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## Prison Policy in Times of Austerity: Lessons from Ireland

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## **Prison Policy in Times of Austerity: Reflections from Ireland**

### **Introduction**

The catastrophic collapse in the once booming Irish economy has led to swingeing budgets, huge falls in property prices, rising unemployment, cut backs in public services, and the ignominy of a bailout financed by the International Monetary Fund, the European Union and the European Central Bank. As has been the case for all aspects of public expenditure, prison policy-makers are now regularly using the language of efficiency and value for money when discussing plans for Ireland's prisons. The state's current economic woes are having some interesting effects on the direction of prison policy. Plans are afoot to reduce the prison population, after decades of growth, and despite the straitened financial circumstances, investment is forthcoming for the improvement of long-neglected prison conditions. Perhaps reflecting the public mood concerning the causes of recession, the sentencing of fraud offences is becoming more high profile, and, it appears, more harsh.

This article examines the effect of the current recession on Irish prison policy. To do so, it explores the ways in which previous times of economic crisis played out in Irish prisons. It assesses the impact of the 'Celtic Tiger' years of economic growth on prison policy before examining how current austerity policies are affecting the numbers in prisons, prison conditions, and sentencing.

### **Previous recessions and their effect on prison policy**

Ireland is no stranger to economic hardship. The exceptional growth registered in the 1990s and 2000s is precisely that – exceptional. Prior to this, the Irish economy was often in recession, and stagnant for long periods.

## *The establishment of the Irish State*

The Irish State gained its independence from Britain in 1922, and, after an ensuing brutal civil war, the State's new rulers were left with a large financial bill as well as deep political division. Vast sums had been spent on the army and compensation payments for property damaged during the war. Attempting to recover from the damage of the Civil War period, the Irish State's early years were characterised by financial retrenchment and economic uncertainty (McCashin 2004; Fanning 1978; Ferriter 2004).

The Cumann na nGaedheal political party which formed the State's first government became inordinately preoccupied with recovering from this situation, and balancing the state's books, arguably more so than even the state's financial status required. Vigorous economic retrenchment was considered to be the ultimate benchmark of fitness to govern. This was all the more important in order to prove that Ireland was able to look after its own affairs (Ó Gráda 1994, 1997; Breen 1990).

The new Government pursued a 'laissez-faire' economic policy, which was combined to an ungenerous approach to social policy. Social welfare provision was very slow to develop, the expansion of unemployment assistance was strongly resisted; the development of public housing was neglected, despite the high levels of slum dwellings registered in the State (Lee 1989; Ferriter 2004; Cousins 2003). The goals of cutting costs and slimming down public administration was pursued with a dogged and ruthless efficiency, becoming an over-arching focus which would permeate and shape all aspects of governmental administration (O'Halpin 2010).

Prison policy during these difficult years was dominated by these financial concerns, along with a keenly felt threat from those opposed to settlement agreed with Great Britain which established Irish independence, who wished to overthrow the fledgling State. Irish prisons were used as part of a defensive strategy, with detention extensively

employed during the Civil War period. Once that threat had receded, prison policy makers largely forgot about the prison system and showed themselves to be extremely loath to innovate. There was no rush by the new Government to put a distinctively Irish stamp on its prison policy. No significant changes to regimes occurred from the 1920s until well into the 1940s, prisons were closed because of falling numbers and in order to save money, the General Prisons Board, the agency in charge of the prison system, was disbanded in a wave of public service cutbacks. Prison policy was largely moribund and inert. Those within the Department responsible for it were, moreover, acting in a climate of great reluctance to public expenditure, which had a significant 'chilling effect' on the propagation of new ideas about how to run prisons (Rogan 2011, 2008).

The effect of the severe economic situation of this period on the prisons was seen largely in the absence of action by policy-makers. Prisons were closed down, but for administrative reasons rather than any broader penal philosophy; the concept of alternatives to custody was not well-developed amongst those responsible for the criminal justice system. With little money to spend, penal regimes were allowed to stagnate, seeing little change from one decade to the next.

### *The 1980s*

The State was rarely in rude financial health during the following decades, but an especially difficult period occurred during the 1980s. Doing nothing about prisons was an option for the State in the 1920s as the prison population was decreasing. Following almost two decades of increases in the prison population, this course of action was no longer feasible in the 1980s. This decade, one of the bleakest periods in the history of Irish prisons, saw unprecedented levels of overcrowding, a system unable to cope with an influx of drugs and those addicted to drugs, poor industrial relations, and a high level of deaths in custody (Rogan 2011). It was also a time of political turbulence, involving three General Elections in the space of 18 months. The State was, furthermore, in a

deep economic crisis which followed, and was exacerbated by, a short period of growth, which was itself based on increasing public borrowing and growing budget deficits in the 1970s (Lee 1989; Keogh 2005). Cuts were made to the health and other budgets, with hospitals being closed (O'Hearn 2003) and spending on public health was below the European average. During this period Ireland suffered mass emigration, had tax rates of the order of 60%, devalued its currency (the punt) in 1986, and unemployment rates were very high (Ó Gráda 1997).

Within the prisons, the most pressing crisis was one of space. The numbers of prisoners had increased steadily since the late 1960s. By the early 1980s Irish prisons were under severe strain. Prison building was mooted as the ultimate panacea to the problems this occasioned, but without any financial backing for these plans, policy-makers took a very short-termist crisis management approach to penal administration. One of the mechanisms used to relieve pressure was temporary release. Such release, for the majority unsupervised and without prior planning or indeed notice, began relied on more heavily as the decade progressed. In 1980, 891 prisoners were released to make way for new committals, with the figure rising to 1,298 in 1982 (Dáil Debates, vol 339, col 373, February 8 1983). Another approach was to utilise the intriguingly name 'home leave' system in 1983. This was framed as an alternative to unsupervised temporary release known as shedding, but, in reality, it involved prisoners serving sentences for minor offences being able to remain out of prison once they signed on periodically at a local Garda (police) station.

One move to increase prison capacity received little attention when compared to the impact which it would have on the prison system. In 1983, then Minister for Justice signed a statutory instrument which removed the provision in the Prison Rules 1947 requiring prisoners to be kept in single cells. This move immediately increased the available capacity significantly. It had a number of effects; first the prisons appeared to be less overcrowded on paper than they were in reality. More serious, however, was the

effect on prison life as well as the increasing resort to multiple occupancy cells as a permanent response to pressures on space, something which has never been reversed.

It was admitted by the then Minister for Justice in 1987 that prisoners were occupying bedding on the floor of Mountjoy Prison in Dublin as well as in the TV Room in B Base and on “secure areas leading from the landings” there (Dáil Debates, vol 373, col 925, June 9 1987).

The prison system was required to rely on outdated prison buildings, such as Mountjoy, which opened in 1850 and did not have in-cell sanitation. Indeed, much of the prison continues to be without this facility. Perhaps inevitably, prison building was viewed as the only viable solution to this continuing crisis. In 1985, in response to queries from the opposition about what it was classifying as its ‘prison development programme’, then Minister Michael Noonan argued that the Government’s planned expansion of the prison system had not been cancelled, but merely deferred due to financial constraints. “There has never, since 1981, been a time when financial constraints were not operating to hold back some significant parts of the developments” he stated in 1985 (Dáil Debates, vol 359, col 378, June 5 1985).

More immediate measures were also used. The education units at Cork and Arbour Hill were ‘relocated’ to temporary, prefabricated, accommodation to increase cell capacity (Dáil Debates, vol 359, col 601, June 6 1985). Accommodation or ‘quarters’ for single prison officers in Portlaoise were also transformed into custodial accommodation. The Minister considered that it could be used to house ‘alcoholic’ or low risk women prisoners. Evidently little thought was being put into the needs of either group and no research was conducted or referred to upon which such decisions were made. In the event, the accommodation was used, as might have been predicted, to house the burgeoning numbers of adult male offenders. These were simply short-term and stop gap remedies.

Similarly, female prisoners in Limerick were required to relocate to Mountjoy women's prison in order to make way for male prisoners (Dáil Debates, vol 370, col 121, December 17 1986). Previously the exercise area for female prisoners in Limerick was reduced in order to provide additional workshops and indoor recreational facilities for male prisoners (Dáil Debates, vol 339, col 442, February 2 1983).

Eventually, sufficient financial resources were found for the first ever purpose-built prison developed by an independent Irish government. This prison, at Wheatfield to the west of Dublin, was initially to be able to house 150 prisoners, but this figure was increased to 320 by the time of opening at the very end of the decade.

The financial pressures on the prison system during these years were a factor in the crises of the 1980s. A lack of money and very real pressures on space resulted in a form of prison policy-making which was chaotic, *ad hoc*, almost entirely reactive and poorly planned. A lack of money was cited as a reason for the serious overcrowding, but, interestingly, this did not lead to a consensus at official level that the prison population should be brought down; this was despite the publication of reports, including those commissioned by the Government, calling for a reduction in the use of imprisonment (CIPS 1985). Irish prison policy-makers would have built more prisons during these years, but they were simply not able to afford to do so.

### **The 'boom years' and prison policy**

Ireland experienced a period of unprecedented economic growth from the early 1990s. Though, as it transpired, much of this was built on the ultimately unsustainable property boom, for almost a decade Ireland witnessed improving public finances. Government

receipts increased rapidly, as did public spending. Notably, capital spending increased significantly.<sup>1</sup>

In prison policy terms, the 1990s and early 2000s formed a critical period and the policies pursued during these years have cast a long shadow. A time of intense political competition, the mid 1990s saw a politicisation of the debate on crime and prisons which had not been present in Irish public discourse previously. The political heat, combined with the reaction to a series of high profile and tragic crimes including the killings of an investigative journalist and a Detective Garda (police officer) acted as catalysts for a prison policy which was focused almost exclusively on prison spaces (O'Donnell and O'Sullivan 2003; O'Donnell 2004). In 1994, a Department of Justice document suggested that the country needed an extra 210 prison spaces, and that a cap should be placed on the prison population. In 1997 a Government paper proposed an extra 840 spaces; the Programme for Government agreed by the parties which assumed power after the 1997 General Election spoke of a plan to create 2,000 prison spaces. Political debate around crime and the prison system revolved around talk of increasing prison spaces and increasing the number of spaces was viewed as a sign of political strength. Reluctance to spend on prison building was used to criticise politicians as being weak on the issue of crime (Rogan 2011).

Crucially, the fiscal limits on the political desire to build prisons present in the 1980s were no longer acting as brakes on action. However, added to this, the cultural memory amongst prison policy makers of times of extreme pressure on prison space, chaos, 'getting by' from day to day and a huge reliance on temporary release must have added to the pressure to increase the size of the Irish penal estate.

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<sup>1</sup> There are many assessments of the current financial crisis, with accounts in various sources increasing almost daily. For an examination by the now Governor of the Central Bank of Ireland see (Honohan 2009). For an excellent and regularly updated selection of information on the current Irish economy see <http://economicpsychologypolicy.blogspot.co.uk/2012/01/readings-on-irish-economy-post-2007.html?m=1> (last visited July 30 2012).



The legacy of this period was in bricks and mortar, with a new prison with 515 spaces opened in 2000, a new remand centre opened in 1999 and the enormously delayed new prison for women was opened in the same year. More importantly, however, prison policy became consumed with a discussion of how many prison spaces should be built, not what prison should be for, or how prison policy might relate to other aspects of social policy and the ability of prison to deal with crime and its underlying causes.

Perhaps the swansong of the 'Celtic Tiger' years in Irish prison policy was the plan to build a prison with the potential to hold 2,200 prisoners at Thornton Hall on a green field site in north county Dublin. Mired in controversy regarding the high price paid for the site, the size of the planned build, and the distance from the city centre, this project was driven by the then Minister for Justice, Michael McDowell (Brangan 2009). A member of the Progressive Democrats, a party which espoused policies of low taxation and economic liberalism, part of McDowell's rationale in the development of this plan was, perhaps ironically, to reduce the high costs associated with the running of Irish prisons, particularly in terms of staffing. In his view, contemporary penal technologies would reduce the need for prison staff. It is estimated that the cost of the plans for Thornton Hall has been in the region of €35 million.

Thornton Hall has not been built. In 2011, following the election of a new Government, a review group was set up to examine the project and whether a prison should be built on that site. That review group ultimately recommended that a smaller prison be built there, with plans to double up cells from the beginning. It remains unclear as to whether even these scaled down plans will come to fruition. Another characteristic feature of the Celtic Tiger years and the decline in the Irish economy is also present in the Thornton Hall debacle. It was planned to build the new prison using a public private partnership model. However, the successful consortium is now unable to fulfil the contract due to its financial difficulties.

## **Current prison policy**

Ireland's economic crash has given rise to high levels of unemployment, crushing levels of public debt, cuts in public spending, and poor demand in the domestic economy. The almost bullish approach to prison policy of the 1990s and early 2000s has given way to a much more muted and cautious tone. As well as this change in rhetoric, Ireland has seen a number of concrete policy changes indicating a desire to reduce the prison population. The first indication of this came in the Programme for Government agreed between the Fine Gael and Labour political parties on the formation of a coalition government. That document stated:

We are committed to a sentencing system that provides a safer society at a lower cost to the taxpayer. We will ensure that violent offenders and other serious offenders serve appropriate prison sentences while at the same time switching away from prison sentences and towards less costly non-custodial options for non-violent and less serious offenders. This will result in a reduction in the prison population and alleviate overcrowding (2011).

A review group established to examine the continued feasibility of the Thornton Hall project also recommended an overall reduction in the size of the Irish prison population (Thornton Hall Review Group 2011).

Shortly after the establishment of the new Government, the Minister for Justice, Alan Shatter T.D. introduced the Criminal Justice (Community Service) (Amendment No. 2) Bill 2011 which aimed to increase the number of community service orders given by the Irish courts. The Act that follows requires the courts to consider the use of community service orders for minor offences where the convicted person would have otherwise received a sentence of up to 12 months' imprisonment. There had been plans under the previous Government to expand the use of the community service scheme.

Interestingly, Minister Shatter had also been centrally involved in the introduction of community service orders for the first time into Irish law at another period of economic crisis, the 1980s.

The press release which accompanied the passing of the Bill into law gave prominence to the financial savings to be derived from the scheme, stating:

The implementation of the provisions of this will deliver benefits on the national, community and individual level. Offenders considered appropriate for community service will be diverted from the prison system while making recompense to the community for the offence committed. The community benefits from the work completed and the financial burden to the State and taxpayer is reduce (available at <http://justice.ie/en/JELR/Pages/PR11000185>)

Perhaps most remarkably, The National Recovery Plan 2011-2014, which contains the agreement between the Irish Government and the so-called 'troika' which is providing financial assistance to the Irish State, contains detailed commitments to reducing costs across the prison system. These include the diversion of those who default on fines from prison and the increased use of community service (Government of Ireland 2011, 70). Under the terms of the 'bailout' for the State, the cost of imprisonment did not escape attention. That plan also envisages the reduction of staff in the Prison Service.

The most recently available figures suggest that the rate of increase in the Irish prison population has slowed down, but that the number of women being sent to prison has increased, with a 12% rise in committals of women to prison from 2010 to 2011. The average daily prison population in 2011 was 4,390. There were 17,318 committals to prison in 2011 which represented an increase of 0.8% on the 2010 total (Irish Prison Service 2012, available at <http://www.irishprisons.ie/images/pdf/annualreport11.pdf>).

In light of the economic prospects for the State, one might expect the Government to turn to private sector involvement to reduce costs. This does not appear to be immediately on the horizon; however, companies working in the justice sector have started to become more prominent in Ireland. G4S, which already operates a private security business in Ireland, recently sponsored a one day conference on the Justice system at which the Minister for Justice and head of the Irish Prison Service were present (<http://www.eolasmagazine.ie/events/justice2012/programme.php>).

### *Changes in sentencing policy?*

While the main impact of recessionary times in Ireland on prison policy has been in efforts to cut costs, one of the most interesting changes taking place in prison matters at present in Ireland is happening in sentencing. The small number of studies on the Irish prison population has shown a picture of educational and socio-economic disadvantage, high levels of homelessness, and a high prevalence of physical and mental illness (Seymour 2005; O'Mahony 1997; O'Donnell, Hughes, and Baumer 2009; Carmody and McEvoy 1996; Kennedy et al. 2005). The limited nature of criminal justice data generally in Ireland makes it difficult to examine the precise offences for which people are imprisoned in any given year (Rogan 2012), but it is not controversial to suggest that few are sent to prison for so-called 'white collar' crime.

However, it may be that this state of affairs is about to change. There are indications that the judiciary is taking a tougher line on financial crime than had been the case previously. Perhaps reflective of the public mood and the feeling that Ireland's economic woes can be traced, at least in part, to reckless behaviour on the part of financial corporations, crimes of a financial nature have attracted comment on the part of the judiciary which indicates a hardening of approach. It must be said, however, that the matters sentenced by the courts to date have not directly concerned the crisis in Irish banking.

The case of *DPP v. Murray* (2012 IEHC 60) concerned an appeal against the severity of a sentence imposed on a man who had been making false social welfare claims. Mr. Murray had been charged with one count of having a false passport and seventy four counts of theft. During the period in question, he had misappropriated sums of almost €249,000 by making claims for jobseeker's allowance, disability allowance and supplementary welfare allowance, using nine different identities, including those of members of his family, without their knowledge. Mr. Murray pleaded guilty to the charges and received a twelve and a half year sentence. At the time of his appeal he was 63.

The fraud was described by the appeal court as “elaborate and sophisticated” (at 3) and involved the use of several false identity documents, including British driving licences, which had been issued in Thailand, where Mr. Murray was living; he would return to Ireland to make the claims every three months.

Mr. Murray made admissions immediately when questioned by the police and was fully cooperative, also pleading guilty at a fairly early stage. Only €11,151 of the misappropriated monies had, however, been repaid. Mr. Murray also had a previous conviction for social welfare fraud in the United Kingdom, for which he served a sentence remitted to almost 12 months' imprisonment.

In delivering judgment, Finnegan J began by saying:

this appeal against the severity of a sentence imposed in respect of social welfare fraud raises an issue of fundamental importance at a time of crisis for the public finances. How should a sentencing court treat offenders who have defrauded the public revenue by either engaging in unlawful tax evasion on the one hand or (as in this case) by making false social welfare claims on the other?

Given the importance of such questions for the public weal – not least at a time of financial emergency – it seems appropriate that this Court should now give some general guidance for future cases of this kind given that prosecutions for tax evasion and welfare fraud are likely to be a more common feature of the criminal justice landscape in the years ahead than may have been the case heretofore” (at 1 – 2).

The court held that a sentence of the gravity imposed by the sentencing judge was usually reserved for serious offences against the person, involving a violation of the integrity of the person, and sometimes a violation of the dwelling. Finnegan J held that though financial crimes are not in the same category as those against the person, they are not victimless, “quite the contrary: offences of this kind strike at the heart of the principles of equity, equality of treatment and social solidarity on which the entire edifice of the taxation and social security systems lean. This is especially so at a time of emergency so far as the public finances are concerned” (at 7).

Finnegan J considered that the fiscal emergencies visited upon the State had been met with stoicism by the Irish people, but that the necessary measures to restore order to the public finances required a high level of social solidarity. In the view of the court, widespread tax evasion by the wealthy and well-to-do can imperil social solidarity and even the stability of the state. Social security fraud also impacts heavily on those most indeed, sapping public confidence in the system and reducing the amounts available for those genuinely reliant on those payments.

Finnegan J went on to say that anybody holding an Irish passport owes fidelity to the nation and loyalty to the State, under the Irish Constitution. At a time of fiscal emergency, this required that social solidarity be respected. Moreover, Finnegan J held that, in the case of offences involving the public purse, deterrence plays an important value in the sentencing process.

Overall, the Court of Criminal Appeal laid down some general principles to guide sentencing judges in future such cases. The court held:

we therefore suggest for the future guidance of sentencing courts that significant and systematic frauds directed upon the public revenue – whether illegal tax evasion on the one hand or social security fraud on the other – should generally meet with an immediate and appreciable custodial sentence, although naturally the sentence to be imposed in any given case must have appropriate regard to the individual circumstances of each accused (at 9).

In these particular circumstances, the court felt that a twelve and a half year sentence infringed the ‘totality principle’ whereby the sentences imposed for individual counts is adjusted in light of what is considered appropriate for the offending behaviour and offender as a whole, and reduced the sentence to nine years, with the final year suspended.

More recently, certain sentences handed down in fraud cases have garnered attention. The limits of data on Irish criminal justice mean that it is not possible to test if there have been more convictions or longer sentences for such offences recently in a statistically robust or meaningful way. The Department of Social Protection has stated that, in 2011, 270 cases of possible social welfare fraud were referred to the police for prosecution. Recently, a woman who pleaded guilty to an offence involving the receipt of €229,000 in social welfare payments to which she was not entitled and received a sentence of three years’ imprisonment (Woman who claimed €230,000 jailed for social welfare fraud, *The Irish Times*, May 24 2012 <http://www.irishtimes.com/newspaper/ireland/2012/0524/1224316609027.html>).

Probably the most high profile case of late involving financial crime to come before the courts was that of Paul Begley. Mr. Begley was the head of the largest fruit and vegetable producers in the State. He pleaded guilty to an offence involving the evasion of customs duty on garlic imported from China. The offence involved the labelling of garlic, which was subject to an import duty of up to 232%, as apples, which are subject to a rate of 9%. The total amount of garlic involved was worth €1.1 million. Mr. Begley made full admissions and was paying back the amounts involved. He had no previous convictions, was referred to by the sentencing court as “an asset to the country”, was generous to charity, ran a very successful business, and was a “decent man”. The maximum sentence for a single count was 5 years and/or a fine of up to three times the value of the goods. Notwithstanding this, the Circuit Court imposed a total sentence of 6 years, holding that a significant custodial term was required because such offences are difficult to uncover and severe penalties act as a deterrent (Man jailed over garlic tax scam, *The Irish Times*, March 9 2012 <http://www.irishtimes.com/newspaper/breaking/2012/0309/breaking34.html>).

This sentence is currently under appeal and has been afforded priority by the Court of Criminal Appeal.

### **A different kind of prisoner?**

While this small number of cases should not be used to draw too many conclusions, the attitude of the Court of Criminal Appeal in the *Murray* decision does, however, lay down a clear statement that sentencing courts should deal with financial crime in a robust manner, and that custodial sentences are to be given. It may be that, as Ireland sees more financial offences being prosecuted its prisons will be required to deal with first time offenders at a more mature stage of life than is commonplace and without the usual profile of prisoners within our penal system. The effect that will have on prison policy, in terms of conditions and the development of alternatives will be both



interesting and revealing of the attitude of the Irish authorities to the questions of what prison is for, and for whom it should be reserved.

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