imagination as a 'territory of disorder' (Bowden 2014), stoking up uneasiness, appealing to their interconnected fears of social downfall, violence, poverty and disorder. Those governmental preoccupations with urban clearances, shown at the beginning of this chapter, also permeated the political culture of the Scottish penal state. That vision of the territory of the disordered was what some of the respondents and reports were referring to

when they said, as Philip did: 'behaviour and social circumstances are totally intertwined'. In Scotland, to have said that crime has social causes meant it was locally 'embedded' (Melossi 2001) in the lifestyle of certain Scottish estates and neighbourhoods, rather than to accept that wider social structures and inequalities perpetuated it. According to the Parole Board, one of the most positive interventions to reduce recidivism that could have occurred was that the area a prisoner was from 'may have been pulled down and redeveloped' (*Parole Board for Scotland Annual Report 1972:11*).

When explaining the uses of imprisonment, excusing the prisons' security and control regimes the image of Glasgow and urban poverty recurred.<sup>51</sup> In telling the story of prisons Douglas and Alistair told stories of 'notorious gangsters' and known hard men from Glasgow. Robert described those 'problems in the West of Scotland: hard drinking, buckfast and valium mentality'. These were the 'urban unrepentant poor' of Scotland (Goffman 1963:171). Prisoners were seen as people raised in criminogenic environments, 'central slums', with their 'notorious streets' (SHHD 1975:11) which inculcated aggressive and criminal behaviour. Reflecting upon the low use of parole for long-termers, Peter said how it was 'not punitive', though it might appear as such. Rather, he argued, it was a reflection of their being 'cautious', given the kind of people they were releasing. The poverty, rising unemployment and the attendant culture of unhinged masculinity within certain places were diagnosed as having a criminal and socially dysfunctional logic. As the Parole Report in 1972 recorded: 'In the nature of things many offenders come from areas of high crime and delinquency...where the downward drag [of their community] may well prove almost irresistible' (p.11). Paternalistic liberalism in 1970s Scotland viewed the prisoners as being from a violent urban 'underclass'

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<sup>51</sup> I will certainly not be arguing that Glasgow, nor any other economically neglected or socially marginalised communities were or were not dangerous or violent. Thus, I am neither challenging nor fortifying the veracity of these depictions and recollections. But instead these geographical areas combine both empirical reality and cultural imagination, such notions have 'currency' (Said 2003:331). That such feelings reflect the political culture rather than precisely mirroring 'its putative object' (Said 2003:22) is the point of this thesis; that such images, and the feelings they muster, are precisely what give imprisonment its peculiar material reality and social uses.

(Sampson 1987), what Simon has described elsewhere as defining 'the poor as a dangerous class, and their perceived dangerousness reinforces their isolation' (1993:253). The fact that prisoners of all categories were not returning to the productive and respectable classes of Scottish society went largely unquestioned within the penal state.

## Controlling dangerousness through violence

Dangerous prisoners, particularly men (depicted through tropes, as hard men, heavy drinkers, career housebreakers, brawlers, petty thieves and gangsters), were contextualised through the stigma of place. Throughout policy documents the dangerous prisoners were always acknowledged as a statistically minor group, but this evidence-based rationality was secondary to the more emotional logic and accepted sensibilities concerning prisoner violence. This group – dehumanised, pathologised and feared – necessitated and legitimised the greater use of coercive and sometimes brutal control. Ken recalled this fear 'mentality' among governors and staff, stating that

'people [staff] didn't have watches, because in those days, well, actually now the officer's going round the corridor and we've got seven minutes and we could try and escape, and if you had a watch you could work it all out'.

The prisoners were subjects from whom the institution and its staff needed to be protected.

The coercive paternalist dimensions, along with the fear of prisoners inculcated in violence that characterised Scottish political culture, also help explain the most extreme reactions to danger within Scottish prisons. While liberalism advocates restraint, it also has a despotic side which allows for a rationally justified authoritarian mentality (Valverde 1998). This side is seen as a rational response to subjects who are unlikely to succeed at self-improvement, and who, as a

consequence must be permanently excluded, have their citizenship suspended, or within imprisonment, be subject to penal exile.

Segregation was maintained by continuously invoking the threat of the violent prisoner, which served to justify the known physical 'brutality' of the prison (Scraton et al 1988), particularly Peterhead and the segregation units. The function of segregation was to keep 'the mentally or inadequately aggressive out of ordinary circulation' (HH57/194). William lamented segregation. But, he reflected, volatile prisoner responses to the segregation units (such as dirty protests) only reinforced the belief in the need for segregation: '[That] was all you had to show those in Operations convinced for the need for militaristic management'. The perceived erraticism, self-debasement and violence of the prisoners justified the extremity and regularity of the segregation control to which they were subject. As such, in the eyes of the penal state, it was not segregation that corrupted prisoners, but rather that their violent responses to penal exile reflected their inherent behavioural characteristics – i.e. precisely what had necessitated segregation in the first place.

While the BSU had been a St Andrew's House innovation, even that most profound development was understood to be another extreme control measure: 'The Special Unit was about getting control of really quite difficult prisoners' (Peter). Adam remarked the unit's benefits to the system were understood as being exclusion and control:

'It was a response to the loss of control. In the end if you [the prisoner] don't consent you can't rule these people, if they were willing to take all the risks they take then you can't control these people' and that its rehabilitative claims were 'thin at best'.

Scottish segregation was a punitive form of control and deterrence, justified within a coercive paternalist political ethos in which authoritarian actions against the prisoner were taken in the interest of fulfilling the order of the prison system (Conly 2014). But such coercive means were also motivated by the less rational fears and

lurid affect which also surrounded crime and punishment in Scotland. Together, these concerns and agendas – shaped by Scottish political culture – elevated security and control as organisational priorities for prison and made segregation a permanent and central feature of Scottish imprisonment regimes. This is close to what Sarat has called the ‘civilizing violence’ of order against social disorder. The violence of the system, in this case segregation, was ‘described as rational, purposive, and controlled through values, norms, and procedures external to violence itself’ (1995:1134). The dehumanising physical control of segregation and penal exile was used legitimately to oppose, control or quell violence by its penal subjects. These shared cultural perceptions about Scottish violence and disorder, and the graphic interpretations that prisoners were dangerous and subversive, led the Division in their routine use of brutal segregation. Segregation served the ‘common purposes’ of prison security and order and was aimed ‘against the anomic savagery lurking’ in Scottish long-term imprisonment (Sarat 1995:1104, 1134).

## 6. Prison Exclusion and Social Control

Building on these insights regarding Scottish imprisonment and political culture, this section takes a broader sociological perspective in order to demonstrate how Scotland’s distinctive forms of imprisonment were connected first, to broader social insecurity, highlighted at the beginning of this chapter, and were, second, a product of the exclusionary dynamics of Scottish welfarism.

By the beginning of the 1970s (and before the advent of Thatcher; see Chapter Ten), Scotland was dealing with the ‘after shock of deindustrialisation’ (Walsh et al 2010). Social work was organised mainly to help children in need, vulnerable citizens and those who had been involved in petty crimes, but not to tackle the chronic deprivation caused by deindustrialisation and concentrations of urban crime. Local authorities faced growing social disorganisation, poverty and welfare in the community. Probation and work with offenders and ex-prisoners were dissolved into generic social work, and received little funding when compared with groups



considered more worthy of welfare interventions, such as the elderly, the sick and the young (McNeil 2005:34). As Adam described it: 'offenders were smelly, children were needy. So, criminal justice became the poor relation'. It is clear from the above section on pathologised understandings of certain neighbourhoods that there was distrust of certain communities where, it was believed, that the informal social controls between neighbours and within families were absent. Within Scotland there were areas of 'concentrated disadvantage and residential instability', and a perceived absence of collective efficacy (Sampson et al 1997), all of which rendered prisoners and criminals culturally and psychologically aberrant.

In this way, as pointed out above, containing, treating and re-training social dysfunctionals was the prison's practical social function. The prison operated to protect Scottish civic stability. The welfare system worked with responsible and cooperative liberal citizens; the prison worked upon their opposite. As Philip described the division as to why certain people were denied community welfare and subject to incapacitation: 'Adult offenders were quite different. A different ball game altogether. The usual categories of permanent offenders...someone who is not suitable for probation'. Crime was perceived as the act of the irresponsible, those wayward and aggressive citizens resistant to community based support. As the WPAR concluded in December 1983, 'if society can find no other response to certain forms of behaviour resulting from disorder of personality than to place the perpetrators in custody, then the place for them to be held in custody is prison, not hospital' (HH57/1794). Alistair best summed up this view when he said the prison was designated and designed for those 'for whom there were no other options'.

For these distinct social classes of the respectable versus the disreputable, two regimes of control and intervention were implemented (Simon 1993:154). These regimes help explain the tension between the prisons practicability and intractability, mentioned above. Scotland's prisons were the 'obverse of the responsabilizing moral imperatives of welfare reform' (Rose 2000:336). While the Kilbrandon innovations sought to help people flourish in the community through

social support, the prison worked to maintain security and public safety through social exclusion. We see the persistence and expansion of disciplinary and exclusionary imprisonment in Scotland in this period, despite the prison's failure to achieve or contribute to welfarist objectives of rehabilitating vulnerable or wayward citizens, and despite claims that Scottish social work expansion improved social life for the most vulnerable (Brodie et al 2008). This is because Scottish imprisonment regimes began where welfare interventions ceased; prison was constituted as a 'terminal position' (Garland 1985:28), it was the last resort for those seen outwith hope, order and normal social control. Given that the Scottish prison served this central regulatory and protective function, the necessity of the exclusionary prison was embedded and taken-for-granted, thus its 'failure never matters' (Muncie 1990). At the end of the 1970s, when researching women's imprisonment in Scotland, Carlen also found this two tier system where 'certain petty, recidivist prisoners' were 'systematically and authoritatively...ineligible for non-custodial supervision' (1983:154). The Scottish adult penal system operated and functioned as it did not because it was the welfare system's safety net. It was openly described, as we saw above, as a social service of last resort, for those adult offenders perceived as beyond hope. In Scotland, the prison was a coercive control setting, a function reinforced by rising crime, social anxiety and the strict limitations on welfare eligibility.

There were consequences of this two-tiered social control system, however, and of how Scottish political culture compartmentalised the excessive use of prison and its denial of structural inequality on the one hand, and the aspirational expansion of welfare interventions on the other. Scotland's reliance on disciplinary and exclusionary imprisonment regimes would have further eroded the collective efficacy and informal social controls that were seen as the root cause of criminality and dysfunction. The high use of imprisonment would have de-stabilised family units (Comfort 2008) who found themselves in a 'web of shame' as the stigma of the prison extended out into their lives (Condry 2007). Imprisonment can become a

cycle which is difficult to escape, trapping people in a routine of short-term imprisonment, a life sentence by instalments (O'Donnell, Baumer and Hughes 2009). All this would have undermined family life and employment opportunities for prisoners. Given that prisoners tend to be drawn from distinct geographical locations (Houchin 2005; Goffman 2014), the heavy reliance on exclusionary imprisonment would likely have also eroded community cohesion and entrenched social exclusion, class stigma and its consequent disorder. Ironically, Scotland's division of social control labour between paternalistic welfare intervention and coercive paternalistic exclusion, would likely have only further entrenched the need for an extensive prison system as a coercive measure of last resort. In so doing, Scotland's field of social control, and the dominance of the prison in particular, reinforced and perpetuated the characteristic classed divisions between worthy/unworthy, treatable/untreatable and social insider/social outsider.

## 7. Conclusion

This chapter has employed archival material, interviews, secondary material and various annual reports to recover, reconstruct and interpret the major dynamics and practices which constituted Scottish penalty from 1970. First, I have mapped the Scottish political culture of paternalistic liberalism – those distinct Scottish penal sensibilities and cultural narratives which combined with a liberal and paternalistic political rationality. This constituted a dismissive, anxious and authoritarian political culture in relation to the prisons. Second, I tried to show how these cultural currents supported the programmes, routines, activities and architecture of Scottish imprisonment regimes, laid out in the second part of the chapter. Visions of blameworthy individuals or groups who were imprisoned – the diseased, alcoholic, disordered and dangerous – provided prison with its intentions, inspired its methods of redress, its characteristic progression, and its extensiveness and almost total lack of capacity-building programmes. Through the bureaucratic choices to build certain prisons, to routinize particular kinds of prison discipline, to organise

the prisons hierarchically, to expand segregation and keep industry a mainly low skilled endeavour, Scottish political culture influenced the material form of the prison system. These characteristic practices of Scottish imprisonment regimes combined to create a disciplinary and exclusionary form of incarceration. Third, the analysis took a broader perspective towards the end of the chapter, proposing a connection between Scottish penalty as defined above and the wider organisation of the Scottish social landscape. The end of the 1960s Scotland diverged from England and Wales, as rising crime, violence and increased deprivation, each becoming pressing concerns. This was the problem context which informed the use of the prison. The social services were not designed to address these kinds of disarray, which were also seen as threats to the informal social controls of the community and the family. The use of incapacitation and exclusion filled the void where these other interventions did not operate or were considered impaired. Moreover, the rise in violent crime and growing fear of hard men and gangs gave the prison a warrant for tighter control in light of an almost unquestioned air of urgency and necessity.

But Scotland's social problems of the 1970s continued. And while these exclusionary and disciplinary forms imprisonment were well established by the 1980s, unrest, protest and rebellion began to spread across the prison system, no longer confined just to Peterhead. How and why disciplinary and exclusionary incarceration briefly, but sometimes spectacularly, was magnified and intensified in the 1980s are historical tasks of description and analysis undertaken in the next chapter.

## Chapter Nine

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### Crisis Management

#### I. Introduction

The previous chapter demonstrated how and why from the 1970s into the 1980s, the Scottish governmental apparatus relied upon the prison as a means to address the growing social difficulties of crime, urban disorder and social divisions. The prison picked up where Scotland's welfare system left off. Internally it had a bleak routine of low skilled labour, health, hygiene, segregation, and progression. Having recovered the historical chronology of Scottish penal culture, we return to the central concerns of *how* and *why* imprisonment regimes change and evolve. Rather than simply documenting the 1980s, this chapter attempts will analyse questions of penal transformation. I will use interview data, archival material and reports, which together suggest that changes in the prison system during this short period reflected the assessments of prison problems by those within the penal state. Decisions made by those actors were, in turn remained embedded in the dominant political culture of paternalistic liberalism.

This chapter will begin with an outline of the extreme pressure on the Scottish prison system in the mid-1980s from a series of crises, with rising prisoner numbers and disturbances and riots. Assessing the prisoners' view of the prison regimes and their reasoning behind the different riots remains outside the remit of this thesis (though see Independent Committee of Inquiry 1988 for an insightful account which includes the prisoners' perspective). This chapter reconstructs these events as they appear in the documentary record and analyses the accounts of their causes and

consequences offered by Scottish penal state actors. In response to the riots, the system increased both segregation and increased security. The rising numbers were met with the expansion of the adult prison estate. In the face of extreme challenges, disciplinary and exclusionary imprisonment was reinforced and enhanced. However, the Division began to draw public criticism for their responses to the prison crisis, putting pressure on the largely unexamined management rationale. This historical account provided below further explores and substantiates the importance of Scottish political culture in the evolution of imprisonment regimes.

## 2. New Prison Problems

In 1983, the British Home Secretary, Leon Brittan announced new parole restrictions on prisoners serving five years or more, who from then on would only qualify for parole under exceptional circumstances. With the threat that those changes may come to bear in Scotland, the Secretary of State for Scotland, George Younger, initially restated the fact that Scotland had a distinct legal system. However, by 1984 he had reversed his commitment to divergent parole policies and the more restrictive changes were implemented in Scotland's parole system (McManus 1999:239). Writing of the negative impact this change in parole practice had on the long-term prisoners in Scotland, the Chief Inspector stated: 'what light there had been at the end of the tunnel had been extinguished' (HMCIP *Report on Peterhead* 1987:64) and that prisons risked turning 'the man of violence' into a 'no-hoper', who then may 'become a serious danger to prison officers and other prisoners (HMCIP *Annual Report* 1986:15). The second urgent problem faced by the Division in the 1980s was overcrowding. Prisoner numbers, already high, rose from 4,518 in 1981 to 5,588 in 1986, and the numbers 'peaked at an all time high of 5,797 on 4 March 1986'. Overcrowding, the Division noted, had become a 'crisis' issue (HH57/2070).

But a third and even more serious set of issues were to culminate within the prisons. In the mid-1980s, a sustained pattern of disorder and rioting erupted across the Scottish prison system which was described as ‘unprecedented in its intensity [and], duration’ (SPS 1988b para1.6). The first major riot occurred in January 1984 at Peterhead, where prisoners took over a hall for 18 hours. The following year in March 1985 at Peterhead, nine members of staff were taken hostage in the course of an abortive escape attempt (*Annual Report* 1985:15). Not long thereafter in November, again at Peterhead, seven members of staff were held at gunpoint during another escape attempt; though afterwards the gun was revealed to have been a replica (*ibid.*).

The Governor of Peterhead wrote in an internal report in 1984, reaffirming Peterhead’s inherent danger: ‘The history of Peterhead Prison is littered with incidents of one degree of ferocity or another, and this latest was simply another chapter in that history’ (HH57/1622). Though Alistair recalled it as a new level of violence:

‘Basically up until then, incidents in prison had always been things like hostages, individual prisoner took an individual officer or another prisoner hostage. How do you deal with these incidents? Then in 85/86 we had the first incidents where prisoners took over a landing or a hall, and we never had that before’.

Prison unrest was not out of the ordinary, protest and demonstration had been routine, but from 1985 the scale of these incidents expanded. Within a small window of time these disturbances evolved into a discernible and perturbing pattern, no longer isolated to Peterhead, nor merely sporadic, but a recurring feature of Scottish prison life. There were several fire-raising incidents and dirty protests at a number of prisons and numerous occasions when prisoners refused food. In 1985 there was another riot, but this time at Dumfries Prison (which had only recently been converted into an adult prison from a young offenders’ institution) during which four prisoners held another prisoner hostage for more than 10 hours. Shortly thereafter two roof top protests took place at Barlinnie Prison.

Prisoners at Longriggend Remand Centre destroyed furniture and set fire to their cells in 1986. There were two serious fires at Peterhead, which meant 150 prisoners there had to be transferred due to loss of facilities and caused serious damage to the kitchen and laundry facilities (*Annual Report 1986:15*). There were further roof top demonstrations at Barlinnie and Edinburgh prisons, and more dirty protests and two further fires at Peterhead. In another escalation in October 1986 at Edinburgh, an officer was held hostage for four days by prisoners. This was the most serious incident in Scottish prison history, but was almost immediately superseded in November 1986 when a prison officer was held hostage for five days at Peterhead by 32 prisoners.

In response to the Peterhead disturbance the Chief Inspector was commissioned to investigate. His report, published in 1987, found that Peterhead had a small group of prisoners who were 'pernicious by nature and often volatile in temperament' (Chapter 12). The Inspector suggested control could be regained through increased segregation. The report concluded that four separation units, each with 15 places, should be built at the mainstream adult prisons (Perth, Shotts, Glenochil and Edinburgh).

The pattern of traumatic incidents continued into 1987, which began to occur in quick succession. In January, a number of prison officers were held hostage for six days at Barlinnie. For two days in April two prisoners held a group of fellow prisoners hostage at Perth. Then in September, a prison officer was held hostage at Shotts prison. Just as that incident at Shotts drew to a conclusion on the 27<sup>th</sup>, the following day on the 28<sup>th</sup> of September two prison officers were taken hostage at Peterhead in what was described by Alistair as the 'Peterhead siege'. One prison officer was reported to have been 'held hostage, subject to assaults, humiliation and threats' (1988b:Appendix 2). This incident was also an unparalleled spectacle, as 'television viewers around the world witnessed an officer being dragged across the



roof of Peterhead Prison with a chain around his neck' (Coyle 1992:8). The siege was not resolved until a dramatic decision to send in the British Special Air Service (SAS), who stormed the besieged hall at 5.15am on Saturday 3 October (1988b:Appendix 2).

Then, on the 4<sup>th</sup> October, a prison officer and a group of prisoners were taken hostage at Perth prison for 33 hours. After the quick succession of hostage takings and the intensity of these distressing sieges, the Division took decisive and firm action to immediately reduce the risk of dangerous prisoners to mainstream order (1988b para.8.4). All adult male prisoners were denied association. A further 60 prisoners, believed to pose the greatest threat to the mainstream, were removed to Peterhead (Coyle 1991:143).

The prison administration described themselves as 'under intense strain' (*Annual Report* 1986:15) and noted that 1986 had been a 'traumatic period' (*HMCIP Annual Report* 1986:14). For many participants in this study these were distressing memories. Ken, who was working inside the prisons, reflected the feeling that a small but considerable carceral civil war had erupted:

'for a while, about two, three years, we were in a warzone... a lot of staff were held hostage, injured, a lot were traumatised, a lot of staff felt they couldn't really cope. It wasn't why they were in the prison service. A lot of staff retired and left. I suppose damaged people. It was a very difficult time.'

A sense of conflict had engulfed the prison system. Prisoners on one side, pulling against and clashing with the physical environment – the building, the landings, the cells –and those agents of power, the prison officers, who every day sought to manage and control them. A cycle of mutual hostility and retaliation began to shape life in Scottish prisons – dirty protests, riot gear, landings blockaded, negotiations failed, homemade missiles launched, roof top protests and hostages taken.

Though these problems were severe, they were identified as an extreme form of the inherent problem faced by Scottish imprisonment. Minutes from the WPAR in 1984 described problems at Peterhead as a 'microcosm of the problem in general', but that at Peterhead there was a 'Premier League' group of violent and disruptive prisoners (HH57/1622). The broader assessment of the situation depicted these incidents as, according to the Governor of Peterhead, 'inevitable' and as having 'everything to do with the character of the participants', which he went on to characterise as being 'consumed with hatred' (HH57/1622). The Chief Inspector gave this view official confirmation in his 1987 report, in which dangerous long-term prisoners, as well as a new group of 'very long term prisoners', were identified as the central causal factor driving the prison riots (HMCIP Annual Report 1987).

The Scottish prison population as a whole had been expanding, but the number of adults serving three years or more had increased at a quicker rate. In 1971, 22 percent of the Scottish prison population were serving very long sentences, here meaning those serving five years or more. By the end of the 1980s, 45 percent of convicted prisoners were 'VLTPs' (Annual Report Prisons 1986:1; SPS 1988b Table 1). The background characteristics of this group were painted with familiar imagery - truanting from school, broken family, raised in the slums of inner-city housing, lacking in morals, long patterns of criminality in which violence 'predominates' (HMCIP Annual Report 1986:15). Now this group were larger and imprisoned without the promise of parole to incentivise them, apparently making them particularly 'bitter' and 'uncooperative'. They were thus 'liable to be disruptive, anti-authority and may inflict physical injury on prison officers or other prisoners' (ibid.). The fundamental functions of the imprisonment regime were seen as sound: prisoners were individuals who generally could not be coerced into rehabilitation, but the rational 'stick and carrot' system of progression and downgrading to incentivise good behaviour was, and should, remain paramount within the imprisonment regime (ibid.: 16).

Faced with the problems of violence, and in an attempt to stabilise the prison system, the practices of disciplinary and exclusionary imprisonment intensified. First, the capacity for segregation was increased. Within the Prison Division it was minuted that senior civil servants believed the incidents 'served to highlight the need to tackle the question of facilities for difficult prisoners' (HH57/2070). In 1986 the Chief Inspector of Prisons (*Annual Report* p.17) suggested that governors in Scotland required a greater array of options 'for the removal of disruptive prisoners at short notice' which would allow them to concentrate on maintaining the stability of the mainstream prison system. Following the first major incident at Peterhead in 1984, the 18 cells in B Hall at Peterhead were sealed-off, transforming it into a segregation lock down facility (SPS 1988b:Appendix 6; *HMCIP Peterhead Report* 1985:5). The Prison Division continued to tighten perimeter security at a number of Scottish prisons (*HMCIP Annual Report* 1986:14), while new 'punishment blocks' and security systems were provided at Greenock, Barlinnie, Aberdeen and Shotts (*Annual Report* 1985:14). There were already 78 places for disruptive prisoners at Aberdeen, BSU, Inverness and Peterhead.<sup>52</sup> Shotts E Hall was added to this inventory in 1987, but its function was slightly different to the existing units. The Shotts Unit was a new progression point where prisoners leaving conditions of limited association at Peterhead could be assessed before being returned to the mainstream. It was also a 'time-out' site for those prisoners not suitable for segregation but who required downgrading out of the mainstream (SPS 1988b para.9.13). A six-cell national unit opened at Perth prison, designed to segregate prisoners from any of the long term prisons. Another alternative small unit for 12 disruptive prisoners opened at Shotts (*HMCIP* 1988:iii; Adler and Longhurst 1994; SPS 1988b, 1990). By the end of the 1980s, the Prison Division proceeded to plan a 'new generation' of maximum security units. This included a 60-person unit to be built 'as quickly as possible' given the 'Department's anxiety to make progress' (1988b para. 8.3-8.8).

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<sup>52</sup> This official figure only includes the specific segregation and exclusion spaces within Peterhead, but does not include the almost 130 people at Peterhead deemed too dangerous and thus were sent to Peterhead because they were being excluded from the mainstream.

Secondly, a new military style of control was developed in response to prison disturbances. In trying to be proactive and plan for the future security of the prison system, the Division developed two mobile military teams: Alpha and Beta. These were run by senior governors and would be, according to Alistair, 'dispatched around the country' in response to major incidents. Ken described this response as something extreme, seductive and necessary:

'We were very much trained in the dark arts of handling major incidents. The three major incidents led us to set up incident command teams...So that was our insurance policy solution'.

New practices of observation were also implemented. The Division reviewed how they assessed long-termers and a new system of increased monitoring was introduced for prisoners serving five years or more. These very long-term prisoners were now subject to an individual annual report until they were eligible for release or parole (*HMCIP Annual Report 1986:iii*)

Finally, with matters of security and control being addressed the need for space now required renewed efforts. To expand the adult imprisonment regime a number of young offender institutions and detention centres were converted into adult male prisons in 1986 and 1987. These included Greenock (for adult males serving 3 years or more), where capacity had been increased from 180 to 231 with the use of doubling-up; Glenochil came on-line as a long-termers prison, and Friarton (just under 100 prisoners) was for adults serving 9 months or less.

Prison violence was now an 'epidemic' (Cooke 1989b). Senior management within the Division then decided to make a 'high risk' and systematic alteration to adult imprisonment regimes. The entire prison estate was to be reorganised under an operation called Grand Design, which was their 'game plan' to reclassify five prisons, this would, they hoped 'meet the accommodation need of the Scottish

prison Service for at least the next three years and perhaps even into the early 1990s' (HH57/2070). Dumfries and Greenock, the latter of which had only just been reclassified as an adult prison, were converted into YOI (*Annual Report 1988*) and an open prison, Noranside, was established in 1987 (*Annual Report 1986; Annual Report 1990-1991; HH57/2070*). During this time the delayed Phase II of Shotts prison was finally completed after a long gestation. This increased Shotts' capacity from 60 to 528 prisoners. These organisational actions were both tactical and reactionary. The Division was trying to ameliorate of the problems faced by the prison system, they were trying to safeguard the future from further chaos and the increased dangerousness of Scottish imprisonment.

### 3. Legitimacy Crisis

For years the Division had been seeking a return to an equilibrium within prison through a reactionary phase. But the legitimacy which had underpinned those actions was undermined as the prisoners had become evermore irreconcilable to their imprisonment. There was a crisis within the Division, as they felt they could no longer secure the objectives of control and containment. Interviewees told stories of senior managers 'breaking down' in tears in public, or on television broadcasts or never returning from holidays. While these anecdotes could not be confirmed, they were formed in this time, visceral tales of a Government department which had 'exhausted' its well of authority and unsettled the consensus about how best to control prisons and prisoners and now found itself in a new form of internal crisis (Hall et al 2013).

Despite their attempts to subdue and control the prison system, from the end of the 1980s a number of key penal state actors came to be perturbed by the excessive use of physical control, discipline and exclusion which ordered (and now failed to order) the Scottish prison system. Across the period of disruptions, small groups within the prison service had begun to probe the logic of the imprisonment regimes,

suggest new ways to engage with prisoners, advocate for a distinctly Scottish approach to imprisonment, or aver against certain regulations (such as the recently formed Association of Scottish Prison Governors, e.g. Bruce 1982; Spencer 1983; Withers 1985; Walker 1987). The WPAR meeting minutes from 1983-1984 highlighted a growing concern about the adverse impact of the rigid security divisions applied in the prisoner classification system, the crude use of 'downgrading', the lack of policy initiative from the Division and the idea of disciplinary training (HH57/1622; HH57/1794). The Chief Inspector criticised the arbitrary use of progression and the systems for long termers as 'inadequate' (HMCIP *Annual Report* 1986:5). The Chief Inspector also noted what he described as a clear 'degenerating trend' among a number of prisoners subjected to segregation and exclusion. He stated that it had become 'less clear how to discourage irresponsibility and past experience is not encouraging. The usual way of dealing with anti-authority behaviour is to impose tighter control' but that 'Some prisoners respond, other merely [sic] become more bitter, anti-authority and dangerous' (ibid.:16). Despite the expanded use of prison's 'civilising violence', Scottish prisoners continued to breach the rules and disrupt the order of the prison with intensifying frequency. Perhaps it was the modes of control which were the problem.

For the most part, prisons had not been exposed to intense public or political intervention or criticism from the period after 1970. Given the events of the 1980s, the Division began to draw public opprobrium for their reactive responses to prison disorder. The Scottish Prison Officers along with the Scottish Council for Civil Liberties wrote to the Scotsman newspaper to critique the ineptitudes of Prison Division in the face of the current crises of violence and overcrowding. An independent review published a report criticising the abuses at Peterhead and the official responses to the disorder (Gateway Exchange 1987). Critical aspects of the unpublished report from the WPAR were leaked to the press. These blamed the current prison problems on a lack of accountability from the Division, and an unfair

system which provided little reward for a prisoners' personal obedience and efforts (Kinsey 1988:108).

In addition to these admonishments, there was a new uncertainty within the penal state. William described it as a confluence of fragility and futility: 'The prison service breaks down, it can no longer manage...[The Division] lost the plot... prisons at that stage were in a real degree of crisis'. The trauma and chaos of the prison system was perceived to have taken an understandable toll upon those in charge, Derek referred to the departures of senior Division civil servants as 'casualties': 'At the time of the troubles...[there were] casualties among governors and managers, who were suddenly away'. Despite their best efforts, and with the Secretary of State's support, senior officials in charge of prison left post, leaving Scottish prisons in an unsettled state. Increasingly, the Division was confronted by a waning of consent on two fronts, within the prisons and within the Division itself. We can identify here a 'crisis of *delegitimation*' what Sparks defines as the 'withdrawal of consent' (1994:15, original emphasis). With each internal suggestion of potential unfairness against prisoners, the on-going incidents, and public identification of the Division's weakening authority each served to undermine the dominance of paternalistic liberalism and the reactive forms of disciplinary and exclusionary imprisonment. Some absence of legitimacy inside the prison had always been accepted, evident in the existence of the downgrading and segregation so characteristic of Scottish disciplinary and exclusionary imprisonment. As crisis and prisoner dissensus was no longer an exclusively (and mainly private) Peterhead problem, but a Scottish prison problem, the intractability of the prisoners now became seen by some as the result of the problems of the Scottish penal authority.

The 'extensive hegemony' which had characterised the approach to prisons in the 1970s, as well as the immediate reactive response detailed above, disintegrated – a 'crisis of authority' emerged (Hall et al 2013). As the riots and disturbances became more prolonged and distressing they altered the practicability of the prison and the

prisoners, and undermined the legitimacy of the Prison Division's traditional use of authority over these matters.

#### 4. Care and Control

What people described from this time was a profound sense of fragility. They felt that the whole order of their work and the system had become severely weakened. As Alistair said with some frankness: 'We really thought we were going to lose the prison service'. The Division needed to reassert its control. At the end of the 1980s a more proactive approach to prison administration emerged. The extension of disciplinary and exclusionary imprisonment received formal footing in two policy documents that espoused the bifurcated view of prison's role as somewhere of last resort for the most vulnerable and a place of exclusion and control for Scotland's most dangerous criminals. In 1988, *Custody and Care – Policy and Plans for the Scottish Prison Service* (1988a) and *Assessment and Control – The Management of Violent and Disruptive Prisoners* (1988b) were published. The Division had rarely published detailed policy reports. Now these documents exhibited some new governmental leadership for Scottish prisons.

*Assessment and Control* addressed itself towards 'the specific issue of inmate who present violent and disruptive behaviour' (para.1.5). In doing so, it reaffirmed the traditional view of the inevitable subculture of dangerous, incorrigible and wilfully subversive prisoners. The diagnosis of the problem at this time remained coherent within the established political culture. It was asserted that in 'the experience of the Prison Department' (1988b para 2.13) that the nature of the violent, gang related, disordered, anti-authority long-termers led to these incidents. In this view, the problem remained the behavioural patterns of individual prisoners and that:

'rather than looking to changes in the way in which the Prison Service as a whole goes about its task, a more productive approach may be to



concentrate attention on the individual personality and 'repertoire' of particular disruptive and violent inmates' (1988b para 2.11).

The logic which followed stated that with greater numbers of long-term and very long-term prisoners there was a greater volume of violent incidents. Moreover, that the capacity of segregation units was now insufficient to address the problems posed by Scottish prisoners. It was assessed that previous practices of security and control were no longer adequate (1988b para 1.2) and that the Prison Division must proceed to develop a 'new generation [of] maximum security units' (1988b para.8.9) with a 60-person maximum security segregation unit (1988b para.8.3).

But *Assessment and Control* also posed the possibility of softer control techniques, such as better assessment tools for 'control profiling' of risky prisoners (1988b para.3.5). As seen in the previous chapter, the Division had favoured a more physical rather than psychological form of security intervention, their 'policy of minimum intervention in the lives of prisoners' (para.4.8). However, rather than merely continue to react to events, the Division suggested the policy objective should be prevention (para.4.9.2). The document suggests that prisoners should be seen as 'responsible' and thus 'accountable' for their actions (para.4.9.1) and the system should develop means of on-going interventions such as 'control risk profiles'.

*Custody and Care* took a wider view of the mainstream regime, providing an outline of the central objectives of the Prison Service: (1) 'security', defined as containment and the prevention of escapes; (2) 'control' achieved through disciplinary measures and maintaining quality of life; and (3) 'quality of life'. Like *Assessment and Control*, largely reasserted existing principles and practices rather than establishing new ones. For example, the more positive dimension of quality of life meant access to 'basic services', such as medical attention, along with 'opportunities for work and other activities' (1988b para.2.9), which as shown in the previous chapter, were basic tenets of the existing Scottish prison practices. *Custody and Care* did, however,

extend the ideas of care and pressed for more institutional responsibility towards prisoners. Ideas of intervention were proposed in this document: 'routines and discipline' should seek to '*stimulate* a positive contribution and response from inmates' (emphasis added para.2.9). Staff, it was argued, should provide more support to prisoners to help them build better prison-based relationships and prison regimes should encourage prisoners to turn away from crime (ibid. para.2.11).

Plans forwarded in *Custody and Care* aimed at improving the progression process and a new mechanism of surveillance and control were suggested: 'sentence planning'. This was described as a more 'dynamic process of assessment, [and] review' for long-termers. A file would be kept in which a prisoner's response to prison, the rules and his sentence were to be recorded. These files would serve as early warning systems for those prisoners 'who cannot or will not come to terms with their sentences', alerting staff to those prisoners who would require 'intensive assessment' outside the mainstream (SPS 1988a para.9.7-9.9). The reports would become like a surveillance diary, a subtle new technique which aimed to reinforce penal control and prevent future disorder.

These policy documents, released within the same short period, exhibited a marked comparative contrast in their substantive focus, revealing the distinct operational logic and penal sensibilities underpinning Scottish imprisonment regimes. *Custody and Care* explicitly did not address Peterhead (para.7.14) or the segregation units, but the rest of the system, namely progression and the provision of care. It was interested in the routine patterns for the mainstream, but also the 'carrot' of persuasion through progression. *Assessment and Control*, however, addressed the 'stick' element of coercive imprisonment tactics. A material demonstration of the cultural delineation between *the mainstream* (the willing and cooperative prisoners) and the *outgroup* (the non-compliant prisoners), a dichotomy which they sought to reinforce in the face of their prison crises.

The problems confronted by the prison system from 1985 were substantial, but the common-sense thinking and affective criteria which inflected decisions regarding the uses of imprisonment had not altered, but were magnified. The riots and protests were felt to be the result of bad prisoners – the hard core, the Premier League prisoners, antisocial and filled with hatred. Those prisoners must be removed from circulation or potentially subject to preventative policy such as personal assessment, profiling and observation as a means to reduce the risk of future prison disturbances. And in the worst case scenario, the Division could also employ their own military response. In 1987, the Secretary of State for Scotland, Malcolm Rifkind, issued a statement which reinforced the balance of sympathies which ordered the prison system:

‘Prison regimes by their very nature will never be ideal for those who have grievously offended against society. It is my view that we have had, in recent times, too great a concentration of attention upon the criminal element. The lawbreaker does not have the sympathy of the population at large. Their support lies with the forces of law and order, and while the Scottish prison system is passing through a particularly trying period our support for them is not in doubt and never will be’ (Scottish Office, 6 May 1987 quoted in Kinsey 1988).

## 5. Conclusion

Drawing on historical data, this chapter has illuminated a particularly bleak period in Scottish penal history. In response to the perceived size and intractability of the problems faced, the penal state adopted a reactive punitive strategy of increased segregation and prison expansion. The cumulative effect of this strategy was to render Scottish prisons more punitive in the 1980s. In chronicling this history, this chapter has also sought to empirically identify how the actions and decisions of actors within the Division gave rise to punitive adaptations within the imprisonment regimes. The analysis has also demonstrated that the meanings which actors attached to those decisions were consistent with contemporary penal sensibilities,

social narratives and political rationalities, reflecting the sentiments and outlook of the pre-existing paternalistic liberalism

The importance of the policy document as an important expression of authority has been demonstrated, deployed as a means to regain control over the system and as an important communicative technique for the penal state. However, as a result of the riots in particular, the Division was left feeling vulnerable, the legitimacy and effectiveness of its approach faced increased scrutiny.

Simultaneously, Scottish social interests were colliding with the governmental and ideological changes brought by the new Thatcher government in the 1980s, and strife and tension beset Scottish social, cultural and political life. The following chapter will explore the consequences of these shifting penal and political sensibilities.

## Chapter Ten

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### Reinventing Scottish Imprisonment

#### I. Introduction

Prisons in Scotland had been evolving in response to the broad problems of social disorder and the perceived danger and failure among the prisoners in the 1970s. By the 1980s, prison disorder was an increasingly important factor in decision-making. Despite their uncompromising approach to control, the Division was unsettled by the period of the riots, its inability to quell the disturbances and the surrounding climate of criticism that followed. In light of this context, this chapter maps the dramatic pattern of penal transformation that took place from 1989. The Division was replaced by a more powerful organisation, SPS (the Scottish Prison Service). SPS had more power and greater authority and increased policymaking capacity. With that, SPS purposefully went about reforming Scottish imprisonment. To understand Scottish penal transformation, we must grasp the forces in which SPS was forged. The first claim of this chapter is that SPS's creation was the result of the particular problems inside the prisons; but it also reflected the rise of a new civic nationalistic sentiment in Scotland which developed in response to anti-Thatcher sentiment and Conservative government's increasingly managerialist approach.

Second, there were improvements in the material conditions of prisons. The use of segregation was altered and softened, and the engagement with prisoners became more respectful. By the mid-1990s, prisoners (long-term prisoners in particular) were seen as rational beings with a degree of ownership over their prison career. These developments reflected the changes in Scottish political culture; consequently, SPS was seeking to achieve a stable and calm prison system and a resilient and prepared prison administration. By framing issues in this way, prisons in Scotland

were reinvented and presented as more egalitarian and humane. Moreover, Scottish penal culture came to be seen as distinct from the English and Welsh prison policy. This was significant: at a time when other Anglophone countries were becoming more punitive, Scottish imprisonment and political rhetoric communicated something much more progressive and parsimonious.

However, thirdly, while charting these positive and progressive steps, this chapter and the history of contemporary Scottish penal culture provides a broader critique. While the transformation was presented as the deliberate outcome of liberal reforms, in many ways these changes simply enabled more 'civilised' means for achieving the prison's aims of exclusion, discipline and control. The historical trajectory presented from Chapters Nine to Ten tempers the urge to over-emphasise the breadth of the penal changes. The prison remained a central technique in maintaining Scottish social order and, as a result, these impressive and redeeming penal reforms actually entrenched the prison as a place of last resort. This chapter demonstrates that an understanding of political culture, situated within the wider social context, is key to explaining transformation in the forms and routines of imprisonment. In addition, it suggests that historical perspective can be a critical tool, allowing us to make more accurate assessments of the nature and character of penal transformation.

## 2. Reassessment

This phase of the story begins in 1988-89. It was at this time that the Director of the Prison Division stood down and, as Derek described it: 'So a group of young Turks took over'. The new Director wanted 'New approaches and new ideas are needed to avoid further disruption' (McKinlay 1989:4). Other civil servants were promoted and hired into senior Division management positions, some of whom had already been advocating within the Division for changes through the Governors' Association and the WPAR. What had been an 'emergent' movement calling for a

refinement of the logic of exile and the systemic practices of Scottish imprisonment, now had a chance to become Scotland's 'dominant' penal outlook (Loader and Mulcahy 2003:59-60).

Interviewees positively described the new management of the Division as people who were 'mavericks' (Ken; Alistair; William; Henry) and William, who had been directly involved in the change in management, excitedly recalled how the crisis came to be viewed as 'a window of opportunity'. The new management, acting with all the fervour of reformers and activists, felt they could radically alter the foundation principles of imprisonment: 'Traditional criminological assumptions and ideas on the organisation of prisons are under challenge from the new perspectives' (HH57/2071), and that the 'fundamental philosophical concerns' of imprisonment were now subject to a 'programme of change' (SPS 1992:10).

These new key state actors began a process of reflection and assessment. The fundamental problem was variously described as an improper balance between the imperatives of control and consent: 'The prison service lost its way and lost control. And in prisons you have to have control and consent. And you don't get control without consent, you lose consent, you lose control' (Adam). This emergent penal norm of consent suggested that order within prisons should be earned rather than imposed. It was felt that the Scottish prison system had undermined the importance of a prisoner's consent through the rigid imposition of downgrading without the same vigilance given to maintaining a fair and enticing privilege system. As a result, Derek reflected: 'we'd lost the good will of the prisoner. So when the incidents happened we couldn't call on that good will because it was gone'.

Further failings of the imprisonment regimes were described as their inherent violence – evaluations which had previously been exclusively reserved for the prisoner. Many in the Prison Division had become embarrassed about the physical

excesses and militaristic responses of the Division. As Ken went on to mournfully recall:

‘Our response was a very hierarchical, forceful, coercive response. We were out there knocking the hell out of prisoners. Prisoners were taking hostages, were destroying buildings, attacking staff, attacking each other. It was a very violent time. And the response was violence by the authorities back, and we locked down and we locked up. And we damaged a lot of people; a lot of prisoners’.

People reflected on the cruelty of segregation in particular. According to Ken, ‘in Peterhead and in the [segregation] cells all sorts of horrible things were happening’. William described the violence that was endemic to the prison system, recalling the early 1970s prisons as ‘pretty nasty places’. Douglas critiqued the barbarity of Scottish imprisonment, a central part of the imprisonment regime itself, saying it appeared to him that ‘Prisons used to systematically brutalise people’.

The newly instated Division administrators began to turn away from the inhumane practices and reactive punitiveness which had governed imprisonment regimes.

Speaking of his predecessors in the Division, William said:

‘They thought they knew everything, they were operational guys...we recognised we were not doing this properly, you know, we were not treating people as people; we were treating them as animals. We needed to change’.

The dehumanising character of imprisonment was also a critical recollection of Ken’s: ‘If you treat people like animals you’re not going to get them to respond in humane ways’. The Prison Division were chastened by the excess of the physicality and coercive segregation. The Division began to suggest that they ‘had to pull back from total control’ (Ken).

At times of crisis, as Hay has written, ‘disparities between previously unquestioned cognitive frameworks and the ‘realities’ they purport to represent are starkly revealed’ (Hay 2002:214). Reflecting this cultural analysis, William described how *Assessment and Control* became a defunct penal programme – a punitive and



uncompromising reaction that was now felt to be offensive and seen as illogical and needing to be repudiated:

‘It came from the common-sense: we have 50 bad apples, or 200 bad apples in the barrel, let’s take them out, but let’s do something for the rest but let’s get these guys out. But what soon became apparent was that another 50 came along.....[it] was about ‘let’s get a cage somewhere and let’s forget about them’. Adults were forgotten, prisons were forgotten services. There was a concept that perhaps we can do things for young offenders, but when someone gets to 21 they get stamped...and this was the shift in the argument that takes us away from *Assessment and Control* ...[new senior management were] able to say *Assessment and Control* was shite’.

Like William, Douglas also wanted to invalidate the Prison Division and was critical of them, describing it as a ‘semi-performing’ Department. New management was intent on transforming the Division *and* taming the disorder in Scottish prisons. William enthusiastically described the new tempo and reform ambition among the senior management of the Division: ‘The atmosphere was great. It was mental, it was a party. That’s when, where, all this started to happen’.

### 3. The Scottish Prison Service

In tandem with the changes in Scottish penal values, the whole rationality of government – its functions, limits and aspirations - had also begun to evolve. Throughout the 1980s, Margaret Thatcher’s Conservative Government, armed with a new doctrine of free market economics, launched an assault on the welfarist and social democratic developments of Britain’s post-war settlement. Ministers sought to minimise citizens’ dependency on government by reducing social provision in education, health, reducing the abuse (as they saw it) of welfare benefits, and introduced new policies to reduce the inefficiencies of public administration and encourage privatisation of state subsidised industries (Gamble 1994). Under Thatcher, the ideology of British politics began to shift to the right, becoming simultaneously anti-state intervention but also more coercive, in what Hall (1985) called the emergence of ‘authoritarian populism’.

In 1988, the seminal *Improving Management in Government - Next Steps* (1988) was published. It outlined an agenda for government shaped by a 'business-type managerialism' (Rhodes 1994:144), which dictated that the civil service should follow the corporate doctrines of performance measurement, greater accountability, responsibility and the principles of competition. In addition, government agencies should be decentralised in order to reduce costs (Hood 1991:4-5). Ideas of 'economy, efficiency, and effectiveness; performance targets, auditing, and monitoring; consumer responsiveness and customer satisfaction' gained ascendancy in British political culture (Loader and Mulcahy 2003:260).

The corollary of these corporate political mentalities was the new demands they placed upon of the liberal citizen. Citizens were still rational and responsible, but were also required to be 'autonomous agents who make their decisions, pursue their preferences and seek to maximise the quality of their lives' (Rose and Miller 2010:298). The Government should better encourage citizens to be an entrepreneur of their own fortune and well-being by becoming prudent (O'Malley 1992; Garland 1997).

The new governmental paradigm of entrepreneurship in ethos, appealed to the Division's new maverick spirit. The critical evaluations of the civil service that *Next Steps* outlined seemed to neatly reflect the problems they faced with the Scottish prison system. As Douglas commented: 'A badly functioning organisation is only interested in the process and stultifies initiative, which summed-up precisely what was wrong [with the Division]'.

But the rise of Thatcher and the Conservative brand of liberalism were highly contentious in Scotland. The majority of people in Scotland voted for Labour MPs through the 1970s and into the 1980s, while Conservatives won the most overall votes across Britain, maintaining power from 1979 until 1997. This did not

necessarily represent a democratic deficit in Scotland, the British political system had always operated so that the party with the greatest number of seats across the UK won the mandate to govern. Constitutional difficulties and cultural divisions emerged, however, in the 1980s, as the Conservative administration pursued social policies which were seen to hasten the problems of deindustrialisation and poverty in Scotland. Scotland's higher reliance on public provision than England, with 15.5 percent of people in Scotland dependent on benefits, extensive social housing, higher unemployment rates, chronic health inequalities and the country having some of Britain's most deprived areas, meant that it 'had much to lose' from Thatcher's economic policies (Stewart 2009:120). Accusations followed from Tory leaders in Westminster that the English were subsidising a dependent Scotland, and that Scotland needed to develop a culture of enterprise (Mitchell and Bennie 1995:94). The Government subsequently imposed policies that were felt to be particularly harsh on Scotland, such as the poll tax, curtailing social provision, introducing privatisation into healthcare, electricity and transport, re-ordering education and local government funding. While these same policies were also being resisted and disputed in England and Wales, in Scotland these policies were viewed as a hostile attempt to 'Anglicise' Scottish government institutions and cultural life (Stewart 2009).

As shown in Chapter Eight, by the 1970s Scotland bore 'cultural scars' (Perchard 2013) from the loss of industry. As a result, in the 1960s saw a 'resurgent' and 'powerful national narrative' emerging (ibid.:78). The policies Westminster pursued fractured the cohesiveness of Scottish-British social and political culture as Thatcherism provoked a Scottish 'civic nationalism' (Perchard 2013:n14).<sup>53</sup> By the end of the 1980s, Scotland had become a 'restless nation' (Munro 1999; Stewart 2009; Midwinter 1990). Scotland was increasingly depicted as culturally distinct, collectivist, left wing, sitting in stark contrast to the liberal ideology of individual

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<sup>53</sup> Civic nationalism has a more collective and inclusive view of citizenship based on shared values (as opposed to ethnic nationalism which has the common grounds of race and ancestry) (Brubaker 1999; Keating 1996).

responsibility in British politics (Perchard 2013). A new cultural identity emerged, one in which Scotland was felt to be 'different' (McEwan 2002:79), or a sense that Scotland was, as Doig (2013) put it, 'special'. Despite Thatcher's commitment to unionism and renewing a sense of British greatness (McEwan 2002), her policies had inadvertently 'alienated [Scottish] civil society and fuelled demands for Home Rule' (Stewart 2009:139), thus undermining the union of the British state. Scotland, rather than Britain, was 'construed as the unit of political and economic management from the 1970s' (McCrone 2006). The view that Scotland should free itself from the 'internal colonialism' (Perchard 2013:86) of Britain became influential.

From the middle of the 1980s Scottish public dissent against Thatcher grew. Scotland's local government, civil society and media engaged in a protracted resistance against the commodification of public services and the responsabilisation of citizens (Holliday 1992; Stewart 2009). By 1987, the cultural and political divisions were apparent: 72 percent of Scottish people stated that Thatcher only 'looked after the interests of one class' and 54 percent said she was 'uncaring' (Stewart 2009:122). In 1989, the Scottish media reported that 77 percent of Scots felt like second class British citizens (Mitchell and Bennie 1995:96). As Stewart writes, Thatcher came to be perceived to be 'anti-Scottish' (Stewart 2009:2).<sup>54</sup>

These influences – changes in the nature of British liberalism and an insurgent Scottish political outlook – provided new ideational resources to address the Scottish problems of imprisonment. It was at this time, that the Prison Division underwent a reinvention and became the Scottish Prison Service (SPS) (1989). In becoming SPS they acquired a logo which adorned their documents, their letterhead, their staff IDs, etc., demonstrating and consolidating their new managerial power. The deliberate reconfiguration of the 'culture' of Scottish prison governance (Frizzell 1993) was to be made literally and physically evident. For example, the reception at SPS headquarters was to be re-designed on the

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<sup>54</sup> In his extensive social history Stewart also problematizes the historical account of Thatcher's empirical impact on Scotland (2009).

instructions that it 'portray a positive image of a forward-thinking service' (HH57/1897). In 1990, the annual report covered 1988-89 so that it corresponded with the financial year instead of the calendar year. SPS set out a Mission Statement in which the old concerns of custody, order, care and opportunities were now precisely stated:

- To keep in custody those committed by the courts;
- To maintain good order in each prison;
- To care for inmates with humanity; and
- To provide all possible opportunities to help prisoners to lead law-abiding and useful lives after release.

In 1994, the 1952 Prison Rules were updated, giving their actions greater legal certainty and reducing the emphasis on discretion, reaction and incremental amendments. The political authority of SPS provided new visual organisational referents by 'which to define itself and advance its claims' (Geertz 1983:143) as a professional, cohesive and organised headquarters. The new virtues and future aspirations of prison governance were to be articulated wherever possible, and by doing so, also conveyed a new form of organisational control, consensus and unity. A 'culture-producing process' motivated by what Wagner-Pacifici and Schwartz (1991:379) describe as a 'pleasure principle that produces a unified positive image' – the creation of SPS was a positive act of political cultural affirmation. SPS was in a process of producing and reifying new penal meanings and political motivations in their managerial paraphernalia.

In 1989, SPS published a *Business Plan* – an extensive organisational review conducted by a private consultancy firm which sought to provide explicit organisational goals, functions and boundaries for the prison management. It also aimed to illustrate how to improve accountability and establish proactive strategic management. Building on this corporate identity, SPS produced *Organising for Excellence* (1990a) which outlined a new streamlined and more efficient organisational structure for the Division. This document was explicitly developed to

reproduce the political outlook advocated for by *Next Steps* for Scottish prisons (1990a:iv, 94-95). The problems with imprisonment were now firmly identified as being largely problems with management, or more precisely, a lack of clear authority and planning capacity. SPS wanted the prisons to function with a long-term plan, to replace a 'control culture' with a more open accountability culture (SPS 1990a:95).

An important outcome of the ascendant British public management agenda was the conversion of branches of the civil service into independent agencies. SPS was not initially considered for agency status, but undeterred its new management of SPS pursued this opportunity (SPS 1990a). In 1993 SPS became an executive agency (SPS 1993). Douglas, who had been directly involved in this bureaucratic conversion, saw this as a great liberation for SPS, and he described the agency status as an unreservedly positive advance: 'More freedom...It meant more freedoms. That really sums it up... it gave [SPS] the freedom and trust that we needed'. However, during the 1970s and 80s the Division had been largely free of the downward pressure from central government at Westminster and the bureaucracy of St Andrew's House. My suggestion is that freedom and trust can be more accurately interpreted as increased penal power. SPS had a greater capacity to reconfigure management and prison infrastructure. As Douglas defined it, they were no longer merely administering prisons. Becoming an agency 'empowered headquarters...That was when we made the most of our progress'. As a corporate-like organisation, SPS had more power, and was able to create a 'coherent line management structure with clear accountability for the overall direction and control of prison operations' (SPS 1990a:i). Adam also saw the reinvention as one which moved prisons away from administrative bureaucracy towards a more powerful corporate system: SPS became 'a managed place rather than an administered place, you can't do any of these things [systematic reforms] without a grip on the business'. The historical irony is that as we saw in Chapter Eight, prison literally operated like a factory, with detailed employment rates, profit margins, marketing

strategies and annual sales figures. For the prison to be a business in the 1980s reflected a new set of governing rationalities, ones which prioritised corporate rhetoric and strategies. Being an agency with contemporary statutory rules, a corporate philosophy and a mission statement meant that SPS was now organised and professionalised. What distinguished SPS's organisational DNA from the administrative Division it replaced was its new corporate identity of effective and strategic control and planning (SPS 1988c; 1990a; 1990b; 1990c; 1993).

## Opportunity and Responsibility

Spurred on by a new reformist fervour, some of the new senior members of the SPS contacted the Secretary of State in 1990, suggesting they wanted to build upon 'the development of thinking over recent months in Prisons Group'. They proposed that SPS abandon the plans for expanded segregation facilities and instead spend the budget improving existing physical conditions. The Minister agreed, but requested a 'small White Paper' which he could use to announce this new policy direction later in 1990 (HH57/2112). This became the most seminal document of this period, *Opportunity and Responsibility* (1990b).

While the practical focus of the document was trained upon the long-term prisoner, *Opportunity and Responsibility* reads as a manifesto. In posing new ideas and re-articulating the aims of imprisonment, it was also intended as an assault upon the Scottish political culture of the preceding period. It was a totemic publication and marked a new beginning that dispelled what had gone before.

*Opportunity and Responsibility* outlined a new 'humane' (ibid.:18) vision for imprisonment. SPS would support prisoners' family contact, improve the quality of life and minimise the 'harmful effects of the prisoner's removal from normal life' (ibid.:9). But the document explicitly linked this vision to the contingent political

changes that were afoot: 'external changes were taking place in society at large, which called for the Service to review its traditional view of the prisoner' (1990b:22). Mirroring the new prevailing policy language, SPS presented a new vision of Scottish prisoners' capacity for personal responsibility. It asserted that Scottish imprisonment had 'concentrated excessively on individual pathology'. The dynamic of care and control was replaced by the semantic framework of opportunity and responsibility, whereby the prison provided programmes and prisoners were responsible for making the most of them. The prison should avoid a 'coerced cure', their new goal was to provide opportunities for 'facilitative change' (1990b:17).

These ideas entailed a 'new understanding' of the 'prisoner as a responsible person' whose 'personal problems' inside the prison could be alleviated if they were provided with better interventions and activities. The prison should not coerce them but engage the prisoners' consent and 'co-operation' (ibid.:16-17). This new vision, as described by the Chief Executive of the SPS, was that the prisoner was neither 'sick' nor defective; nor 'an inferior kind of person who is unable to exercise decision making' (Frizzell 1993:206). The prison administration began to think more should be expected from prisoners and that to achieve their aims of 'custody' and 'control' they should be underwritten by a regime of 'opportunities' (HH57/2067). They could no longer just do things to prisoners. They envisioned a system of 'mutual responsibilities' between the regime and the person confined (ibid.:18). But this would place new demands on the prisoner. As the new Director of Prisons stated 'prisoners claimed their rights. Many [in senior management] feel they did so without living up to their responsibilities' (ibid.). Training prisoners to be responsible had been a marginal practice in the 1970s and into the 1980s, a generosity which had previously been restricted, given to prisoners only as privilege as they progressed into Training for Freedom. By 1990s it was the dominant concern of Scottish imprisonment.



*Opportunity and Responsibility* also gave renewed impetus to other existing prison practices. Segregation was now referred to in the more civilised terminology as 'small units' (ibid. Chapter 8-9). It reaffirmed the need for segregation facilities, though was opposed to the large unit recommended in *Assessment and Control* (ibid.:53). Moreover, it outlined a coherent single policy to govern all segregation units, no longer would segregation be the discretionary and summary power of the Governors (ibid.:59). The object of SPS's attention was upon the entire prison system and not, they felt, disproportionately concerned with the most discordant prisoners. Keeping prisoners within the mainstream prison system had become their ultimate goal.

### **A New Prison Expertise**

SPS officials presented themselves as reformers and modernisers. Douglas observed that these were civilising developments: 'From the 1990s on civil servants [in SPS] were more enlightened'. Similarly, Alistair described this as the time SPS became a 'thinking organisation'. By contrast, leading scholars have identified an Anglophone trend in which imprisonment was inflected with a new austerity, stripped of its reformative capacities, prison policies were no longer the preserve of insulated researchers and civil servants. These experts were, according to the general historical trajectory of British penal policy, displaced from the policymaking process, which was increasingly beholden to popular sentiment and public opinion (Garland 2000:349-350; Cavadino and Dignan 2006:230; Loader 2006). In Scotland, the growing power of SPS and the establishment of ideas of efficiency and effectiveness opened up a new space for evidence-based policy and at the beginning of the 1990s a new research unit was established at SPS (*Annual Report 1991-1992*). In notes from 1990, the ambition of SPS and a new tool of evidence was revealed: the 'role of research in the SPS' presents 'in theory a process which promises

significant, if not radical approaches for dealing with the management of prisoners in Scotland' and research was intended to take a 'proactive role in prison policy'.<sup>55</sup>

Research facilities were intertwined with the new business approach to managing prisons:

'The transformation in this period was that knowledge, evidence was used to drive the business...Why? Partly, because we could write, the prison service couldn't string together an argument. We transformed the quality of what was brought to the board, just transformed. Two pages became 22 pages. Things had references to academic work, footnotes – that was never ever part of that agenda before. So, the whole way of doing business became much more professional' (William).

The descriptions of the reams of paper and the influx of radical new ideas evokes another image, that of the coloniser and the proselytiser.<sup>56</sup> Understandably, given the ambition of the penal transformation posed by SPS, there was not unified support from all management and staff behind the new initiatives of prisoner empowerment and responsibility (HH57/2112; HMCIP *Annual Report* 1992-1993:11). As Ken explained, 'it was a time to take stock. And I am glad that is what the prison service did. We tried to think about things. People were polarised'. For the transformation to 'work' they needed to convince but also coerce other SPS staff of this new way of thinking:

Some 'prison staff, they were the anchor, and they were slowing us down. As long as you can have more people on your side you can make it very uncomfortable for the minority. Lots of people sit on the fence, you've got to show them your way was the better way' (William).

Documents allowed them to raise the standard of the previous archetypical prison administration, the way it looked, the form it took and the outlook it communicated. As Alistair explained it, being capable of 'joined-up writing' gave them an

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<sup>55</sup> These are no archive code as were taken from SPS internal files.

<sup>56</sup> Not all documents are intended as colonising practices. In this cultural and political context, at a time of self-conscious and deliberate transformation, the concrete practice of document production had ideational and cultural promotion as its characteristic meaning. It is about reading the meaning agents produce by undertaking social practices of production (Biernacki 2000:289), in this case report compilation and publication.

advantage. There was an avalanche of information, of publications, writing and ideas. They used the documents to colonise the space vacated by previous management and destabilised by persistent disturbances, but also to convince those who were skeptical of the changes. The research and policy publications allowed them to establish a striking penal identity; allowing, as William described it, new 'ideas to get supremacy'.

The existence of so many publications, a series of extensive prison research reports, research bulletins, policy documents, business plans and strategic reviews<sup>57</sup> was in many ways an anathema to the previously reactive administration of the Prisons Division. Moreover, these documents also *looked* different: all adorned with the new SPS logo, they were sleek and glossy A4 documents. Documents should be read literally as a cultural knowledge source, but also read visually as an object, describing the document's forms as, additionally, a cultural agent and cultural product. Without having to literally read their content or narrative framing, these documents send viscerally attainable signals that demonstrate new practices of penal administration and a new configuration of penal politics. These documents were a 'powerful technology of rule' (Stoler 2002:101) and identity creating practices, cultural artefacts establishing and producing the foundations of a new professional and authoritative penal culture.<sup>58</sup> In addition, the slew of documents were also cultural artefacts of a new 'fact production' (Stoler 2002:91) that were establishing a new vision of the prisoner, the prison, prison governance and new cultural and political conventions for penal administration.

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<sup>57</sup> In 1994 reports were published on HIV/AIDS in Prison; Physically Disabled Prisoners; Psychological Disturbance Amongst Prisoners; Mentally Disturbed Prisoners; Drug Use and Prison (Summary); Drug Use and Scottish Prisons; An Evaluation of Barlinnie and Shotts Units; Evaluation of Parole Procedures; Research Bulletin; The Second Prison Survey; Evaluation of the Saughton Drug Reduction Programme. In 1995 reports on Vulnerable Prisoners; Relational Prison Audits; A Review of Regimes and a Research Bulletin were published.

<sup>58</sup> Stoler, in her article 'Colonial Archives and the Arts of Governance' (2002) chastises the historical anthropologists who neglect form which, like content, also reveals cultural shifts and dynamics: 'Students of the colonial experience "mine" the content of government commissions and reports, but rarely attend to their peculiar form or context' (2002:90).

## 4. Mainstreaming, Normalisation and the Entrepreneurial Prisoner

The SPS structure was now empowered to 'endorse the new philosophies' envisioned for Scottish imprisonment (*Annual Report 1991-92:ix*). To align the prisons with its campaign for a new organisational culture and penal philosophy SPS set about transforming imprisonment regimes into a single efficient and business-like system. While disciplinary and exclusionary penal culture had shaped a system which relied heavily upon the logic of segregation and exile, SPS inverted that thinking. Their new general objective for Scottish imprisonment regimes was 'mainstreaming'. No longer would attention be directed at the expansion and oversight of segregation, but was retrained upon the mainstream system, supported by new techniques of prisoner intervention, responsabilisation and pacification.

Regimes now had performance agendas and targets to meet and each prison was to be aligned with the Service's business outlook. The annual reports no longer provided summaries of health, order, hygiene, activities etc. but set an agenda for each prison which was assessed. Each establishment was now listed with its particular strategic objectives for facilities, conditions and security. The annual reports took on the character of a report card organised around 'Performance Measures':

1. The number of prisoners unlawfully at large
2. The number of significant events.
3. The numbers of serious assaults on staff and prisoners
4. Basic quality of life for prisoners.
5. The amount of available opportunities for prisoners' self development.
6. Time out of cell for unconvicted prisoners.
7. Average annual cost per prisoner place.
8. The level of absence through staff sickness (*Annual Report 1993-1994:9*)

The bureaucratic rationality manifest in this new method of accountability, in the 'making prison up' (to paraphrase Hacking), operated as new techniques of rule and hierarchy, a means of controlling and realigning imprisonment regimes to reflect a new political ethos.

The Scottish commitment to new public management within prison practices was most vivid in the official representation of the prisoner. SPS attempted to rhetorically re-position the prisoner: from a person who was primarily a worker and a danger to a *customer*. SPS was spreading this new mantra through workshops at which staff were 'learning a business approach to forward planning, focusing on quality of life service and customer needs' (HH57/2071). At senior management meetings they began to refer to prisoners as 'customers', 'SPS customers' and 'prisoner customers' (ibid.; HH57/1897).

With this in mind they developed the Prisoner Survey, described as 'a major market research study' (Wozniak and McAllister 1992:10). The survey was extensive and set about gathering prisoners' opinions of the Scottish mainstream system. Questions focused on accommodation, work and wages, education, cooking and food, clothing and hygiene, cleanliness, general state of repair, official complaints, length of visits, privacy and visiting facilities for children. It inquired about the atmosphere and relationships within the prison (between prisoners, officers, governors, specialists). The survey also sought to gain insight into a prisoner's personal reflections about being imprisoned: the character of their personal problems, their sense of personal safety, issues they anticipated upon release such as jobs, homelessness, etc.

William described how the ideas of consumerism gave new legitimacy to Scottish imprisonment:

'the customer has a legitimate voice...we were using populations of prisoners, and prisoners' voices in a very different way. I think it starts

the change. People think, [the] prisoner's voice is right!'.

The prisoner survey directed SPS's efforts in the process of *mainstreaming*. To reduce prison disturbances, SPS set about improving the conditions and quality of life for prisoners in the mainstream prisons rather than relying on the threat of segregation to maintain order. In response to these reports there were a variety of improvements in the visiting facilities. This also included, though not systematically for every prison, the addition of pictures, piped music, plants and a baby changing area. SPS produced separate information booklets for prisoners and for people visiting the prison. Food was also improved after a catering audit (HMCIP Report 1993-1994). A new grievance procedure was introduced in 1994 when an Independent Complaints Adjudicator for prisoners was appointed. SPS also shifted the use of classification terminology for long-term prisoners. First, in a stroke, SPS reduced the number of long-term prisoners by increasing the threshold for long-term imprisonment from 18 months to two years and then to four years. In so doing SPS had decreased the problem prisoner category by making it more difficult to qualify for that classification. Second, in 1993, the Standing Committee on Difficult Prisoners was replaced with a lay membership and given the banal unprovocative new title of Advisory Committee on Prisoner Management (Annual Report 1993-94:42). During this time SPS did not build new prisons, they modernised and ameliorated some of the harsher and objectifying aspects of Scottish prison life. SPS sought to increase the legitimacy of the system among prisoners.

In addition, the existing 'small units' for prisoner exclusion were given a different dynamic. Small units would provide opportunities for facilitated change by addressing prisoners' anger issues, emotional problems, 'criminal attitudes, values and beliefs', then quickly returning them to the mainstream with improved behaviour (SPS 1994:42). Rather than relying solely on spatial and temporal control, small units would also help normalise the prisoner, though not for society at large, but for the mainstream prison system. Segregation was now a site for more proactive intervention with the dangerous and disordered prisoner. Within this

same normalisation endeavour, a National Induction Centre for newly convicted long-term prisoners was opened. This was an independent unit for up to 52 prisoners at Shotts, where prisoners serving a sentence of ten years were sent after sentencing (excluding sex offenders). There, prisoners underwent a 2-3 week induction programme. This provided 'a supportive regime for prisoners' at the beginning of their sentence to help them adjust to the mainstream prison system, and decisions were made regarding a prisoner's security category (SPS 1998:10). It was hoped that this would reduce long-termers' hostility towards the system, according to Douglas: 'The induction unit at Shotts [aim was] to get more long term prisoner inducted into the system in a way that would hopefully make them less likely to be disruptive'.

Bolstering the mainstream like this, however, put the BSU in a tricky position. The BSU had always been outside the mainstream system, and had been lambasted for perverting the progression system, as it was often perceived as a reward for bad behaviour (*HMCIP Annual Report 1986*). Now it was criticised for undermining the mainstream system and harbouring prisoners who were opposed to SPS's positive interventions (SPS 1994:40-41). The Unit became emblematic of a system that had fallen into disarray because of prisoners with non-compliant attitudes (*ibid.*:41), it was now an anathema to the governing ideas of systemic consistency, harmony and mainstream efficiency. Douglas reflected the disdain for the Unit when he described it as 'rotten to the core'. People were also repulsed by the permitted conjugal visits at the BSU (William; Douglas), the prisoners there were described a ragtag bunch of misfits whose prison life was offensive to senior managers' modernising sensibilities. In the era of mainstreaming, the BSU was seen as a relic, that it had become mummified; an historical oddity in the new modern organisational field of imprisonment. William, recalling this time, characterised the BSU as being 'completely beyond its sell by date'. Alistair felt similar, saying that 'the Barlinnie Unit had outlived its time'. The BSU, once considered Scotland's great prison experiment (Sparks 2002), by the 1990s was a prison out of time, in both senses of

the term. SPS's progressive programme of mainstreaming made BSU's position as a penal outlier untenable, as encapsulated by Douglas's account:

'we felt we were improving the whole system. The arguments for it [the BSU] were becoming less and less. And we did an internal thing and discovered things that were going on that were making it insupportable. To be honest, it was outrageous'.

SPS commissioned a report on small units (Bottomly et al 1994), which was left unpublished for some time (Sparks 2002). That report was largely positive about the character and routine of the Special Unit – which was not what the Division wanted to hear, according to William. Shortly thereafter, another working group on small units, this one internal, was established. Its criticisms were decisive and unambiguous (SPS 1994). The BSU was not improved, reclaimed or realigned. Like so much else, it was, as Sparks has written, 'a standing admonition of the very system that the reformers believed they had superseded' (Sparks 2002:576), and in 1994 the Unit was disbanded and the prisoners distributed across the mainstream system.

Other innovations and techniques were introduced. SPS implemented psychological interventions, such as cognitive behaviour groupwork and disruptive prisoner programmes, making prisoners compliant through a personal evaluation of the reasons for their criminality and acts of prison disorder (SPS 1998:10; *Annual Report* 1994-95). These practices and interventions accepted that in Scotland most psychological disorder was 'imported' into prison rather than created there (Cooke 1994:8), while good behaviour and decision-making could be inculcated through psychological interventions.

The imprisonment regimes evolved to include new techniques of intensive micro-management. Personal Development Files and Sentence Management were introduced for long-term prisoners in July 1992. These dossiers would enable prisoners 'to address personal development issues and problems' (SPS 1998:9). They



provided 'a formal and standardised system within which all information relevant to the prisoner can be consistently and coherently gathered, collated and maintained.' (HH57/2110). From 1992, all prisoners serving a sentence of two years or more could take part in the Sentence Planning Scheme and Personal Officer Scheme (*Annual Report 1991-92*), in which they were appointed a personal officer and along with them would agree the best way for them to make the most of their time in prison (Coyle 1992). These techniques combined the vision of prisoners as responsible and as customers with the idea that imprisonment was an opportunity:

'As far as possible prisoners are allowed to make choices about their use of the opportunities available. The aim is to give prisoners the opportunity to address their offending behaviour and to assist and encourage them to make constructive use of the available facilities which include education, programmes, work, vocational training, counselling and contact with other agencies. Prisoners are involved in the preparation and review of their sentence plans and have the opportunity to see, discuss and comment on what has been written about them by their personal officers' (SPS 1998:10).

Prisoners now could be taught how to behave in a socially acceptable form:

'responsibility must be learned' and prisoners must be encouraged to negotiate between 'choice (the freedom to do as I want) and obligations (my duties towards others)' (SPS 1995a:7). Sentence planning gave prisoners 'increasing responsibility', establishing a 'sphere of freedom' around them (Rose and Miller 2010:298), while making prisoners meet their 'targets' for improvement and good behaviour as they worked on their files and progressed through the system (SPS 1995a:15). By rendering themselves responsible, prisoners were allowed 'to take part in the government of their own confinement' (Garland 1997:192). The system moved from the idea of authoritative assessment by staff to entrepreneurial 'personal assessment' by the prisoner on his own behalf (Coyle 1992:6).

It was no longer sufficient for a prisoner to physically circulate through the prisons on their progression career, instead the regime of the prison could also move the prisoner from within once he had the opportunity to exercise agency. Now the

Scottish prisoner was promised that he could be 'master of his own destiny' (Coyle 1992:6). The responsible penal persona was productive and aspirational, giving the SPS a new impetus. It was not just simply that the Scottish prisoner became responsible because people expressed that belief, but these new rationalities materialised in the altered shape of imprisonment regimes which sought to 'encourage' prisoners into the kind of 'responsible citizens' they desired (SPS 1994a:26). The responsible prisoner was both 'imagined and moulded' (O'Malley 2010a:14).

A final systemic innovation that developed to support a stable mainstream was the emergence of risk management. The particular statistical silhouette of the prisoners – created by the new research reports, prisoner self-prepared dossiers and survey data – allowed SPS to engage the prisoners' needs as institutional risks. Suicide, for example, was not just a mental health issue or welfare need, but a behavioural risk (Power 1997:21). The reports on drug taking in prison, psychological disturbance, vulnerability and communicative diseases provided a more nuanced crop of behavioural typologies:

'The information thus gathered should be used to develop a detailed needs profile for each prisoner and should be used to expand upon and develop the needs analysis built into the Sentence Planning process. In some instances it may also be necessary to carry out more explicit assessments, such as formalised risk-needs analyses, intelligence tests or assessments for psychopathy' (SPS 1994a:28).

These prisoners were not looked upon in a manner that made them an object for help or a threat to be warehoused and excluded. Scottish prisoners were institutional risks to be monitored and contained with a minimum amount of disorder. Moving away from the overt physical control of segregation, a new process of behavioural management was informed by risk and needs assessment work, carried out with the prisoners' involvement (SPS 1998:10).

We should not equate rhetorical change with material transformation in prison practices. Imprisonment regimes did not become a business.<sup>59</sup> They did not pivot entirely on risks and probability. Prison regimes remained humming along to the beat of the textile factory. Prisoners continued to progress through their prison careers. But the new lexicon of economic ideas and their attendant terminology and tactics: customer, efficiency, accountability, responsibility, strategies, corporate philosophies, all became widespread and were manifest in the adaption and developments of Scottish imprisonment regimes. The industrial regime in Scottish prisons remained largely the same as a physical process, but its semantic framing was adapted to align with the new patterns, codes and agendas of Scottish political culture. It was no longer just a means to prevent idleness, it was now also an opportunity for the prisoner to exercise his agency and civic responsibility. Working on the prisoner with these combined techniques meant that SPS did not need to rely so much on high security categorisations, and could decrease the number of high security prisoners and reducing the violence and disturbances inside the prison system.

These changes were spoken of with great enthusiasm by almost all of the interviewees. Speaking in 1991, a senior governor reflected that through their reforming efforts SPS had 'overtaken and passed traditional penal reform groups, such as the Howard League' in the development of new practical theories of incarceration (Coyle 1992:6). In the face of crisis, violence and adversity it was now felt that Scotland was leading the way in progressive prison reform. Such was its faith in the positive changes being made, SPS outlined an almost utopian vision of the future of Scottish imprisonment: 'the current privilege system will wither away' (SPS 1990a:63). By the mid-1990s, imprisonment was 'rendered more homogenous, more knowable and more governable' and with the 'centralization of powers and a

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<sup>59</sup> Or at least not until quite some time later when private sector prisons enter the scene (for which this period might be regarded as preparatory).

shift from a patchwork of particular expertise to a more homogenized field of risk and resource-management' (Garland 1997:190).

## 5. Soft Authoritarian Imprisonment

In the space of a few years, Scottish imprisonment underwent a striking revolution. Physical segregation was minimised, with a new emphasis placed on psychological intervention. Prisoners were not to be viewed as alien and subhuman. They were now service users, proprietors of their personal development with legitimate insight into the best use of imprisonment. Prison conditions were being modernised, and improving the quality of life became an important goal of Scottish imprisonment. By the 1990s there were no more celebrity prisoners, celebrated units, notorious prisons or infamous cells. Imprisonment regimes were made less threatening through new techniques and terminology, yielded less potential for harm, were de-militarised and in significant ways were materially improved. In this time, techniques such as Sentence Management and Personal Development, progress targets, the survey, economic rationalities, and efficiency measurement all replaced what Ken described as the physical and macho character of imprisonment, the 'brawn and bravado', with 'talking to prisoners'.

These transformations are all the more astounding given the violence and disorder which preceded them and, moreover, that in the context of the riots Scottish imprisonment became *more* punitive and exclusionary. But that was the immediate and uncompromising reaction to the crisis inside Scottish prisons. Then there was a second and more programmatic change during which it is clear that disciplinary and exclusionary imprisonment had been replaced by a more caring and managerial form of imprisonment. However, this programmatic transformation is best understood not as a total break from the past, but as an adaption of disciplinary and exclusionary penal culture. This new form of imprisonment which can be defined as *soft authoritarianism*. It is the distinct characteristics of this hybrid imprisonment regime, and its penal subject over whom its authority is exercised that I will now

briefly trace out.

Soft authoritarianism recognises and encourages the agency and rationality of its penal subjects. The prison developed practices of subjectification, such as psychological and cognitive programmes and schemes which encouraged self-regulation and promoted responsible decision-making. The image of the 'prisoner customer', cognitive behavioural programmes, Personal Development Files and the Sentencing and Personal Officers Schemes which emerged during this period, were cultural conduits, means to indoctrinate in prisoners a new identity framed by responsibility and self-control. The Scottish prisoner was no longer passive, but an active consumer, 'an entrepreneur in his own personal development' (Garland 1997:191), who was being taught how to manage their own risks and potential. As SPS wrote: 'It is not sufficient to say: 'Be responsible'. Responsibility must be learned in a context' (SPS 1995a:14). As a result, soft authoritarian imprisonment was 'tighter' (Crewe 2011b), it made greater expectations of prisoners.

Characteristic of soft authoritarianism is the recognition of the criminogenic potential of the prison situation. SPS sought to moderate the prison in order to reduce the threat of unrest. The carrot and stick style was replaced by persuasion, the attraction of better mainstream prisons and a promise of 'pseudo-autonomy' (Crewe 2011a). Soft authoritarianism, as a form of imprisonment, could produce discipline, order and efficiency within imprisonment; where the hard power of disciplinary and exclusionary punishment had proved counter-productive and 'degenerating'. SPS accepted that the mainstream prison conditions were in fact substandard. The survey demonstrated that SPS largely accepted the prisoners' complaints. In so doing, SPS provided an 'implicit inducement' for non-compliant prisoners to return to the mainstream and 'subtle ways of undermining' the resistance and protest of prisoners (McEvoy 2001:252). This agenda was conveyed with some optimism and confident reflection by Derek:

'we wanted to make the mainstream good, and if we make the mainstream good then we can have less difficult prisoners, that's how

we managed difficult prisoners. So that was the policy, and I think it by and large worked'.

By focusing on concessions in, and improvements to the mainstream, reduced the battle lines within the prison system, allowing it to operate more smoothly and diminish its criminogenic impact upon prisoners.

It would seem that the routine of autonomy and responsibility that had characterised the BSU would be consistent with this new rational regime. However, it came to be seen as a potential threat to the authority and practices of the newly homogenised mainstream system. Prisoners were to be offered autonomy, but no prison could be autonomous from the mainstream. There were to be no escape routes and places of exile which would undermine the newly emboldened authority, the inducement of soft authoritarianism with its goals of good order, control, compliance and prisoner responsibility.

The aims of soft authoritarianism were an evolved form of disciplinary and exclusionary penal culture, which share the prison objectives of order, confinement and control. What distinguished soft authoritarian imprisonment from its predecessor was that utility and docility were no longer the ideal prisoner outcomes for imprisonment regimes to strive for (Crewe 2011a:460). The prison could no longer just warehouse people, it had a responsibility to intervene (Hannah-Moffat 2005:42). Highly intrusive psychological and cognitive programmes which encouraged self-regulation and promoted rational decision-making exerted a 'broader and tighter grip on behaviour and cognition', helping to ensure compliance to the prison order (Crewe 2011a:460). During the 1990s, Scottish imprisonment regimes became more controlling, if less physically oppressive, transforming long-term imprisonment in particular 'from something to be endured into something to be worked at – a personal project or occupation' (Crewe 2011b:522).

The objectives of soft authoritarian imprisonment were concentrated on achieving and maintaining the good order of the prison system and not upon social outcomes, such as reducing crime or transforming lives. Normalisation, for example, was used

to support prison order and to make good prisoners. Like the disciplinary and exclusionary forms of imprisonment that had preceded it, SPS avoided the language of recovery and rehabilitation for the same reasons they always had, the hopeless character of the prisoners. Douglas summed up the careful balancing of new penal aspirations with familiar penal problems thus:

‘we didn’t call [it] the rehabilitation agenda, but the opportunity agenda to prepare for release. And there was a debate around how do you rehabilitate the non-rehabilitable in the first place given where the majority of the prison population are drawn from’.

Adam made a similar point:

‘It was a kind of therapeutic despondency in that we’re not actually very good at causing people to desist from a life of crime and so we have to recognise that and acknowledge it’.

At the height of these transformations the Chief Inspector also noted that while commendable progress was being undertaken, there was still an absence of prison programmes which encouraged desistance (*Annual Report 1993-1994*:11). This form of imprisonment had clear lines of institutional responsibility, in which the prison was not accountable for directly addressing social problems (Hannah-Moffat 2005:43); it was not interested in prisoners’ social biographies, but concerned with achieving the targets of imprisonment (O’Malley 1992:264).

## 6. Neo-paternalist Liberal Political Culture – Civilising Imprisonment

In this section I wish to illuminate the political cultural sources of Scotland’s 1990s prison transformation. In doing so, I suggest that the evolution of soft authoritarian imprisonment was an instantiation and material extension of the *neo-paternal liberalism* political culture which took hold in SPS. As a political outlook, it favoured rational responsibility, governmental intervention and managerialist outcomes. It had its cultural antecedents in paternal liberalism, and was also informed by latent Scottish penal fears of dangerous prisons and disorderly prisoners. Further, we can

connect these changes in political culture to wider social forces and political shifts. This provides a broader critique of the nature of the penal reform that took place and which has been described above. The cultural currents, social factors and political ethos which combined to create neo-paternal liberalism were multifaceted and complex. Highlighting each thread of reasoning in this culture will allow us to explain and understand the range and character of Scotland's soft authoritarian prison transformation.

First, the view of the rational subjectivity of the prisoner changed. Paternalistic liberalism denied that most prisoners were capable of well-reasoned thinking. Instead, those in the Prison Division had viewed prisoners as inherently irrational, and responded to them as erratic and unpredictable. The Division therefore sought to control male prisoners physically, using rudimentary behavioural techniques and physical punishment. The view of neo-paternal liberalism accepted that prisoners manifested at least a degree of rationality, and credited them with the potential for self-control and responsibility. In taking seriously the need to improve the mainstream prisons, SPS were taking seriously the rationality of the 'prisoners' voice', which they believed the Division had not previously respected: 'That the prisoners' voice was a legitimate voice in the change process' (William). Archive material shows that senior officials were self-consciously transforming the understanding of the prisoners' capacity for rationality:

'I know that many of you will find this a challenge but it is fundamental to what the paper is about; substituting some phrase such as "a person who is capable of acting responsibly" may encourage people to duck the issue. The point is that we believe that the prisoner is a person who is responsible for his actions and who should be encouraged to act responsibly, then it follows that we must believe that he is a responsible person' (HH57/2112).

In viewing the prisoner as such, and constituting him as responsible in the new interventions, SPS now had a new site to work upon; namely, prisoners' perceived rationality as a means to shape prison order. As Garland has written, by 'assuming the reality' of the prisoner to be responsible and rational, 'the authorities begin to



give substance to it, projecting it on to live men and women' (1997:190).

Second, the straight managerial dimensions of Scotland's evolving political culture should be clear and, thus, it should be similarly apparent that the changes occurring in Scotland reflected those taking place elsewhere in the British Government. Such as being effective, technocratic, encouraging entrepreneurship, reorganising the civil service to mimic private sector businesses, and developing an evidence-based policy portfolio. These particular views on the role of government were reflected in abundance in the many accounts from the interviewees, were evident in the framing of the new SPS documents, and the very creation of SPS as an organisation first, and the active pursuit to establish it as an agency. The Scottish case of penal transformation clearly demonstrates how managerialist ideas and practices were quickly and eagerly embraced in the governance of Scottish prisons.

Thirdly, this managerialist transformation should be seen as a distinct Scottish transformation, and not just an instance of new managerialism identical to any other (McEvoy 2001; O'Malley 1992; Pollitt 1990; Loader and Mulcahy 2003; Garland 2001). After the prison disturbances and the crisis inside the Prison Division, the pre-existing consent that formerly seemed certain unravelled. From 1989 until the mid-1990s, the senior prison administrators were seeking a return to an equilibrium by reorganising the most provocative and inciting aspects of their rule – managerialism provided the tools for that project. There was no protest and angst around the implementation of new public management and signature Conservative policies in Scottish prisons – as there had been when it was grafted onto other areas of Scottish social provision. People in the penal state were high-spirited and jubilant about the managerial transformation in Scottish imprisonment regimes and its supporting governmental processes. This is because it appealed to their fears summoned up by the events of the prisoner riots. Actively pursuing the new public management agenda bestowed SPS with the power and a complete set of ideational resources to take control of prisons.

The enthusiastic embrace of managerial ideas in Scottish penal culture reflects the desperation and anxiety which had over taken the Division. The trauma of the riots left people feeling vulnerable about the prison as a workplace. The prison service was all too acutely aware of its own fragility as a public and political institution. The language of the customer, the new business motifs and the orderly outlook safeguarded the organisation against future vulnerability. As the Director of SPS remarked in the 1990-91 Prison Report: 'Prisons will always be potentially volatile but I believe that the more professional we become at managing the Service, the less violence will occur' (p.3). By being more proactive and managerial, SPS were seeking out forms of safety and protection as much as managerial efficiency, according to the next Chief Executive of SPS (Frizzell 1993). Undoubtedly the efficient management of the prison system was bound up with what was going on in British politics. The new managerial systems and evidence-based penal stratagems, as they emerged in relation to Scottish prisons, converted the view of surviving the present into a long-term vision of a thriving organisation; it gave people a renewed sense of order and certitude. Ken illustrated this with the starkest imagery, likening the prison work to a concentration camp:

it was 'a concentration camp almost, where you are absolutely running everything. You really needed to get a position where it was relaxed and as stable as possible'.

Stability was what they aspired to, it could restore security. The life of a person working in and on prisons could be more relaxed, rather than rigidly disciplining and violently controlling prisons and prisoners.

Similarly, prison research liberated them from the unpredictability of experiential know-how with the facts of evidence. Risk indicators gave SPS a view into the future; responsibility, compiling personal prisoner dossiers, and mainstreaming were also anticipatory technologies (O'Malley 2010b:488). These modes of imprisonment provided SPS with new controls to prevent future disorder and disarray. Responsibilisation and the 'techniques of the self', such as sentence

planning, allowed SPS to 'optimize autonomous subjects' as a means to prevent 'potentially traumatic futures' (ibid.).<sup>60</sup> They stated this quite explicitly in

*Opportunity and Responsibility:*

'It is, however, to be hoped that as the other developments in this document are introduced, there may be less need for prisoners to have to resort to the grievance system' (SPS 1990a:33).

Literally, management were intent on reducing the prisoner's desire or need to take a stance against the system.

The perceived inherent danger in the prison population was replaced by a measurable, preventable and unemotional organisational capacity to cope.

Delightedly reporting the success of this era of transformation, Douglas stated that imprisonment 'had become stable, no riots, you know... I'm proud of the way we created a service that could cope'. Responsibility as an organising concept reflected 'a logic of resiliency', which, according to Lentzos and Rose:

'implies a systematic, widespread, organizational, structural and personal strengthening of subjective and material arrangements so as to be better able to anticipate and tolerate disturbances in complex worlds without collapse, to withstand shocks, and to rebuild as necessary (Lentzos and Rose 2009:243 in O'Malley 2010b).

In addition, the new responsible prisoner-customer criteria and objective pro forma of performance measures allowed SPS to begin the de-dramatization of the Scottish prison system. Loader and Mulcahy describe a similar transformation in English police governance (that took place at the same time) as rendering it 'profane':

'to make the police profane; no different from any other public bureaucracy, and able, like them, to learn from organizations that have to compete and survive in the marketplace' (2003:289).

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<sup>60</sup> Responsibility as a technique of preparedness differs from probabilistic techniques of risk calculation, because 'Probabilistic risk is a threat-specific technique of harm minimization. Preparedness on the other hand involves the creation of routines and resources for coping with emergencies that are imaginable rather than precisely calculable' (O'Malley 2010b:488).

But for Scotland, the motifs of managerialism were less about surviving the marketplace, concerned instead with the distribution of a stabilising effect across prison life, which had been marked by chronic chaos.

Fourth, a vital source of change that helps explain the particularly positive glow around managerialism and penal change (McAra 1999) was the desire to implant a distinctly Scottish identity in the penal system. There was something amoral (O'Malley 1992) in how SPS conducted itself and treated prisoners. But when interviewees recalled this time, their stories were also charged with the nationalism which had been mobilised in response to the Tory policies of the 1980s. Interviewees were appalled by Thatcher. Discussing these feelings about Thatcher, Philip stated that the difference lay at the level of values: 'She made some terrible decisions, and her value system was just wrong'.

Showing the overlap between these anti-Thatcher sentiments and the positive Scottish managerialist motivations, Douglas, who had commended the *Next Steps* policy document, described Thatcher's influence as totally 'toxic', dividing Scotland from England:

'The Tories in Scotland tended to be gentry, to be from the country. They tended not to be card sharps and corner boys that became the Tories in the 1990s, dealers in the cities and were from Eaton. They were rather different here...the Thatcher years, which were toxic because she was a south-east England posh lady and anybody with that type of accent doesn't go down well here.'

Douglas's statement conforms to what Mitchell and Bennie described as source of Scottish nationalism: a deep personal dislike of Thatcher, who was felt to personify 'anti-Scottish' Westminster politics (1995:96).

Alistair described the Scottish penal changes in contrast to England, with an abiding sense of stability and penal betterment in Scotland: 'It worked quite well, and quite different from England and Wales, and [they're] in crisis now and in contrast to here'. Yet, at the same time Scotland's prison rates exceeded those of England and

Wales, a point often footnoted or side-lined in history (e.g. Cavadino and Dignan 2006:n111; Hamilton 2013, 2014b) and in memory. The object of penal reform around this time was not so much concerned with reducing the number of people in prison, which in fact continued to expand throughout the 1990s, rising to a daily average of 6000 prisoners by 1998. The penal reforms SPS enacted gave a new discursive life to the distinctly Scottish prison. A penal shift that was a reflection of the contemporary 'neo-nationalist sentiment', which McLennan described as forming an image of 'New Scotland' in the collective consciousness, representing 'the historical consolidation of a coherent and distinctive national civic culture of progressive pluralism' (2006:592). This was occurring elsewhere in the Scottish Office, which also found ways to embed an image of national distinction in Scottish governmental departments, described by McEwan (2002:72) as a 'tartanisation' of the Scottish government administration. Douglas best summed-up the nationalist charge within Scottish penal cultural:

'During the 1990s we had the Tory government and we had people like Michael Howard in England preaching about prison works and all that stuff and a very right-wing agenda, and of course we weren't quite following that here. We were trying to be a bit more evidence-based rather than politics based...Scotland didn't like the Tory government. Scotland hates the Tories'.

SPS's actions affirmed a distinct way of doing things north of the border that was less right wing, it implied a cultural and political victory over Tory England. As commentators wrote at the time: 'The perception that Scottish public attitudes were progressive as compared with 'Tory England' seems quite accurate' (Mitchell and Bennie 1995:99). By improving prisons, anti-Thatcher views and growing nationalist sentiment found some practical expression. In its name and how its declared its rationale and penal intentions, the Scottish Prison Service communicated very clearly that it did not identify with the Conservatives and that there were alternative ways to govern Scotland.

Fifth, to explain the high levels of control and intervention which continued to

pattern Scottish imprisonment regimes in the 1990s, we also have to look beyond the amoral institutional language and optimistic nationalist bent, to the enduring sense of dangerousness and dysfunction. Yes, many SPS officials believed prisoners could be trained as responsible, giving life to those ideas in their programmes. The traits and subjectivities that supported these perceptions of the prisoner, however, remained rooted in the earlier period preceding the 1990s (outlined in Chapter Eight). As Mary Douglas (1992:46) reminds us, risk is never separable from the idea of danger and hence blame. For example, SPS conducted research on their various prisoner groups, such as drug addiction and personality disorders (McManus 1994; Power et al 1994; Shewan et al 1994; SPS 1995b). The survey was also a means to monitor the temperature of prisons, and performance measures were used to keep a close eye on levels of prisoner assaults and escapes. SPS never fully relinquished their visions of prisoner disorder, dysfunction and threat. These concerns were overlaid with more attentive objective measures, research and focused reports. These, in turn, contributed to SPS's sense of resilience and identity as an amoral public service, detached from the penal fears of the past. That 'cultural sterility' (Simon and Feeley 1995) dulled, but did not entirely dissipate the aura of disorder around the prisons. This helps explain why SPS avoided, as Douglas suggested they purposefully did, the language of rehabilitation. The cultural ideas which also informed the understanding of a prisoner's personhood were largely consistent across this period from 1970. Consequently, this embedded, though largely implicit and unacknowledged, anxiety maintained a cap on the aspirations of their prison rhetoric and strategies, allowing SPS to avoid objectives and aims which would not undermine the efficiency of their new penal power.

Sixth, a *neo-paternal* cultural current formed within SPS. While being overtly and publicly committed to managerialism, SPS still accepted its authoritarian role as a paternalistic social organisation. The soft authoritarianism qualities of the prison reflected how that paternalist streak evolved into a more refined cultural form. Crewe defines neo-paternalistic thinking as an:

‘almost protective support, stopping the prisoner from succumbing to inertia and preventing him from making hasty or uninformed decisions, while steering and inducing him towards ‘sensible options’ (as defined by the authorities), providing opportunities, and appealing to his ‘better self’ (Crewe 2009).

For SPS, containment and discipline remained their aim, but neo-paternalist thinking relies on a more civilised approach to achieve authoritarian penal ends. In line with this neo-paternal cultural landscape, SPS reformed the reasoning behind even the most inexcusable prison practices. Segregation was now ‘small units’, aimed at achieving normalisation, not exclusion (though segregation was still what small units did). Use of the small units was now for the prisoners’ own good, backed up by official reviews and policy (SPS 1990b; SPS 1994). Neo-paternal thinking was also evident in how SPS rationalised their use of penal power and prison interventions. SPS encouraged prisoners to work upon themselves, through cognitive behavioural programmes and attending to their dossiers. Similarly, improving the mainstream facilities further demonstrated SPS’s more magnanimous approach to achieving their ends of containment and control. Reflecting this, Adam – recalling from his position inside the new SPS – somewhat glibly described the combination of care and control as ‘do-goody’ practices. But these were sensible choices: giving prisoners more rational prison interventions gave SPS improved control over prisoner behaviour:

‘In the events at that time we formed a mission statement of the prison service, and there had to be order, that’s the first. Order, 100%, that’s your job. You can’t do anything unless it’s orderly. You do have to take care of them, you have to feed them...[that’s] why we get personal officers, why we get sentence planning and all that do-goody stuff. And we have control’.

These features constituted Scottish neo-paternalistic liberalism and help explain the decisions SPS made regarding the uses and objectives of imprisonment regimes. Yet, I aver a caution against too positive a reading of this period of change. That is because the nature of the penal reform that took place in Scotland was a *civilising*

*transformation*, rather than a humanitarian one. Scottish civilising penal reforms were not about making prisons more humane, but reflected a 'a new configuration of power, knowledge and bodies' (Garland 1990a:223; Elias 1978; Foucault 1977). Civilising Scottish punishment was about winning back management's ruling prestige and returning the prison to some form of acceptability and predictability, while reducing the quotient of violence. In confronting their prison problems, an embarrassment also crept in among the SPS professional managers, who expressed an open discomfort at the physicality and brutality of Scottish imprisonment. As shown above, interviewees felt uncomfortable when faced with the bodily aspects of prison, the segregation and dehumanising nature of the regime. Euan recalled it now as something despicable and inexcusable. Looking back, he felt what he described as a

'horrible kind of, this impression of grey, they [prisoners] ate off tin plates... And they had sex offenders sewing mail bags. It was grim, absolutely grim...I know that sounds bad, and when I look back no one was interested in these and what was going on in these places'.

They had seen it, but and had not always acknowledged the prison was dismal and sometimes inhumane. By the end of the 1980s, in Scottish prisons, 'forms of cruelty that had once gone unquestioned' were increasingly hard to justify (Halttunen 1995:303). These realisations had clear benefits for the prisoners: improved food and visiting facilities, better clothing, and access to a complaints commissioner. The prison system itself was more accountable and publicly opposed to the summary punishment of segregation and other kinds of prison cruelty.

However, while there was a 'diminution in the gratuitous suffering' imposed upon prisoners (Morris 1966:628), a humanitarian shift in penal sensibilities would have curtailed the very act of inflicting imprisonment (Halttunen 1995); making the imposition of harsh punishment unacceptable (Garland 2013:148). What happened in Scotland was not a reduction in the use of the prison, but a concealment of its penal pains and a refinement of its forms of oppression. Both Adam and Douglas outlined the spirit of the change as humane, but their pairing it with terms of



'efficient' and 'evidence-based' reveals a concern for preventing penal impropriety rather than preventing penal pain:

Adam: [We] 'made policy a bit more humane, a bit more efficient'.

Douglas: 'I would say sensible, I would say humane, I would say evidence-based and legal...From the 1990s on [prison] civil servants were more enlightened'.

The civilising desires of Scottish neo-paternalistic liberalism were more ambivalent about the infliction of pain, not doubting its necessity, but appalled by its brutality and vivid existence. Managerialism and mainstreaming were part of this civilising process, making the administration of prisons dispassionate; both 'offered a variety of narrative strategies designed to distance' SPS 'from any imputation' of barbarism and prison brutality (Halttunen 1995:328). The civilising reforms that took place instead created a more palatable modern form of imprisonment. Implementing the ideas of rationality and opportunity made prisoners more visible and accountable for their progress. If prisoners failed inside the mainstream, the blame must rest with them and not SPS, who offered prisoners a programme of positive engagements. Segregation was also made more sensitive to the demands of penal civility. What they expressed was an unease and embarrassment about the prison's excessive force, but not about its aims, social function or stigmatising practices. These 'Civilised sensibilities might be best understood as an aesthetic of refinement, delicacy, and self-restraint', they 'reduce the sight of pain', but not 'its infliction' (Garland 2010:150).

There were few traces of humanitarian sensibilities, such as an increased empathy, or social identification with the plight of the prisoner or their life trajectories, poverty and background. The BSU, for example, was a more humane prison. It reduced the use of penal pain, acknowledged prisoners as people and was managed with greater discretion. The Unit, however, offended the sensibilities of many senior SPS officials, it transgressed a civilised system. The BSU, as William contemptuously described it, 'was sending mixed signals to the system'. Douglas

described people there, the way they looked, and how they conducted themselves, as 'outrageous', too lurid to go into detail – though he was quite clearly hinting at the fact that BSU prisoners were allowed to have private visits in their cell and that sex had become an 'open secret' of the BSU (Bottomley 1994:27). How could a prison system that strived for a more rationalised form maintain this peculiar, even deviant, experimental outlier – and one which appeared to have abandoned civilised order? The closing of the BSU epitomises how the civilising agenda was privileged at the expense of more humane penal reforms.

This civilising and neo-paternalistic reinvention was as much a strategic transformation in penal power, 'an arrangement that gains more by concealing' its 'violence than by showing' it (Garland 2010:146). It is likely that the cumulative impact of prisoner disturbances, political and public criticism and demands for greater governmental accountability, pierced the inertia which had surrounded prisons in the 1970s and early 1980s in Scotland. Confronted by the public unravelling of their legitimacy, SPS sought to civilise both the prisons along with the prisoners, and in so doing also rehabilitate the image of Scottish penal power. Like so much new governance, there was transformation at the level of rhetoric and policy products. Often it was 'more a matter of words, than deeds' in which similar policies, perceived to have failed, were publically and authoritatively re-packaged (Muncie 1990:64). The ideas of *Opportunity and Responsibility* were inherently civilised. SPS took opportunities away, they removed the opportunity for prisoners to dissent, and soft authoritarian imprisonment employed control techniques which relied directly on the 'pains of self-government' and psychological assessment (Crewe 2011b). Hence the Scottish prison 'dialectic of liberty and discipline' (Vaughn 2000:80) became more cultivated, control became subtler. These civilising reforms, a product of the neo-paternalistic political culture, successfully renewed the prisons' institutional purpose: to confine *efficiently and effectively*. These acts reinforced SPS's newly established authority, making the organisation's civilised sensibilities publicly clear.

In addition, defining themselves in contrast to England also gave the impression of penal culture in Scotland as more humane. But in Scotland, while senior SPS managers became averse to overt and indecent prison control, their neo-paternalistic liberalism ethos maintained the prisons central place within the social field. Those new performance management techniques and declarations of civilised penal sensibilities entrenched the prison as the terminus for deadbeats and the dangerous. Philip reflected on this time of 'sensible and humane' penal reform, but wondered why the use of the prison continued to expand. The demand for the prison was still driven by the fault of the prisoners:

'The thing is, bringing down the prison population is so difficult. I think it probably shouldn't be thought of, thinking back on it, as an end in itself. You do need some people in prison, very dangerous ones, and therefore it's making sure you're using it sparingly, and we didn't manage to solve that. I think that's a pity, but a lot of people were interested in doing that, trying to have less use of prison, and that in a sense is a failure. But the whole system, but it's not as if we had a little down we could turn....the very difficult problem, the continuing offender, which drives quite a lot of it'.

SPS never lost their faith in the use or justification for confinement, nor challenged the sociological forces which caused crime. The prison remained extensive, because it had to; the prison still had to deal with those people who were dangerous and those who simply would not stop: 'what do you do with the people that carry on?' (Philip). The answer was not social welfare, but prison. Scottish imprisonment regimes continued to perpetuate the social distance between society and the prisoner, but now those practices were more professional, efficient and presented in profane language. Without the tenets of social justice or aims of penal welfare, the transformation that took place by the 1990s in Scotland was that the exclusionary prison was made amoral, riven with liberal rationality, civilised and neo-paternalistic; thus, its forms of pain became more deniable. The prison was redeemed, appearing civilised rather than punitive, communicating an impression of Scottish penal superiority. The historical and mythopoeic narrative of Scottish prisons and pre-devolution penal welfarism, which has classified Scotland's more

virtuous place in the Anglophone historical imagination, has as its source the institutional strategies, prison techniques and decisions made at this time in history.

## 7. Conclusion

This chapter has shown how the civilising sensibilities, nationalist distinctions, benevolent authoritarianism, managerialism, visions of entrepreneurial citizens and rational prisoners, constituted a new Scottish governmental disposition of neo-paternalist liberalism. The political culture in the penal state had adapted in this way in response to the problems of prison disorder, and as a consequence of the diverging trajectories of British and Scottish politics. As this political culture took hold it provided the ideas which transformed the institutional structure of prison administration and allowed SPS to transform the character of the imprisonment regimes. SPS recognised the limits of reactive administration and unfettered discipline and control. Imprisonment regimes were to be made less archaic and shameful, but also less chaotic. The changes in the prison system, the new techniques of control, prisoner auditing, mainstreaming and normalisation, were conditioned by Scottish political culture.

The changes in Scottish penal culture described in this chapter could be seen as a case of total penal metamorphosis, a swing of the pendulum (Goodman et al 2016). But researching these changes historically and from the political perspective that generated and supported these changes – and following the interpretation provided in the preceding two chapters – allows for a more nuanced assessment. Key actors in the SPS at that time were deliberately, through their documents, name change, agency status and new rules and procedures purposefully demonstrating a root-and-branch penal transformation – that was the intended effect. The image of transformation was precisely what they wanted to express: Scottish imprisonment has (1) had a break with the past and all of its inherent dangers and incivilities; and (2) a separation from British political ideology. The desire for resilience and

preparedness begins to explain the particularly enthusiastic managerialist overhaul of Scottish imprisonment and penal state. These methods of governing were politically tactical and instrumental. But they were also contingent; a means of redress for Scottish prison disorder, a system of governing that provided a complete framework to diagnose their previously intractable management problems and provided an effective route out of their trauma. But the creation of SPS and the determined series of reforms inaugurated were also intended to put a distinctly Scottish stamp on Scottish prison matters and to assert that when it came to penal matters and Conservative policy there was no comity within Britain.

Imprisonment and political culture in Scotland was adapted to the changing political context and in response to acute prison problems, but consistent with the historical findings in Chapters Eight and Nine, prisoners in Scotland in the 1990s remained entrenched outwith society. The prison's intrinsic social function as a secure site in which to contain and exclude those social nuisances and public threats remained steadfast. It is this combination of political and cultural forces that allowed the contradiction in Scottish imprisonment to prevail in the 1990s. A penal system that has been lauded for its humanitarian and welfarist values (McAra 1999, 2005; Croall 2006; Tata 2010) but continued to imprison people in greater numbers, subject to greater penal controls. With its new institutional forms, dispassionate management style and civilizing reforms, SPS upheld and redeemed Scotland's exclusionary use of penal incapacitation.



## Chapter Eleven

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### Conclusion

This thesis has sought to explore, historically and comparatively, the political and social dynamics of imprisonment in Ireland and Scotland during the second half of the twentieth century. It has examined how punishment differs between neighbouring jurisdictions in ways both obvious and less immediately perceptible. The thesis has sought to demonstrate that divergences in Irish and Scottish penal culture were the result of differences in collective morality, social order and political culture, which found institutionalised form in the functions of the prison system.

To conclude I want to suggest four points about the benefits of this approach. First, I want to suggest how the thesis contributes to comparative penology by developing a conceptual framework. Second, this account questions the dominant narratives for the history of penal politics in Ireland and Scotland. Third, the thesis queries the prevailing generalities concerning the punitive turn and Irish and Scottish penal exceptionalism. Fourth, having studied penal culture in Ireland and Scotland historically provides the potential to open up new spaces of ideas and more searching considerations for humane penal reform in these countries.

### Implications for Comparative Penology

A contribution of this thesis is a more grounded comparative research framework for penality, which is an empirically engaged kind of comparative strategy which transcends 'sheer description or empirical generalization' (Merton 1968:39). This framework provides conceptual and methodological tactics which can recover the phenomenology of penal politics, trace their effects on the systems of imprisonment, connect these practices back to wider social structures and in doing so allow us to explain differences in cross-national penality. Comparison is complex, and this

approach is labour-intensive, but entirely feasible, and in my view, hugely beneficial in terms of conceptual development and sociological research.

I have presented the cases of Ireland and Scotland as two separate narratives, in order not to violate the historical integrity of each, but neither the descriptions nor the analyses could have been reached without the benefit of continuous comparative reflection. While penal culture, imprisonment and the political ethos that undergirded it, was certainly different in Ireland and Scotland, as is evident in the empirical detail, the thesis examined these issues comparatively in the belief that such a perspective could teach us more generally about punishment and penal politics. The dialectic between empirical research, thematic analysis and comparison provides a vantage point from which to observe the characteristic patterns that political culture and imprisonment regimes exhibit. The analytical benefits of comparison were that the patterns observed in one place provided reciprocal insight on its counterpart, which provided deeper analysis of the material and also contributed to the framework for comparative research.

A central aim of this thesis was to develop a more politically insightful comparative criminology. It was in the course of the comparative research process of speaking to people, reading archives and documents that a different vision of political work and intention began to emerge. As noted in Chapter Three, political culture is embedded in social relations and practices, it is not 'merely' ideological or institutional. The penal state here was viewed as a sociological, cultural and ideological space forged within a distinct social order, with a sense of its own limitations, rendering it more plural in its meanings and intentions, and grounded in the everyday business of ruling. Governments may rely on a distinct, and sometimes detached, organisational and policy language which is not often part of our lay discourse. We should not, however, overstate government's detachment from the social space it seeks to order.



As we saw in Sections Two and Three, what officials (and the departments in which they worked) did was always entwined with a narrative of why they did it, their collective and personal mores, moral standards and ideational commitments. Government officials drew on their views regarding the nature of governmental responsibility and their political vision of the nation, which gave a distinctly political rationale to their penal decision-making. Aspirations for the penal system and penal politics were also tempered by a felt sense of the constraints of government and the limits of the prison therein. Civil servants spoke of prisoners as certain kinds of people, construed in these very capacious ways. Prisoners were felt to be deserving and/or undeserving, responsible or understandable, and these accounts were attached to often-vivid causal social back-stories of how prisoners came to be imprisoned. These descriptions variously invoked allusive disquietude, genuine empathy and intense disgust. Prisoners were understood as being drawn from distinct social places, communities and families, each of which in turn exposed broader social judgements. Prisoners' criminal acts were always framed by preponderant but patterned understandings of their moral, social and political causes and consequences. The problems of crime were rarely reflected upon as dispassionate statistics – if crime was going up or going down that brought new anxieties or welcome relief, but it could also be dismissed, depending on the circumstances. Crime then had a more descriptive and cultural character, as bothersome, merely a nuisance and implicitly excusable. Or alternatively, crime, criminality and violence were described with dismay, as something grave, threatening and potentially socially destructive. These political cultural fault lines – evident in the digressionary talk, the narrative framing of reports and archival material – were attached to each and every government decision, choice and struggle.

Because of the nature of political culture, and its centrality to how the power to imprison was deployed, certain kinds of prison intervention would have been utterly inappropriate for them, the Government, to undertake – it was truly

unthinkable. Interventions which may have been routine in one country were judged to be beyond the capacity of their prison system to achieve – such ideas required rethinking in this context, to fit their political ethos. In Scotland, for example, addressing overcrowding by developing prison amnesties such as the Irish did, with TR and shedding, would have been out of the question. Scottish prisoners were perceived as social outsiders, dehumanised in the eyes of the penal state. Their perceived criminal proclivities and social immorality rendered them too risky or unworthy of more inclusive systems of release. In Ireland, in the 1970s to the 1980s, the kind of exclusionary and segregative long-term imprisonment characteristic of Scottish imprisonment regimes would have transgressed their view that the prison was inherently abnormal and should be curtailed where possible. The kinds of exclusionary imprisonment that developed in Ireland in the mid-1990s would have likely been entirely unpredictable to their predecessors. Those officials in the 1970s Irish penal state, who were enculturated in conservative pastoralism, were encouraged to draw on their well of tolerant, indulgent and humanitarian sensibilities (Melossi 2001; Pavarini 1994; Garland 2010); overt punitive sentiments which shaped the later political culture of sovereign authority would have been grossly out of place in the earlier epoch. The character of Irish political culture in the 1990s, particularly its expressive punitive sensibilities, however, would have felt almost forbidden within the governing political culture that developed in Scotland at around the same time. Scottish neo-paternalistic liberalism privileged a profane, amoral and bureaucratic approach to punishment, and developed a distaste for the less civilised penal rhetoric and prison practices. The actions of officials were also laced with ambivalent feelings, fears and sympathies about the character of crime and narratives of social inclusion/exclusion. Rehabilitation in Scotland was seen as veering towards the fanciful, particularly given the characteristics of the Scottish prisoner. Industry and utility were promoted as the best alternative to welfarism. While in Ireland, rehabilitation was deconstructed so that it fit better with the pastoral demands of Irish political culture: supporting the sanctity of family and community. In Ireland, the open prisons were developed with a view to developing

communal and social bonds of trust with the prisoners; Scotland's open establishments (and the regime of progression to get there) hoped to implant liberal rationality in prisoners' behavioural frameworks. Scottish prisoners were to learn the art of self-government, Irish prisoners were to feel a sense of collective belonging. As such, political motivations of the penal state were in part tempered and determined by a visceral diagnosis of the personhood of prisoners (be it socially, culturally and in terms of their criminality). These cultural sensibilities and political mentalities helped define understandings of problems, the refinement of solutions, and legitimated penal choices and carceral plans. The concept of political culture used throughout was developed in response to these intricate webs of meaning and ideation, and how they appeared to operate in guiding thinking, habits and actions of actors inside Irish and Scottish penal states.

The comparative perspective forced me to rethink and reconsider the prison's forms and characteristic features and how they are researched in comparative study. Prison systems may vary in their depth and moderation between jurisdictions, but within each of these national systems of incarceration it is very likely that there is also different kinds of settings, spaces and programmatic interventions. But its institutional heterogeneity has an underlying dynamic which orders it. The prison works upon people to seek certain ends. The prison teaches, trains and utilises prisoners. An imprisonment regime is designed to move prisoners through, in-and-out and around the prison system in ways that will accord with its penal, political and social fears and desires. By concentrating on only the exceptional uses of imprisonment, the volume of people in prison, the quality of prison architecture or physical conditions, we frequently overlook the forms and functions which give national imprisonment its characteristic style.

I required more precise and consistent ways to map and describe national prison systems so that we can make better comparative judgements and assessments of the prisons systemic character. But in so doing, the researcher must be open to

imprisonment's positive possibilities and intentions, and be willing to see prison as both punishing and remedial, hurting but potentially healing, pacifying people but also seeking to develop them. In demonstrating that specific differences in imprisonment regimes were the result of political culture I hope to have moved towards 'bringing politics back in' (O'Malley 2000:162) to our understandings of comparative penality

This kind of situated and in-depth governmental and cultural line of inquiry into penal politics has rarely been pursued in comparative criminology. By focusing on political culture in particular, and in this grounded manner, I have sought to avoid some of the essentialist national models of culture that are common in comparative penology. To say: Europeans are more egalitarian (Whitman 2003); Anglophone countries more punitive (Tonry 2007b); Nordic nations have a greater sense of fairness (Pratt and Eriksson 2013); or the Scots are more civically minded (Hamilton 2014b), depicts punishment and penal politics as the product of national habit. Culture in these accounts is instead seen as embedded and unchanging – inherited and perpetuated by each new generation. These explanations are too broad to offer comparative explanation for heterogeneous imprisonment regimes, and too detached to describe the plurality of working political cultures. In Ireland and Scotland, the very distinct cultural motifs, mores and political ideologies shaped forms of incarceration that were both humane and exclusionary. In the short period of just less than 30 years, the currents of Irish and Scottish political culture shifted and adapted to the changing world around them. Change in the uses of imprisonment and the form of the penal state were the material results of these developments. Therefore, to depict penality in terms which relate to essential national cultures appear ahistorical, has an ambiguous social location and deterministic in comparison (Swidler 2001:188-189). To comparatively explain penality, culture is an essential component. If we are to add a cultural dimension to the study of penal practices and comparative politics of imprisonment, then it needs to be based on grounded findings. The precise nature of those visceral cultural

forms, moral judgements and political ideologies must be researched in relation to the actual penal practices, and the historical context and events which produced it.

## Historical Sociology of Punishment

This study began without a clear sense of what it anticipated finding because it was firstly about historical recovery. The grounded and interpretive research agenda was intent on capturing the past in its own terms. It sought to follow the shifting forms, practices, meanings and discursive patterns entailed in the deployment of the power to imprison in Ireland and Scotland across almost 30 years. Interviewing provided new insight into the work of government. Archives and documents as monuments of the politically momentous and the mundane illuminated the texture of meanings and the understanding of the prison problem. Secondary material yielded extended insight into social relations which informed the particular character of penal politics and thus imprisonment. This kind of mixed research approach has rarely been undertaken before in the study of the history of Irish and Scottish penal politics or in comparative penology.

The histories presented here are chronological, often immersive and employ a narrative form. It is hoped that having done so they achieve certain historical and analytical ends. Perhaps, from now on, to speak about the contemporary history of punishment and penal politics in Ireland and Scotland will be to call on analytical descriptions of two places that developed distinct kinds of imprisonment which reflected the contingent social order, political process, cultural norms and historical events in each country. To have been imprisoned in Ireland and Scotland in the 1970s were two very different fates. In Scotland we saw that the logic of exclusion defined the imprisonment regime in two ways. Internally it excluded those not willing to succumb to the utility or docility the prison demanded, and sociologically the prison was for those who should be excluded from daily civic life. Contrastingly, in Ireland release and permeability in the early period worked to enforce a prisoner's place in society, particularly their communities and families.

Thus their social exclusion was less complete than their Scottish counterparts, whose social exile and stigma were encompassing. But as the fault lines of Irish and Scottish social and political life evolved in tandem with a sequence of practical events – such as the rising of crime, prison disorder, prison overcrowding, social modernisation, political evolution – the respective political cultures which governed prisons began to change. As these social changes were realised in the values which constituted political culture, they in turn brought new meanings, social demands and political rationalities to bear upon the practices of imprisonment. The prisons and the penal state were modified so as to express these new social orders, cultural meanings and political sentiments.

Ireland began to modernise. What had been in the 1970s the weakening of Church social regulation accelerated in the 1990s when the Church had to accept its diminishment. Ireland urbanised. It became more socially unequal as social relations polarised. As a result, Irish conservatism developed a more exclusionary and adversarial outlook and pastoralism became marginalised. The state was seen as more sovereign, facing greater demands for political responsibility. In Ireland, *pastoral conservatism* was replaced by *sovereign authority*. The extension of the prison's punitive capacities that followed, allowed the government to express a new authority over a changing Ireland, and to exert control in the face of the social fragility brought on by rapid change. This account considerably advances what we know about the history of Irish imprisonment and political culture in this period and the nature of the penal transformation that took place.

For those who have fully imbibed the story of Scottish penalty as a paragon of welfarism, the case presented here may come as a startling counter-narrative. Prison in Scotland was mundane. But also inflicted pain and worked to exclude problem citizens – those who were diagnosed as socially, psychologically and morally beyond hope, help and good citizenship – governed and maintained by Scotland's *paternalistic liberalism* throughout the 1970s and into the 1980s, with its anxious and

disdainful sensibilities. But this evolved into a more refined form, *neo-paternalistic liberalism*, in response to the changing moods in both British and Scottish politics. The emergence and coalition of these political ideas and identities provided new energy to address the prison and legitimacy crises that had developed in the 1980s.

In putting forward these analyses this thesis has tried to faithfully recover the past. But in addition, and central to the aims of the thesis, there was a desire to develop a punishment and society project. In studying imprisonment, I have also learned about how Irish and Scottish society were organised, the conditions that made certain kinds of punishment possible and injected imprisonment with different cultural meanings and gave political ideas traction; what forces normalised the uses of punishment, what social relations and changes dramatized and problematized the use of penal authority. These broader insights help explain the micro-dynamics of penal politics and how they were transformed and reproduced. Chapters Five to Ten showed how punishment came to play an important role in the shape of Irish and Scottish social order, reinforcing a certain image of government and a particular vision of society. This modifies our historical understandings of the character of political culture and the uses of imprisonment in Ireland and Scotland, and providing new sources of explanation for both.

Given the in-depth and qualitative nature of this study the thesis does not provide a neat 'positivistic formula', so often the conclusion of comparative research (Downes 2011b:37), to take away and test. The combined methods generated fuller histories, which challenge some of the assumptions about government, punishment and penal change in Irish and Scottish penological history in particular. This kind of thick descriptive qualitative research 'produces the detail that guarantees discovering differences, thus guarding against forcing the case to fit a theory or a previous case' (Vaughn 2004:319). I hope therefore that these findings temper some of the over-remembering and under-remembering that, I would argue, has become part of the conventional wisdom in Irish and Scottish penal historiography.

Second, close analytical history can complicate the distinctions which suggest Irish and Scottish exceptionalism. When we have situated empirical accounts such as these we see local distinction but also familiar trends, which were often woven together in the same acts and declarations, such as rehabilitation, managerialism, zero tolerance. This adds weight to Girling et al's (2001) study of crime sensibilities in which they found that understandings of crime and punishment are intertwined with ideas and meanings which are both regional and global. This evidenced finding makes it more difficult to describe Ireland or Scotland as somehow exceptional because neither country was ever entirely beyond the reach, or fully resisted, the emergence of Anglophone political and penal trends from 1970 until the 1990s. This insight also obliges us to rethink the kind of crude insider/outsider patterns which inform how we describe exceptional penalty. It is hoped that at the very least Ireland and Scotland can no longer be set to one side, or reduced to a dismissive footnote in the contemporary history of Anglophone penalty.

Third, in taking this historical, sociological and comparative approach, the thesis findings problematize some of the understandings of Ireland and Scotland's experience of the 'punitive turn'. Across Sections Two and Three we observed the trajectory of two penal transformations. Ireland's penal transformation was negative, while the Scottish one presented a much more positive story. The historical and sociological lens allow us to probe those claims further, however. Viewing penalty within its historical-social context, illuminated a clear and sharp punitive penal turn in Ireland that was in fact tied to more progressive and liberalising social change. Scotland's positive penal reforms, on the other hand, were a civilising attempt to tame penal and political problems and better instil order within prisons and pacify prisoners. It was about the refinement of the prison's coercive tools rather than the extension or entrenchment of penal welfarism.



## Futures: Concluding Thoughts

Fundamentally, the ambition of the 'historically tutored memory' (Nellis 2010) is to provide us with new possible ways to think about our futures. Cultural sensibilities, penal passions and social aspirations change over time, but they remain steadfastly features of political culture, whether openly evocative and public, sequestered away by de-politicised agencies, evidence-based or discretionary. These emotions and feelings are ever-present and were sources of both good and ill in the history of penal politics and imprisonment. Rather than seeking to tame or exclude them from our public life, or even to chase the belief that such an aspiration was feasible, we should seek to understand their logical frameworks and cultural supports. In doing so we may be better able to directly engage the core pillars, implied, denied and explicit, which maintain forms of imprisonment that otherwise might feel inexplicable and unjust.

In addition, an historical memory of the specific travails of penal politics and imprisonment may help us develop a rapprochement between our knowledge of the past and our vision of the future. The fieldwork here, conducted as a study of social reproduction and change, shows that nothing is inevitable in how punishment is undertaken. In the case of Ireland, the 1970s, in terms of the culture of prison administration, was a very different place. It was less bureaucratic, though centralised and authoritarian, it also was motivated by more humane sensibilities. Officials were more sceptical of the prison, recognising its disintegrative affect on individuals and society. Using the prison to reduce re-offending was seen as too thin a mission to consider the complexity of people and the sociality of crime. But in the 1990s, Irish imprisonment was bereaved of much of its inherent permeability and its more pastoral aspirations were demoted – a pattern which persisted into the next decade (Brangan 2009; Rogan 2011). Understanding the change that happened this way makes the present look a little less triumphant, less like a victory of

strategic government over a neglectful and stagnant past (O'Donnell 2008; Rogan 2016).

Currently, however, Irish penal politics endeavours to envision a new future for imprisonment in a spirit of reform, seeking out ways to move the prison closer to strategic goals of consistency and reducing reoffending. But the government also aspire to have greater use of open prisons, community based sanctions (Department of Justice 2014) and new forms of 'decarceration' (Houses of the Oireachtas 2013). The Director General of the Irish Prison Service recently described the ambitions and the problems of Irish imprisonment: '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, respect' (Donnellan 2014). In the current Irish climate of willingness for penal reform, and perhaps even willingness for a more pastoral kind of incarceration, we might pause and see the immediate history of Irish imprisonment and government as a source of its future improvement. We might argue that this humane outlook is indeed a return to something – not merely imagined but once in operation – that was not eradicated but marginalised and sidelined for a period. This can be a source for the revivifying of a more sceptical and compassionate kind of imprisonment and penal politics, justified on the grounds of a collective sense of national well-being and the need to make a prison more humane.

Scotland's penal past was a more dismaying time. Crises and disturbances in prisons, such as those endured in Scotland in the 1980s, are not entirely rare (we are only too aware of names of prisons made familiar due to such disorder: Strangeways, Attica, San Quentin). But the crises that these events represent are rarely followed by the kind of progressive and programmatic change that occurred in Scotland. The organisational amendments brought about from 1990 were a process of redemption for Scottish imprisonment and the power to imprison, one which allowed for prison's pain to be denied rather than undermined. In retrospect,

it seems that despite the rhetorical claims to penal reform, this was a moment of unrealised potential.

As the Scottish prison population has grown further still, there have been more episodes of reflection about the potentially tragic impact of prison on prisoners and society (Social Work Services and Prisons Inspectorate for Scotland 1998; Scottish Prisons Commission 2008; Angiolini 2012; SPS 2012). This suggests that anxiety regarding the way imprisonment is used in Scotland has remained an abiding concern in Scottish political culture. Perhaps the hopes for prison reform as they emerged in the 1989-1990 period remain prevalent because they feel still unrealised?

The way these moments of episodic reflection have been resolved have tended to follow the pattern developed in the early 1990s. While there is a productive and reformist narrative in recent Scottish prison policy, SPS has faced its problems by refining penal techniques, expanding its capacity, modernising the prison architecture, improved rehabilitation techniques and a heavier reliance on evidence-based policy.<sup>61</sup> But the prison in Scotland has not escaped its fate as an instrument first and foremost for excluding Scotland's social outsiders (Scottish Prisons Commission 2008). SPS describes prisoners now as 'proto-citizens', and still wishes to convert them into 'responsible citizens' (SPS 2016:10). Despite the new jargon, the Scottish prisoner remains a liberal citizen-in-training. The comparative history in this thesis, which showed the differences in humanitarian and civilising penal changes in Ireland and Scotland, suggests the need for a more cautious disposition to certain kinds of penal reform, even if they appear manifestly positive (Brangan *forthcoming*).

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<sup>61</sup> Particularly the extensive modernisation of Scottish prison architecture that has taken place over the last 20 years; to improve the situation of women and girls at Cornton Vale prison SPS designed a new 'women centric' prison (though this plan was abandoned after sustained penal reform efforts); SPS policy has become heavily reliant on desistance literature (SPS 2012; SPS 2016); SPS trains personal officers who can follow prisoners into the community; SPS have expanded the metrics for measuring prisoners' purposeful activity and so on.

Perhaps this historical recovery can reveal the unrealised possibilities of Scotland's period of critical reflection at the end of the 1980s. During the first moments of critical reflection in the 1980s there was a sceptic's view of prison's cruelty and a desire to improve matters. However, confident plans for penal refinement were adopted over a more thoroughgoing and critical questioning of prison's social functions and its enormous capacity for social and personal destruction. But there was briefly a time when Scottish political culture was animated by a fear of the prison and the misuse of penal authority, rather than the problems of the prisoners. A vision of a just Scottish society partially motivated these optimistic plans. Such a society, which stands as a beacon of tolerance and caring, is more openly desired than ever (Scottish National Party 2017; Sturgeon 2017). But it cannot be realised when the use of penal exclusion and control remains so prevalent in shaping and regulating Scottish social order. Change could be informed by those dormant ambitions, wanting again to seek out more humane and civically minded kinds of imprisonment, rather than those which are civilised but inherently anti-social.

In general, criminology continues to face the challenge of trying to find new routes out of our current penal predicaments. Combining comparative penology and historical sociology can first challenge what we think we know about our penal pasts and their place in the wider history of our times. This perspective can also broaden our horizons by showing that there is nothing inevitable about how penal politics is exercised and how people come to be imprisoned. If the power to imprison is deployed in ways which project an image of society while seeking to solve practical problems, then historical and comparative insight can evidence the practical limits, logical contradictions and social consequences of these agendas, and suggest alternate pathways to achieve a more equitable form of penalty. The promise of an historical comparative sociology of punishment is that it can succeed in creating detailed analyses which reveal the political cultural foundations of punishment. In so doing, it can also illuminate the potential for a different kind of

penal politics, one that could yet be made practical within our contemporary social relations.

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## Appendix I

### Anonymity, Ethics and Limitations

Interviewees here are referred to with pseudonyms and vague references to their place in the penal state. I have cleaned the data, carefully used quotes in ways that do not reveal a person's position, their promotions, departmental switches or their civil service rank. Identifying someone by rank does not really provide anonymity, and is potentially revealing to those who know the field of prison in these times and places. Some positions, such as Director of the Scottish Prison Service, Secretary of the Department of Justice are single posts. Also, if someone worked in the Scottish Office and then the Prison Division, or in the Irish case, worked in a related job in the Department of Justice and then moved into the Prison Division they are more easily identifiable. These are small work places and the CV trajectory of the main players are well known to each other. I forewent using job titles as monikers. Job titles are often the artifice of anonymity rather than actually letting people be present in the pages of the thesis with the protection of anonymity.

Often people asked to be named, they wanted to lay claim to their words, they wanted to be identified with their critique. This however, would be a disservice to the analysis, I believe. I was opposed to revealing interviewees names, no matter how desirous they were to be identified. Part of the thrust of this thesis has been to move it away from figure heads, characters and individuals, and to identify how what people did reflected and perpetuated patterns of thought, acceptability, intentionality, values and morality. In dulling people's identity, I have also dulled some of their agency, a point which I suspect some of the participants will not feel entirely comfortable with. These are, however, some relatively public figures – of course that varies by degree – whose testimonies about their work in prisons and administration are on record or very well known to those who work and campaign on these matters in both jurisdictions. I felt this collection of potentially recognisable

voices could distract the reader or, at worst, undermine the purchase of my argument and the nuance of my analysis. No longer would people be reading my account of penal history but find themselves reading X's views, or taking sides between one person and another. Moving away from known individuals has meant readers are not distracted by their own attempts at pop-psychology in assessing the interviewees words based on their own knowledge of that person. In sum: more rigorous anonymity allowed me a greater authorial control of the text.

Instead what was elevated were collective narratives, themes and moral codes. But this kind of material is itself not infallible to the practices of identification. These are not just the words of people; people are often defined by *their* stories. These are probably among some of their key and favourite anecdotes which they likely wheel out at the pub, over dinner, with their families and at times with former colleagues recalling work. To those close to my interviewees they will likely recognise the timbre of a person's vernacular and their arsenal of stories, familiar with the patter of their repertoire. That has been impossible to 'clean', but that is precisely the valuable stuff of oral history – those stories and what they seek to convey. I have kept what made interviews personal and sociological without making it individual.

But anonymising can still be humanising. During 2017 I read *Eviction* by Matthew Desmond (2016). This is a fantastic and inspiring piece of critical sociology and empirical research. Part of what made it so impactful (though this does little justice to the scope and ambition of the work) was how humane the account was, how full of personality Desmond's participants were. Ethnography often employs pseudonyms, but when we discuss people in the people state they are more dehumanised, understood by job title alone (Carlen 1983; Annison 2013). Until this point, within the thesis my interviewees had been numbered, e.g. Ire1, Ire2 and so on, and for Scotland: Sct1 and Sct2 etc. Part of the thesis motivation was that people undertook governmental work in ways that were affective and logically complex, the subject of moral struggles and political debates, and tied to wider social norms

and cultural codes. These political cultures were felt as deeply personal – this was how social relations came to find themselves embedded in imprisonment regimes. Giving my interviewees pseudonyms allowed me to return some of that identity to them and give the reader, I hope, a better sense of people at work, why they did what they did and the different emotional, political, ethical and social stances that this work provoked. This felt more intimate without trespassing on my desire for anonymity.

## Limitations

All methods are necessarily partial and limited, and this study is no exception. Comparison requires you to make certain kinds of decisions about what is being compared. While this study advances comparative imprisonment to include the order, routines and functions of a prison regime it does not include insight into the lived experience of those programmes. Imprisonment regimes operate between internal description of prison life and aggregate prison data. As a consequence, certain features of prison life are not included here, such as internal discipline, food, or minutiae of the daily regiment. Instead imprisonment regimes focus on the main features of the prison, its designated purpose, its characteristic mobility.

People who have written on the harshness of historical Irish and Scottish prison conditions may feel aggrieved to encounter what at first appears to be more sympathetic accounts which attempt to establish what it was governments were trying to achieve with imprisonment. Though descriptive accounts such as this are no less critical.

With all that said, the ethnographic view of prison life is not here, instead what is presented is an historical ethnographic account of prison administration. To include both would make a cumbersome study, I believe. Cultural sensibilities and the subjectivities of prisoners would need to be established, related to different social forces, then contrasted to the administration. This would seem to open up a space to

also study prison officers and prison managers, who are vital conduits in directing and shaping the experience of prisoners, but also are themselves constrained by in large by the imprisonment regime and political culture. These present valuable future avenues for future outworking of this thesis, to further explore how the relationship between politics and imprisonment holds or is modified on the ground.

In terms of data gathering there is always more that could be done. Though it had to end somewhere, and the decision to leave the field was really only prompted by the impending start date of a visiting scholarship at another university. Was there more people I could interview? Yes, certainly. More so in Scotland than in Ireland, the latter took longer to find people, to track them down, but when I did making contact and the eventual interviewing happened quickly. I don't think a few more interviewees with key personnel would change the direction of the critical analysis, but it might add more texture to the accounts of change if I had.

The thesis rarely includes contemporary news reporting on events, mainly because I think this is a serious topic of study in its own right, quotation from these sources require their own methodological and theoretical resources. When people reference news reports in a glib fashion it is often done to add quotation colour to their comparative or historical narrative and suggested as an example of a lived perspective from that time. However, the risk is that people rely on polemical accounts and editorialising in lieu of some other more serious reflection and empirical recovery, presenting a potentially hyperbolic account of politics and punishment. It is hoped that the insider voices of the interviewees, the archival material and the close reading of the official publications will give the reader a sense of the time and place and the concerns that animated change.

All limitations are accepted in the hope that they allow for more profitable theoretical and methodological choices elsewhere. These limits were justifiable in

the hopes of building a comparative and ethnographic historical account of comparative power to imprison in Ireland and Scotland.

## Scottish Prison Service Ethics Form



RESEARCH ACCESS  
GUIDANCE



**SPS RESEARCH**

# STRATEGY UNIT

OCTOBER 2013

## Introduction

The purpose of this information pack is to furnish guidance to researchers, and in particular research students who are undertaking a recognised post-graduate qualification, on the procedures for applying for access to the Scottish Prison Service to conduct empirical research. Although this guidance is intended primarily for MSc or PhD students, the advice contained herein is of general relevance to all those who may be contemplating research work within a prison environment.

Opportunities to undertake research within SPS are limited by the nature and operating environment of the organisation, but SPS is always open to collaborating with qualified individuals and research students who can demonstrate clarity of purpose and evidence quality proposals pertaining to prisons research.

In order to ensure that all research is methodologically sound, complies with ethical codes of conduct and is of relevance to the work of the Service, all researchers must submit in writing a full outline proposal to SPS. Proposals must have the formal approval of the relevant university supervisor or course leader where appropriate.

Proposals should be submitted to:

Dr Jim Carnie  
Research Services  
SPS Headquarters  
Calton House  
Redheughs Rigg  
Edinburgh  
EH12 9HW

[james.carnie@sps.pnn.gov.uk](mailto:james.carnie@sps.pnn.gov.uk)

## Role of Research in SPS

Research needs to be an integral part of any organisation's activities. If an organisation (and the business or service it delivers) is to advance and keep pace with a rapidly changing world, then it must innovate and adapt its *modus operandi* to suit the environment in which it functions.



Research's role within SPS is to inform the decision-making process and to furnish sound evidence upon which policy and practice can be founded. It has been, and remains, founded on five principle functions:

- *provide reliable and valid research and evaluation evidence and performance measurement information to underpin rational, strategic decision making within the Service;*
- *provide relevant data analyses, performance information, evaluations and research based evidence to a broad range of public, organisational and parliamentary interests (from grassroots to Partner Agencies to Ministers);*
- *scan the domestic and international horizons and disseminate innovative thinking on, inter alia, organisational performance, multi-agency collaborative working, penological practice, and criminal justice reform;*
- *encourage appropriate skills, knowledge and information transfer across the organisation and between associate partner agencies; and*
- *contribute to the improved efficiency and effectiveness of the Service by delivering an approved agenda of performance measurement, benchmarking activities and programme of research and evaluation projects to time, quality and budget.*

#### The Research Access and Ethics Committee

All external and internal requests to conduct empirical research within the Scottish Prison Service are considered by the SPS Research Access and Ethics Committee. The Committee meets every two months to assess research proposals which have been submitted for consideration. Meetings take place in the second week of February, April, June, August, October and December. Papers are required to be submitted seven days in advance of the meeting.

Requests are received from a diverse range of researchers and proposals can vary dramatically in quality and content, but all are assessed against standard criteria which include items such as **literature review, knowledge of the substantive area of enquiry, methodology, objectives, ethical propriety, utility of the proposed work for SPS, experience and ability of the researcher, sensitivity to the prison environment, extent of access required, timescales and dissemination plans.**

Membership of the Committee is drawn from research, psychology, statistics and health care. The Committee acts as a quality assurance mechanism to ensure that only relevant, valid and methodologically sound research is conducted in SPS. It is always mindful of 'research fatigue' within the Service (where a particular topic or location is potentially being over researched) and is careful to protect both prisoners and staff against unwarranted intrusion. Periodically, prison matters become highly topical and the Committee regulates the volume of research at any given time.

As a general rule, access is normally granted only to work which has a relevance to the Service and which is compatible with the existing programme of research priorities. **Undergraduate students are not permitted access to conduct empirical research for the completion of first degrees in order to safeguard the system from overload.**

All researchers allowed access to establishments are required to sign an undertaking binding them to ensure anonymity and confidentiality to all persons involved in the study and to abide by the appropriate ethical guidelines of their profession or discipline. The Committee upholds the highest ethical standards to protect the welfare and dignity of prisoners. Where health related research is involved, concomitant clearance is also required from the relevant NHS Research Ethics Committee.

Adherence to the research access process allows accurate records to be kept regarding research demand, prevents possible repetition or duplication of effort, permits priority to be given to SPS-sponsored work, monitors levels of research activity in Scottish prisons, imposes a standard set of regulations on all researchers entering prisons, ensures ethical propriety and provides an official channel for keeping Ministers and the Scottish Parliament informed about research in SPS.

#### Contacts and Further Information

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SCOTTISH PRISON SERVICE - RESEARCH ACCESS APPLICATION

**Applicant:**

Louise Brangan

**Supervisor:**

Lesley McAra and Richard Sparks

**University:**

University of Edinburgh

**Title of research:**

Ireland and Scotland - comparing penal policy from 1970-1998

**Literature review and substantive context:**

The increasing punitive and retributive pattern of punishment in the Anglophone world from the 1970s has been much discussed among academics and practitioners (Garland 2001; Simon 2007; Lacey 2008; Cavadino Dignan 2006). How can we explain such dramatics punitive shifts in the tone of penal rhetoric and the aims of punishment? Yet, unwittingly, this accepted grand narrative is far from complete. Scotland and Ireland are two small countries that are closely linked to their other Anglophone neighbours geographically, culturally, historically and economically. Yet, somehow, they managed to resist these broad punitive shifts. During this period Ireland and Scotland had very different forms of penalty, and they also differed from each other in significant ways (McAra 2008; Rogan 2011). What were policymakers and practitioners doing differently in these countries which allowed them to resist these punishment trends and patterns? How might we characterize and define these different practices of penalty?

To begin to illuminate these differences, this research first asks: what were the key moments in Scottish imprisonment between 1970-1998? What impact did generic social work have on prisons and probation? How, when and why did prison

management evolve from the Prison Directorate, to the Prisons Division and then SPS, later becoming an executive agency? What impact did these shifts have, if any, on penal regimes? What policy shaped prison practice between this period? How and by whom were decisions on prison management made? How did the series of riots in the 1980s impact prison policy? What changes were felt in prisons and penal policy by the managerialism heralded by Thatcher's Conservative government? The development and publication of *Assessment and Control*, *Custody Care*, and finally, *Opportunity and Responsibility* have been spoken about as a trio of landmark texts, asserting a new direction and view of the aims of imprisonment. What was the impetus for their development?

In answering these questions, we can acquire a better understanding of the prison policymaking process. This will, firstly, offer a critical reassessment of generally accepted criminological narrative of Anglophone punitive penalty. Secondly, the project will provide a detailed history of the nexus of politics, government and policy of penalty in two countries in which such accounts have never been drawn in this way. Thirdly, Scotland's distinct pattern of penal practice and policymaking is often submerged below the coterminous banner of UK analysis, which side lines Scotland's more interesting and critical history.

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Rogan, M (2011) *Prison Policy in Ireland: Politics, penal-welfarism and political imprisonment*, Oxon: Routledge.

Simon, J (2007) *Governing Through Crime: How the war on crime transformed American democracy and created a culture of fear*, New York: Oxford University Press.

**Key objectives of research:**

- 1) What influence does national government have penal policy and penalty in general?
- 2) What were the key organizations, bodies and experts involved in shaping penalty in Scotland and Ireland between 1970-1998?
- 3) How did these policymaking spheres change or evolve over time?
- 4) What were the sources of institutional and policy changes and how did they ultimately impact the manner in which prison and punishment was managed and governed?
- 5) By asking these questions comparatively, what new light may be shed on the familiar and local understandings of the relationship between government and punishment in both Ireland and Scotland? Can we illuminate previously unseen policymaking trends in both jurisdictions?

**Outline of research proposal including proposed methods: (continue on further sheets as required)**

This research is concerned with the practice of government and policymaking and its impact on how people are punished. As such, what is it to govern and to make penal policy, and who does it? What sorts of resources do policymakers employ? How do these factors change overtime? In comparatively studying historical penal policymaking in Scotland and Ireland between 1970-1998 this research will offer a i) critical reassessment of the punitive turn in Anglophone penal politics; ii) provide a thick empirical history of government, penal policy and practice in Scotland and Ireland, and; iii) insight into the impact of different government arrangements on the practice of policymaking

Employing oral history, this project has sought to reconstruct the views of those people who were involved in practice of penal policymaking in Scotland. These interviews are now near completion.

The second stage of this research is archival. Using key documents, memoranda, committee and working group reports, etc., I will develop a timeline line of key events which will frame the qualitative themes drawn out from the interviews.

**Timetable:**

I estimate that access to documents and SPS archives will take no longer than January-May 2015 on a part-time basis.

**Resource demands and access required (e.g. establishments requested; number of respondents; length of interviews etc.):**

Access to historical SPS records on management of prisons and policymaking. I am interested, particularly, in understanding who was involved in managing. What was there in terms of overarching prison policy from the 1970s, and how this evolved over time.

**Ethical considerations and clearances:**

I have full ethical clearance for this research and the named methods from the University of Edinburgh Ethics Committee.

No individuals will be named in this work and no personally identifiable information retained in any notes or final publications as this is a study of broad sensibilities and practices rather than individual actions.

**Utility of research to SPS:**

At the very least it will provide a detailed history of SPS and how prison policy was managed and shaped in pre-devolution Scotland. Further, it will illuminate the influence of various management systems upon punishment, prison regimes and penal policymaking.

**Dissemination plans:**

Research will be presented at various academic conferences. Findings will be published in academic journals.

**Supervisor's approval and supporting comments:**

I have approval from both supervisors for this project and the archival stage of this research project.

Lesley McAra Lesley.McAra@ed.ac.uk

Richard Sparks R.Sparks@ed.ac.uk

**Additional information (if any):**

**Date submitted:**

28/11/14

**REGULATIONS CONCERNING RESEARCH ACCESS TO PRISON ESTABLISHMENTS FOR THE PURPOSES OF CONDUCTING RESEARCH**

All access to prison establishments for the purposes of conducting research is conditional on the researcher(s) agreeing to abide by the undernoted requirements.

1. All subjects to be included in the study must be informed that their participation in the study is voluntary and of their entitlement to withdraw consent at any time.
2. All subjects involved in the study must be informed of the purpose of the study; anticipated uses of data; identity of funder(s) (if applicable); and the identity of the interviewer.
3. All subjects must be assured of anonymity and all material arising out of the study must be dealt with on a confidential basis. Researchers must comply with the Data Protection Act (1998).



4. All research data and material of whatever kind (i.e. interview notes, questionnaires, tapes, transcripts, reports, documents, specifications, instructions, plans, drawings, patents, models, designs, whether in writing or on electronic or other media) obtained from the Scottish Prison Service shall remain the property of the Crown. Information collected during the course of a research project must not be supplied to another party or used for any other purpose other than that agreed to and contained in the original research proposal. All confidential research data obtained from SPS must be destroyed within 12 months of completion of the research project.
5. All researchers must abide by the ethical guidelines of their profession or discipline and must nominate below the guidelines to which they will adhere. (e.g. Social Research Association, British Sociological Association etc.)
6. Where appropriate, research proposals may require to be submitted to the Ethics Committee of the local Area Health Board and to receive their approval before access is granted.
7. The Chair of the SPS Research Access and Ethics Committee (RAEC) must be informed in writing and agree to any changes to the project which involve alterations to the essential nature of the agreed work.
8. The Scottish Prison Service reserves the right to terminate access to SPS establishments at any time for any Operational reason that may arise or for any breach by the researcher of the Access Regulations or for any failure on the part of the researcher to conduct the study as agreed with the RAEC. In the event of access being terminated for any reason whatsoever, all data obtained from SPS during the course of the research shall be returned to the Scottish Prison Service.
9. The Scottish Prison Service will not have liability in respect of any loss or damage to the researcher's property or of any personal injury to the researcher which occur within SPS premises. The researcher (or, if applicable, the researcher's institution or organisation) will be responsible for arranging all relevant personal indemnity to cover the conduct of research within SPS premises.
10. In principle, the Scottish Prison Service supports the publication and dissemination of research findings arising from approved work. However, all material resulting from such access and which is intended to be presented publicly, must be submitted to the Chair of the Research Access and Ethics Committee, Research Services, SPS Headquarters, Room 312, Calton House, Redheughs Rigg, Edinburgh EH12 9HW. The Scottish Prison Service reserves the right to amend factual inaccuracies and to make modifications to the text and material intended for publication in order to preserve the confidentiality of the information and the identity of individuals or, where appropriate, of any institution.

Ethical \_\_\_\_\_ guidelines \_\_\_\_\_ nominated \_\_\_\_\_ University \_\_\_\_\_ of  
Edinburgh \_\_\_\_\_

I have read the above regulations and agree to be bound by them.

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Date)

#### CRITERIA FOR EVALUATING RESEARCH ACCESS REQUESTS TO SPS

Applicant Louise Brangan

Project Title

Proposals which seek research access to the Scottish Prison Service should be assessed against the following criteria where information allows. Where possible each item should be scored out of 10. Marks should then be summated to give an overall score.

##### Quality of research proposal

- knowledge of literature
- general awareness of substantive area
- proposed research methodology
- overall feasibility of proposal/methodology
- ethical propriety and compliance to ERSC REF standards or equivalent

##### Operational considerations

- timescale of project and potential demands placed upon SPS staff
- experience/suitability of researcher
- sensitivity of proposal to prison environment/context
- compatibility of proposal with existing/planned programme of SPS research priorities
- utility of proposed research and policy relevance to SPS

Comments

Score

Approved Conditional approval (revisions sought) Not Approved
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Signature of assessor
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Date
------

## Sample Consent Form

Thank you for agreeing to be interviewed for this research project. I am a PhD student at the University of Edinburgh and the focus of my research is on penal policy-making in Ireland and Scotland from 1970-1998. I am interested in what it was like to work in both jurisdictions during this period, and mapping the various organisations and groups who were involved in this process.

Therefore, I am interested in interviewing those who were involved in penal policy during the period before 1998, such as civil servants, criminal justice practitioners, criminal justice researchers, advisors etc., and hearing about their experiences.

By signing this form, you acknowledge that I have fully explained the purposes of the research and they have been understood. All interview recordings will be destroyed once they are transcribed. All the participants in my research are offered anonymity, which means they will not be named and I will do everything reasonable to make sure they are not personally identifiable. Also, you are consenting that anonymised information from this interview can be used in the Doctoral thesis and any subsequent publications.

- I consent to this interview being taped for the purposes of this research
- The researcher has told me about the research project and answered any questions I had about it
- I understand that I do not have to answer any questions I do not wish to.

I understand that my name and personal details will not be used in any way that could identify me individually in any subsequent publications.

Signed:  
Print Name:

The Researcher:  
Print Name

## Appendix 2

### Subversive Activities in 1970s Republic of Ireland

- 1971 2<sup>nd</sup> February British embassy burned down
- 1972 May Special Criminal Court was established
- 1972 1 December Loyalist planted bombs in Dublin at Sackville Place and Liberty Hall where two people were killed and 127 injured.
- 1972 28 December bombs in Belturbet, Clones and Pettigo
- 1973 3 September Attempted murder of angler from Northern Ireland in Mayo.
- 1973 28 October murder of Detective Constable Doherty RUC at Ballindrait Co Donegal 1973 31 October direct rescue attempt by helicopter/escape from Mountjoy of three prisoners.
- 1974 24 January helicopter hijacked at Gortahork and used in attempted bombing of Strabane.
- 1974 11 March Murder of a member of Irish parliament Billy Fox.
- 1974 22 May – armed robbery, Beit paintings stolen.
- 1974 May shooting at Gardaí in Mayo.
- 1974 17 May – UVF planted bombs in Dublin (three car bombs within ninety seconds) and Monaghan (car bombs an hour and half after the Dublin bombings) where 33 people were killed and 153 wounded.
- 1974 19 IRA prisoner break out of Portlaoise after ‘blasting open a gating’.
- 1974 4-9 June Kidnaping of Lord and Lady Donoughmore.
- 1975 3 October-7 November 1975 Kidnapping of Dr Herrema by Republican affiliates and resulting in a seventeen day siege with the Gardaí.
- 1975 11 September murder of Garda Reynolds.
- 1975 19 December bomb in Dundalk where 2 people were killed and 19 wounded.

- 1976 Garda killed in an explosion in Laois.
- 1976 15 July attempted escape of prisoners from Green Street courthouse.
- 1976 9 July bomb exploded at a Salthill hotel.
- 1976 21 May bomb exploded at Swanlinbar.
- 1976 21 July British ambassador and Miss Cooke murdered in Dublin.
- 1976 incendiary devices planted in hotels throughout the country and in pub and cinemas in Dublin during the summer.
- 1978 Ireland brings Britain in European Court of human rights accused of torturing republican prisoners in the north
- 1978 16 people killed in an explosion in Down.

*Sources:* Department of Justice (1976) unpublished internal memo on state of emergency; (JUS/2004/27/16); Ferriter 2012.

### Appendix 3 POA Strikes

Date	Prison	Action Taken	Problem
<b>1981</b>			
30 January-2 April	Arbour Hill	Ban on supervision of industrial work	Overtime
27 February-5 March	All prisons except Loughan House and Training Unit	Ban on all escorts and to process newly committed prisoners	Protest against a discipline incident with a prison officer in Mountjoy
18 September-19 October	St. Patrick's	Ban on workshop activities	Payment of allowances
5-30 October 5-6 November	Cork	Ban on evening recreation, use of the education unit and visits.	Staffing levels
5 November	St. Patrick's	Prisoners not unlocked	Protest against a prison officer being disciplinary for conduct during an incident.
20-24 November	Limerick	Ban on evening recreation	Protest against a discipline incident with night guards
<b>1982</b>			
4 February	Limerick	Ban on searches, visits, unlocking prisoners, supervision of work, processing committals	Response to a prison officer being suspended
16 March	St. Patrick's	Negotiations with Governor ceased	Dissatisfied with negotiations
1 April-4 November	Mountjoy Portlaoise Limerick	Women prison officer refuse to wear uniform	Uniform not available

7 April	Limerick	Ban on visits	Protest in response to inadequate canteen and car-parking facilities
12 April-1 June	Cork	Ban on outdoor recreation	Staffing levels
17 April	Loughan House	Ban on outdoor recreation and recreational activities	Dissatisfaction with management
26 April	Mountjoy	Negotiations with Governor ceased	Dissatisfied with negotiations
29 April	Arbour Hill	Staff refused to unlock prisoners between 2-2.30pm	Staff wanted time off to cash their pay cheques
29 April	St Patrick's	Refused to unlock prisoners for evening recreation	Delayed pay cheques
8 June-22 June	Limerick	Officers refused to wear caps	Wearing caps should not be compulsory
19 August	All Prisons	Ban on: workshop supervision; transferring prisoners; all work but essential maintenance; prison transport; work in prison laundries; moving supplies between prisons; prisoner working parties who work outside the prison; review and liaison meetings; and instigating a go-slow approach to clerical tasks.	Government pay embargo



26 August	N/A	Prison Officers picket the Department of Justice	Government pay embargo
30 August	Mountjoy Women's Unit	Refusal to unlock more than four women at a time.	Staffing levels
1 October-4 November	Mountjoy Portlaoise Limerick	Women prison officers ban court escorts	New prisoner officer overcoat not available
9 November	Arbour Hill	Prisoners locked in cells from 2.30-4.30pm	Possibility of reduction in overtime
22 November	Loughan House	Refusal to use prison transport	Vehicle alleged to be not road worthy
1-3 December	Portlaoise	Staff refuse to unlock prisoners for evening recreation	Staffing levels
14-29 December	Cork	Refusal to work overtime	Protest in response to a prisoner being reported for assaulting a prisoner
<b>1981</b>			
4 January	Cork	Refusal by basic grade officers to work evening overtime	Staff protest against the Assistant Chief Officer in the Prison
21 January-11 March	Limerick	Refusal to open craft shop	Manning levels
17-20 February	Cork	Ban on prisoners being transferred to Cork	Manning levels
18 February	Arbour Hill	Staff prevented the Rationalisation of prison vans	Rationalisation of prison vans in Dublin

15 March	Portlaoise	Not all rostered staff turn up for overtime	Assault on prison officers
18 March-1 April	Portlaoise	Refusal to man prison boiler	Return of boilerman to 7 day liability
21 March	Cork	Refusal to do evening overtime	Demands for extra night officers
26-27 March	Several prisons	Refusal to unlock prisoners	Murder of prison officer, Brian Stack and dissatisfied with cut in overtime
12 April	St. Patrick's	Short delay on unlocking prisoners	Dissatisfied with manning levels
15-27 May	Limerick	Ban on craft workshop and study space	Dissatisfied with manning levels
16-17 May	Limerick	Ban on visits	Dissatisfied with manning levels
23 May	Mountjoy	Prisoners unlocked late for evening recreation	Overtime for trade staff
24 May	Cork	Refusal to work evening overtime	Withdrawal of staff reserves
12-13 July	Mountjoy	Ban on workshops	Lack of response to POA demands
26 July	St. Patrick's	Refusal to unlock prisoners for evening recreation	Demand for special leave for senior POA trade union officers
29 August-12 December	Portlaoise	Ban on searching prisoners' shoes	Dissatisfied with manning levels
6 September	St. Patrick's	Limited out of cell time	Call for more prison officers following a fight between two prisoners
14 September	Limerick	Refusal to work evening overtime,	Issue with Governor

		Garda assistance required	
18-19 October	Shelton Abbey	Ban on supervision and on delivery of produce to Portlaoise and Mountjoy	Unpaid allowances
1 November	Mountjoy	Delayed evening recreation	Manning new unit
4-18 November	Mountjoy	Ban on court escorts and dealing with newly committed prisoners	Manning of escorts

Source: Committee of Inquiry into the Penal System (1985) *Report of the Committee of Inquiry into the Penal System* p.307-310

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