

## **Martin Tansey Memorial Lecture**

### **Rehabilitation, Research and Reform: Prison Policy in Ireland**

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#### **Introduction**

I didn't have the pleasure of knowing Martin Tansey, but the principles that he stood for and sought to realise mark him out as a visionary and an innovator. Those principles continue to be relevant and require our energies and ideas to see them fulfilled today. I am very pleased and humbled to have been asked to deliver this, the fifth lecture, in his memory. I would like to thank Maura Butler and the Board of the ACJRD for the kind invitation to speak. My thanks also go to Danelle Hannan for her kind assistance.

When I read about Martin Tansey, I thought there were three themes I might draw on which had particular relevance to his legacy and ideals. The first was the concept of rehabilitation, the second the possible impact of research on policy, and, finally, the role and importance of 'interest groups' within the criminal justice system.

I propose, therefore, to examine these three themes within this lecture. First, I would like to track the concept of rehabilitation within official thinking since the foundation of the state. I will explore when and how the term was first used and how it has fared since. Secondly, I would like to examine barriers to and the role of research in the making of prison policy and to say a few words about data deficits in our system at present. Finally, I would like to look at the role of interest groups within the criminal justice system, and specifically their effect, or potential effect, on the formation of prison policy.

#### **The Concept of Rehabilitation**

I had the pleasure of hearing Professor Fergus McNeill give this lecture in 2009 and he gave a masterful examination of the concept of rehabilitation which I would not be able to

emulate, nor wish to rehash. My focus is on how this concept emerged, was fashioned and developed in Ireland.

As Fergus McNeill said in his Tansey lecture, rehabilitation is both a penal concept and a penal practice (McNeill 2009). The word is also used to describe a process of being rehabilitated or an outcome. As McNeill made clear, there are very many other vexed questions arising out of any attempt to describe what rehabilitation means. Some see it as a quasi-religious notion, others a form of re-education, others a kind of medical treatment; some a paternalistic, coerced and enforced set of practices, others something which is legitimate only when engaged in freely by an individual him or herself (see further the excellent analysis in Ward and Maruna 2006).

In this lecture, I am not interested in what rehabilitation is, might be, or should be, so much as how the concept itself has developed in Irish penal thinking. My emphasis will be on how the term or, more specifically, the idea of rehabilitation was conceived of and used by policy-makers. The way in which the concept was translated into practice is, of course, an entirely different matter. I want to explore how Ireland's penal policy makers used the term and what they meant, or thought they meant, when talking about rehabilitation.

### **Understanding policy formation**

How policy-makers use terms like rehabilitation is revealing of the sensibilities of those policy-makers regarding punishment, the objectives of punishment, and the relative importance or priority between competing objectives. It is therefore useful shorthand by which we can understand penal thinking generally. In *Prison Policy in Ireland* (Rogan 2011) I attempted to look closely at what policy makers were doing, or thought they were doing, at various key points in the history of our prison policy. I consider this to be an essential, and somewhat underused, way of understanding penal change.

There is a growing literature on trying to understand the actions of policy-makers and the policy process as a way of explaining penal change (Jones and Newburn 2007; Stolz 2002; Sparks, Newburn, and MyLibrary. 2004; Ryan 2003; Wall, Ryan, and Savage 2001) but in this regard I wish to draw most particularly on the work of Loader and Sparks who suggest that it is important for us to understand how policy actors themselves talk about and conceive of

their actions and intentions (Loader and Sparks 2004). Advocating a process they call 'historical recovery' Loader and Sparks state:

The procedure we envisage would subject ... events to more searching forms of historical research and reflection , aim to explore their interplay with extant political imperatives and programmes and seek to explore the ideas and meanings that actors mobilise to encode/decode events and 'name' the legitimate response (Loader and Sparks 2004, at 15).

While this is of great explanatory potential, it is also quite good fun to revisit and examine historical and contemporary politics and see how politicians and civil servants use language.

### **Rehabilitation as a concept in Irish penal thinking**

Ireland provides a particularly interesting place to study the concept of rehabilitation and how it has been used by policy-makers. Our shared penal, legislative and administrative history with the United Kingdom meant that, at Independence, we had many of the structures in place which are associated with the rehabilitative turn in penal history. The Prevention of Crime Act 1908, the Children Act 1908 and the Probation of Offenders Act 1907 were all British inventions. We also had a penal system which was, as Osborough states, "largely the product of English penological thought" (Osborough 1985, at 181), with prisons, particularly Mountjoy, exemplars of Victorian thinking on how to organise punishment. Whilst we had these foundational structures in place, Ireland took something of a different path to its nearest neighbour with regard to both prison policy and rehabilitation after Independence. This makes Ireland a very interesting case in which to study the 'conditions' in which rehabilitation can be propagated.

#### *Rehabilitation and penal-welfarism*

When talking about rehabilitation, we are of course, talking also about 'penal-welfarism' as an approach to or period of penal policy, associated with the period from 1895 until the 1960s. 'Penal-welfarism', also known as or considered to encompass correctionalism or penal modernism, as a penal idea has been subject to innovative and expert analysis by David Garland in a most detailed and reflective early work, *Politics and Welfare*, published in 1985 (Garland 1985). As an aside, it is interesting to reflect upon why this book has received

much less attention than his more famous *Culture of Control* (Garland 2001) or indeed why it has spawned much less penological scholarship and critique.

When we talk about penal-welfarism, the wider concept in which rehabilitation is embedded, we are talking about a period in penal policy and penal thinking which had certain key or characteristic features. These include particular penal practices such as attempts to divert people from prison through the use of fines and probation, and, generally, a far greater number of sanctions, requiring the input of the social and psychological sciences into the legal milieu. There was also a distinct transferral of responsibility for dealing with those who had committed crimes from private charity to a state funded and administered system.

The prison took on a new role and position within this altered structure, being 'decentred' within the penal-welfare complex. Many of the new sanctions introduced during this period were conceived of as alternatives to imprisonment, while others functioned to remove certain classes of offender from the prison setting entirely. The prison also became a place, in the imagination at least, of transformation of individuals, a setting for treatment rather than simply punishment.

The representation of those convicted of crimes and of punishment also changed. A new language of reform, correction, normalisation betrayed the movement which sought to support the 'inadequate', de-emphasise personal responsibility, to cure and restore (Newburn 2003). Radzinowicz and Hood (1990) also describe this period as one in which there was an increased sense of scepticism about the efficacy of prison, an increasing optimism about alternatives, and a desire to utilise the principles of social work with those convicted of crimes.

Scholars such as Lucia Zedner (2002) and Mick Ryan (2003) have cautioned against indulging in a kind of penal nostalgia about the period prior to the 1960s, noting that repressive elements existed in those systems and conditions within prisons continued to be difficult. This is an important warning to bear in mind. However, it has come to be accepted that this period of penal-welfarism gave way in the 1970s to a penal era which emphasised punishment rather than welfarism, austerity in prison conditions, and a greater use of

prison. This, at least, is the standard narrative from the United States of America and the United Kingdom (Garland 2001).

### **A history of 'rehabilitation' in Ireland**

In this part of the paper I would like to explore the development of the concept of rehabilitation in Ireland.

As I have mentioned, the independent Ireland had inherited the legislation characteristic of penal-welfarism at the foundation of the State. We also had a series of institutions outside of the prison which had as their aim the transformation of behaviour and control. These included the inebriate reformatories, while they lasted, and the extensive use of institutions, now infamous, such as Mother and Baby Homes, Magdalene laundries and the industrial and reformatory school system. As Kilcommins et al state, the kind of penal-welfarism that existed in Ireland did so through a variety of sites other than the prison (Kilcommins et al 2004).

Post-independence, these institutions remained in existence. However, in the context of prison policy, the notion of 'rehabilitation' was largely absent in the thinking and language of prison policy makers. More basically, there is little evidence that prison policy makers thought deeply about what prison was for at all, or what its objectives might be. The fact that there was not a great deal of consideration of rehabilitation as an aim of the prison system is therefore hardly surprising. Prison policy makers were far more occupied by reducing the cost of the prison system and actively avoiding innovation. As I have described in much greater detail elsewhere (Rogan 2010, 2011) ministers and departmental officials were excessively cautious and conservative, resulting in a period of stasis in prison policy in the post-independence years.

However, on the few occasions when public officials described their thinking about the purpose of prison, the rhetoric employed was that of progress. The form of language used, however, was dressed in the religious or moralistic tones of reform and salvation, reminiscent of Victorian ideals of penality, surrounding 'saving', the regenerative power of work and moral reform.

This was shared across party lines during the 1920s. The Cumman na nGaedheal Minister for Justice, Minister Fitzgerald-Kenney, stated in 1928 that: “in dealing with prisoners the main object is to endeavour to reform them, to endeavour to bring home to them that though a man may have fallen he can rise again; ... Our idea is to try to save these prisoners” (*Dáil Debates*, vol 27, col 368, November 16 1928). Mr Little TD, for Fianna Fáil stated that the moral regeneration of the prisoner should be the driver for prison reform (*Dáil Debates*, vol 27, col 372, November 16 1928).

“Rehabilitation” as such was not a word familiar to the penal policy makers of this period. The idea of changing prisoners, or helping prisoners to change themselves, was more closely related to the Christian idea of saving rather than any broader or indeed more secular notion of ‘social rehabilitation’. That said, though they were undoubtedly paternalistic, it is significant that the policy-makers of the period were not speaking a punitive language.

Things were little different in the 1930s and into the 1940s, with the language of rehabilitation absent from official penal discourse.

In 1947, the Irish Labour Party carried out an examination of Portlaoise Prison, arising out of disquiet concerning the death on hunger and thirst strike there of an IRA prisoner, Seán McCaughey (Rogan 2008). There was a great deal of public concern about the conditions in that prison, which translated into more generalised criticism of the prison system. The Labour Party’s report, which ended up being the first policy adopted by any Irish party on the prison system, called for the establishment of ‘colonies’ rather than jails which would allow for the segregation of prisoners and provide work and training. Significantly, it planned for longer-term prisoners to be accommodated under the care of a doctor and a psychiatrist and for such prisoners to be equipped for release through a combination of moral and physical training. This thinking was getting close to penal-welfarism.

As for the Government of the day, however, it implemented the Prison Rules 1947 which were largely Victorian in their outlook. These Rules, designed to govern every aspect of prison life, were essentially administrative, with an obvious concern with hygiene, cleanliness and good order. Within those rules there was little attention devoted to the question of the ‘treatment’ of prisoners in a rehabilitative sense. The language of rehabilitation was, however, beginning to appear, with the Visiting Committee of the prison

at Sligo commending the changes brought about in penal regimes in the 1940s for their impact on the rehabilitation and reformation of the prisoner.

These were isolated pockets however, and rehabilitation did not penetrate official thinking for some time to come. There were some signs of change in 1958 when the then Minister for Justice, Oscar Traynor T.D., argued that rehabilitation was not possible in Ireland at the time because sentences were too short. However, change was on the horizon and in a couple of years rehabilitation went from being something which was unusual, a bit exotic, and rarely spoken of, to a central idea behind penal thinking, something to be proud of, something to show off. This happened during the crucial decade of the 1960s.

### *Rehabilitation becomes fashionable: Ireland in the 1960s*

Rehabilitation became fashionable in Ireland in the 1960s. Temporary release was introduced in the Criminal Justice Act of 1960. It was introduced not to alleviate overcrowding, which was part of the reason for its introduction in the UK (Newburn 2003) and indeed to which use it was put in Ireland later, but, rather, as a humanitarian measure for prisoners who needed to be at home for whatever reason for a short period and as a mechanism to prepare people for release. Its introduction was an indication of things to come. In 1962, Charles Haughey became Minister for Justice. I have written elsewhere about the impact he had on the Department of Justice, which was, in my view, significant and long-lasting (Rogan 2010). No doubt, this was a young Minister, in his first portfolio, desiring to impress and to be seen to be active and forward-thinking.

Haughey used the term rehabilitation repeatedly in his discussions about prison. This is illustrated by some examples of the type of language he used:

Prison will always be a place of punishment, but it seems to me that our prisons nowadays must to an increasing extent become places of rehabilitation as well. In so far as rehabilitation may save a person from the misery and degradation associated with a life of crime, it is entirely justifiable on humanitarian grounds alone. In addition, however, it can be regarded as something which brings a positive benefit to the community as a whole. It can mean the difference between a former prisoner

continuing as a burden on the community or becoming a useful member of society.  
(*Dáil Debates*, vol 198, col 126-7, November 27 1962).

He had the following to say about temporary release: “I am very enthusiastic about the system – the idea that you would trust somebody to go out into the world, to enable them to readjust themselves, these are the important things”. He argued its use was “enormously beneficial” as it showed to a person that “we trust him” and that it “proves that everybody isn’t against him”. Overall, he considered it could have “really satisfactory results” (“Young Offenders in St. Patrick’s Institution”, An Radharc Archive, Ref No 9, available in the Irish Film Archive).

It was not, however, solely Charles Haughey who was experiencing these new impulses and feelings, or was riding these winds of change. The Department of Justice was also working on proposals which can be described as having a rehabilitative ethos. Haughey and Peter Berry, Secretary General of the Department of Justice, combined their forces to establish an Inter-Departmental Committee on Juvenile Delinquency, the Probation System, the Institutional Treatment of Offenders, and their After-Care in 1962. Again, this language was revolutionary. Haughey himself remarked that the recommendations made by the Committee had “in the main, as their aim the social rehabilitation of the offender” (*Dáil Debates*, vol 198, col 124, 27 November 1962).

In the 1962 An Radharc documentary referred to above, Haughey described his plans for St. Patrick’s Institution. He informed the interviewer that “we have a great deal of plans and ideas in mind” including the primary hope to obtain a new, more spacious, building, the provision of an educational psychologist and a matron to provide a feminising influence on the boys” (“Young Offenders in St. Patrick’s Institution”, An Radharc Archive, Ref No 9, available at the Irish Film Archive). As we know, St Patrick’s remains in operation on that same site today.

The Inter Departmental Committee established in the 1960s engaged in activities which were also characteristic of penal-welfarism – research. There were somewhat amateurish attempts to establish ‘case histories’ of people detained in Mountjoy. This was undoubtedly modest, but this desire to come to know the offender, to pathologise, to diagnose, to cast a criminological gaze on a person, is certainly characteristic of penal-welfarism. Significantly,

this Committee also sought out and apparently read *Penal Practice in a Changing Society: Aspects of Future Development*, a UK Home Office publication from 1959, which is considered to represent much penal-welfarist philosophy and practice. The Committee also sourced newspaper reports on Swedish plans for prisons. The Committee also got results, something which is perhaps rather rare in the history of Irish prison policy. Again, its proposals are characteristic of penal-welfarism. It is possible to attribute the development of a psychiatric ward at Mountjoy to the Committee, along with the reopening of the prison school and the expansion of prison trades as well as the introduction of what became 'the Training Unit' to the work of this particular committee.

But the Department of Justice had even more radical plans for the prison system. In the early 1960s a number of proposals, which never made it to public discussion, were, at least superficially, penal-welfarist in nature and self-consciously and unashamedly aimed at rehabilitation. The Department was considering whether abandoned farms in the West of Ireland could be used to provide temporary or permanent housing for groups of prisoners or prisoners together with their families. It was suggested that the prisoners would be paid at a rate lower than the going minimum, with the state making a contribution. No objections were envisaged towards the scheme.

An official in the Department was also writing this revolutionary stuff: "prison should mean two quite different things: A means of rebuilding and restoring the failure, and a punishment – severe enough to be an effective deterrent" (Unsigned, undated memorandum, unreleased, uncatalogued, Department of Justice Files, 93/182/17. Emphasis in original).

### *Changing language in the media*

The media reports of the time were also using this language. *The Irish Independent* for example carried a very favourable report saying the developments represented "one of the most encouraging steps forward in prison reform and rehabilitation ever taken in this country" (The Irish Independent, October 10 1964). *The Irish Press* in 1967 carried a feature piece on "Our Prisons Today" arguing that "the emphasis has now passed from punishing men to attempting to cure them of the disease of crime" (The Irish Press, June 29 1967). That same year, *The Evening Herald* reported that "a wind of change is blowing down our

prison corridors”, thanks to the introduction of corrective training, ‘work parole’ and changes in the work practices of prison officers (The Evening Herald, April 28 1967).

One very significant example of increasing media interest in penal affairs came in the form of a television documentary made for Telefís Éireann as part of the ‘Discovery’ series in 1965. This was sanctioned by the then Minister for Justice, Brian Lenihan who hoped that:

Such a documentary, showing the new methods of treatment introduced under our penal reform programme, would lead to greater public interest and co-operation in the efforts of prison administration to secure the social rehabilitation of persons discharged from prison.

(Letter from Lenihan to Rugheimer, Controller of Programmes, Telefís Éireann, January 29 1965, National Archives, Department of Justice Files 2002/2/94).

The programme apparently had “the Minister’s enthusiastic approval” and it was even hoped to show it at the forthcoming UN Congress on Crime Prevention and Treatment of Offenders in Stockholm.

The discourse of the documentary was characteristic of the period. The voice over attested “one of the constant factors in crime is lack of education” and alcohol. A Welfare Officer was filmed saying: “now don’t forget – my job as Welfare Officer is to help you and your family.”<sup>1</sup> The Governor was also shown guiding prisoners into what was described as “useful therapy”. An interview with a warder elicited this response: “the old style warder was ... ‘custodian’. Today’s warder needs to be half-psychologist, half schoolmaster and as much the prisoner’s friend as his guardian”.

The documentary concluded that, with a prisoner “there is no point being tough ... the greatest truth of the prison service is that tough prisons are always full. Let us have prisons that can one day lie empty”. Such was the perception of change within the system that the documentary asked “have we simply gone soft on men?” to which the Governor replied “we are not here to punish men ... our intention is for them to leave here as better citizens”.

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<sup>1</sup> The prisoners’ cells in the ‘special landing’ were also shown and it was stated the cells could be decorated as they wished with pictures etc. According to an officer, Pope John XXIII and President Kennedy were the most popular adornments, though the ‘old lags’ rarely decorated their cells at all.

The Department of Justice was particularly receptive and enthused this by project, reflecting an openness towards penal matters that dissipated in the following decade. Some of this openness must also be attributed to the very favourable portrayal of the Irish system and the approach of the prison authorities given by the filmmakers. The Producer of 'Discovery' wrote in the RTÉ Guide that Ireland had "the most enlightened penal system in the world" and having been in many prisons before "I have never encountered such a reformatory atmosphere as I did in Mountjoy" (Letter from Kennerley to McCarthy, May 3 1965, National Archives, Department of Justice Files 2002/2/94).

The fact that this kind of language and assessment was that approved by the Department is itself striking. During this period Justice officials were more than comfortable with the notions of rehabilitation, assistance, training, and humane conditions. At no stage was there a discussion that there might be a public outcry about the portrayal of the prison system in such a way or concerns that perhaps voters or politicians would not bear the evidence of the documentary. The Department, by contrast, wanted to put forward such a position through the media, suggesting that it was, at this time at least, most enthusiastic about the ideas of modernisation of the prison system and prisoner welfare.

*Rehabilitation appears in legislation* Ultimately, the ongoing commitment within the Department of Justice to this changed language led to changes in legislation under another young Minister, Dessie O'Malley, who became Minister for Justice in 1970, at the age of 31.

O'Malley piloted the Prisons Act 1970 through the Dáil, though it was essentially a civil-service driven development in gestation for several years. The Prisons Act 1970 was the legislative zenith of this period in Irish prison policy. Its immediate impetus was to provide statutory regulation for Shanganagh Castle which had been opened in 1968 as a semi-open prison for young people. However, the Act went further. Its preamble and explanatory memoranda stated its purpose was "to enable the Minister for Justice, for the purpose of promoting the rehabilitation of offenders, to provide places other than prisons for the detention of persons". Rehabilitation was now an official aim of the Irish prison system, in legislative form. Interestingly, this has never been repealed. Moreover, the softer term 'place of detention' was introduced into the Irish penal lexicon.

In the Dáil, the Minister stated a number of principles about which he felt there was 'general agreement', one of which was that the causes of crime were environmental conditions such as educational disadvantage, emotional disturbance and social inadequacy, and that the environment of an institution was basically unsuitable for encouraging individuals to become responsible members of society (Dáil Debates, vol 247, cols 100-1, 26 May 1970).

### *Rehabilitation and sentencing*

The judiciary was also demonstrating reformist and rehabilitative signs during these years. In 1969, Butler J introduced a new form of sentence into the limited panoply of options for the Irish judiciary in the case of *State (Woods) v Attorney General* ([1969] IR 385). This type of sentence became known as the 'Butler Order' and involved the imposition of a custodial sentence with a direction that the offender should be brought before the court again after having served a specified portion of the sentence. At that point, the judge would then make an assessment of whether the remainder of the sentence should be suspended, subject to the accused entering a recognisance to keep the peace for the remaining period. Such a recognisance would also typically involve undertakings to participate in certain activities or seek help for an addiction for example. In this case the judiciary took it upon themselves to create a rehabilitative alternative to the prevailing sentence options.

Suggestions for further sentencing reform came from the bench in 1972. Henchy J, while sentencing a repeat offender in the Central Criminal Court stated that he regretted the fact that he had no power to arrange a more suitable form of treatment. Specifically, it was suggested that, instead of giving judges the sole power to remand a person to a mental hospital or psychiatric institution for treatment, "independent lay assessors should be employed in courts and proper professional diagnostic services be made available before any attempt is made to deal with offenders" (The Irish Press, July 28 1972).

All of this tends to support the conclusion by Kilcommins et al that "as belief in rehabilitation waned elsewhere, it began to be formally embraced in a modest way by the Department of Justice" (Kilcommins 2004, at 53), and, arguably, beyond.

### *Rehabilitation after the 1960s*

The 1970s were, however, also a time of great crisis in the prison system. The Troubles placed a great deal of strain on a prison system which was beginning to become overcrowded and affected by drug addiction. The Department of Justice became a secretive and defensive place, with a huge degree of emphasis placed on security and defence of the state. However, in the midst of this, the Department of Justice continued to pursue a rehabilitationist agenda and successive Ministers for Justice declared their commitment to the principles of rehabilitation, such as Minister Gerry Collins in 1978 (Dáil Debates, vol 303, col 1114, 14 February 1978).

The 1980s were an extremely bleak decade in Irish prison policy generally. Rehabilitation was viewed almost a luxury penal policy makers couldn't afford in these years of severe overcrowding, doubling up, high levels of temporary release, and limited funds for the prison system. Rehabilitation is a word little enough used by policy makers during the 1980s.

It was, however, a significant feature of the reports carried out on the prison system during these years. The Whitaker Committee in 1985 stated that rehabilitation should be the aim of the prison system and the MacBride Commission and the Council for Social Welfare were highly critical of the lack of rehabilitative efforts within the system. The lack of any effective response by the Governments of the 1980s to these reports is telling. For them, rehabilitation had little place in a system under such immense strain. It is also important that there was no active opposition to rehabilitation as a concept. Indeed, when the prison system and, perhaps, its policy-makers recovered from the crisis ridden 1980s, the 1994 Department of Justice document *The Management of Offenders: A Five Year Plan* sought to introduce a positive sentence management committee for each prison. It is interesting to note here on the change in language, perhaps subtly, away from rehabilitation to this contemporary concept of 'positive sentence management'.

Much less in the way of hesitation or holding back regarding criticism of the concept of rehabilitation was evident in the mid 1990s. Governments of that period did not speak of a commitment to, never mind laud, rehabilitation. Opposition parties linked the concept of rehabilitation to a general softness on crime.

Liz O'Donnell T.D. said in 1994: "my generation grew up with a liberal approach to crime. However, as one encounters crime, those liberal views are quickly diminished" (Dáil

Debates, vol 443, col 1946, 15 June 1994). She also criticised a lack of prison building as being an example of a “woolly minded preoccupation that all criminals are ultimately victims” in 1997 (Dáil Debates, vol 474, col 1101, 11 February 1997). A Fianna Fáil T.D. criticised temporary release, saying the prison system had a higher turnover than Dunnes Stores (Dáil Debates, vol 459, col 1812, 29 November 1995). Ivor Callely T.D., in 1997, asked a series of questions of the Minister for Justice regarding the provision of facilities and items such as magazines to prisoners. He then criticised the government for providing “swimming lessons, outdoor pursuits and telephone calls” to prisoners (Dáil Debates, vol 475, col 76, 18 February 1997).

There are many things which could be said about the 1990s, but perhaps the greatest contrast from the 1960s and, I argue, its most pernicious legacy, is the following. In the 1960s the debates about prison policy concerned what prison should do, what it should be for, and the objectives of punishment. In the 1990s, the debates revolved around a single, ultimately extremely narrow and sterile issue – prison space and prison building. What prison should do, apart from lock more people up, did not receive prominence on the Governmental agenda.

There is complexity here, however, as it was also in this decade that treatment programmes for those convicted of sexual offences were established and, in the 2000s, there are statements from Michael McDowell, that he was interested in developing new prison facilities to improve conditions and he was the Minister who oversaw reform of the temporary release system, but crucially, not its abandonment (see Rogan 2011, Chapter 9). Temporary release was restated as being of importance to reintegration and sentence planning.

It is clear, however, that rehabilitation certainly did not have the cachet that it had in the 1960s and 1970s or indeed the political appeal.

#### *Future directions*

What of today? It seems that we have the language of rehabilitation reappearing in official discourse. For example, the terms of reference of the Thornton Hall review group charged the group with examining, *inter alia*:

The need for an adequate stock of prison accommodation that meet required standards including in particular, in cell sanitation, adequate rehabilitation, educational and work training facilities for prisoners as well as facilitating contact with family members and other standards identified by the Inspector of Prisons and relevant international bodies;

It will be interesting to see whether these sentiments mark a renaissance for rehabilitation in Irish prison policy, or indeed, to see further what our policy-makers mean when they use the term.

### **Reflections on rehabilitation in Irish prison policy**

This brief history tells us some interesting things about rehabilitation as a concept in Irish prison policy, and perhaps more generally.

First, it is clear that what policy-makers think they are saying when they talk about rehabilitation is important to interrogate and understand. The term can be capacious, ready to be filled with whatever sentiments and viewpoints the speaker holds regarding punishment and prison generally. Often it is a term merely bandied about without a great deal of reflection as to what is meant by it or what the implications of advocating for it are. Sometimes, rehabilitation is used as a shorthand to describe broader and usually equally ill thought out positions a speaker wishes to be seen to hold or to ascribe to others. It was a feature of the discourse on prison policy in the 1990s, for example, that rehabilitationist motives were assigned to political opponents who were generally 'soft' on crime.

Similarly, the absence of discussion on rehabilitation, as a form of 'unthought thought' (Tonry 2001) is itself revealing of the nature of prison policy at a particular moment. In the 1990s and 2000s, those wishing to be seen as cracking down on crime spoke the language of prison expansion rather than describe what they considered the purposes of imprisonment to be. The lack of examination of rehabilitation in the period from the 1920s to the 1950s was, by contrast, as a result of the term simply not being conceived of or imagined.

It is only in the 1960s and 1970s that we see rehabilitation being advocated as what appears to be a genuine objective for the prison system. This can be attributed to the coincidence of a group of individuals wishing to make changes in the prison system, the fact that

'rehabilitation' was considered to be the modern, progressive way, and a climate in which being modern and progressive were things to be admired.

The experience of Ireland tells us some interesting things about penal-welfarism more generally. If we recall the background 'conditions' which Garland describes as being present in the development of penal-welfarism in the United Kingdom, increasing prosperity, the support of social elites, a social democratic consensus background in politics, these were present in Ireland during the 1960s. The 1960s has been described as a decade of progress, modernisation, a shift to the left in politics, increasing prosperity (Keogh 2005; Lee 1979; Foster 1989; Tobin 1984; Lyons 1973). The experience of Ireland indicates that such background conditions are necessary for the development of penal-welfarism.

What Garland's account doesn't contain, however, which Ireland shows very clearly, is the importance of individuals and their objectives outside those in the penal realm, in the creation of a penal style. It is by no means certain that Charles Haughey had a fully developed understanding of rehabilitation and what its role in the Irish criminal justice system was, but the fact that it was associated with being European, modern, exciting, forward thinking was clearly highly influential on him. These matters deserve our attention in order to understand the nature of and driving forces behind prison policy.

### **Barriers to criminological research in Ireland**

#### *The role of research and our data deficits*

Underpinning the rehabilitationist project was a criminological research base or at least an interest in research. In Ireland of the 1960s this was certainly very limited, with very modest attempts being made to source research carried out abroad and to carry out basic surveys on the prison population. However, this desire for research was indicative of a penal-welfarist approach to prison policy.

These early indications that there was an increasing appetite for more research on Irish prison policy were not borne out in subsequent years. Certainly the tentative plan to create a research unit within the Department of Justice mooted in the 1960s has never come to fruition.

In this part of the lecture I would like to examine the barriers to research on prison policy and prisons in Ireland at present.

Ian O'Donnell has written thought-provokingly of whether it is naïve, or even dangerous, to believe that more and better research will inexorably lead to what might be considered progressive policy outcomes (O'Donnell 2011). In O'Donnell's view, the limited capacity for research on Irish criminal justice may have acted as a bulwark against more punitive elements of crime policy introduced elsewhere. As the experience of the USA and the UK shows, well developed research infrastructure is no insulation against outcomes which penal reformers would consider authoritarian and counter-productive. It is true that if we evaluate and find failure, we open up the possibility of alternative, more repressive policies.

It is evident that politicians act for a variety of reasons when creating criminal justice policy. As Tonry argues, policy makers often act for symbolic purposes, creating policy for reasons far removed from the desire for an effective way to reduce crime (Tonry 2004). The personalities and particular interests of Ministers and senior civil servants are often decisive in creating a policy direction (Rogan 2010). The manner in which research evidence is presented to policy-makers can also be influential (Stevens 2011) as can broader ideological agendas. As Loader and Sparks suggest (Loader and Sparks 2004; Loader and Sparks 2011), criminologists, and I would argue, penal reformers, would do well to examine what it is that motivates particular policies rather than puzzle over and critique politicians who implement policies which do not accord with what research evidence suggests is sensible.

Improving our research data may do little to shift political objectives or how research evidence is used in the service of other goals. Advocates of improved research infrastructure in Ireland should be alive to the concern that more research by no means inexorably leads to better policies. While that is so, it is also the case that the lack of good criminal justice data in Ireland has frustrated efforts to contest and challenge the policies which have been made.

Taking full account of the concerns regarding improved research infrastructure, it is nonetheless submitted that we would do well to address the research deficits in Irish criminal justice. Unfortunately, there are many of them.

Our criminal justice datasets in Ireland are generally of poor quality and we lack basic statistical information and have poor statistical infrastructure. The Annual Reports of the Irish Prison Service and the publicly available data on our prison population is scant. We lack full information on sentence length and offence type. Full demographic information on who our prisoners are is not published. As has been described elsewhere (Rogan 2012; O'Donnell 2004), we are unable to link data across the criminal justice system, with the Courts Service and Prison Service, for example, using incompatible computer systems militating against the easy cross matching of data.

Our past performance in the recording of criminal justice data is not auspicious. Throughout a number of periods in the state's history, the publication of annual reports on the prison system has been tardy and uncomprehensive. As O'Donnell notes "prior to 1995, the annual reports on prisons and places of detention ... were reasonably detailed, but often published so far in arrears that their value was severely curtailed" (O'Donnell 2008, at 121). During the 1970s, for example, prison reports were published intermittently and after an absence of some years, with the pressure of work cited as the reason for this delay. Remarkably, during the years 1995 to 2000 no annual prison reports were published and when these were produced as a compendium, the figures given related only to the total number of committals. No detailed breakdown is given regarding the number of remand prisoners nor those detained under immigration laws. This is all the more worrying given that this period was one which witnessed fundamentally important decisions about prison policy. Kilcommins et al report that a Cabinet Minister at the time described a proposed increase in prison spaces at the time as having been come up with "on the back of an envelope" (Kilcommins 2004, at 238).

The lack of data on Irish criminal justice has been lamented for some time (CIPS 1985; Law Reform 1996; O'Mahony 1996; O'Donnell 2008). In 2002 the Government established an expert group on crime statistics to examine and make recommendations on the collation and presentation of information relating to reported crime. This group was set up because of limitations identified in the collection of crime statistics (Statistics 2004). The Group recommended improved linkage across criminal justice data collections, which has been very slow to develop, and the establishment of a specialised unit within the Department of Justice, which has not yet happened.

### *Sentencing data*

The lack of data on sentencing has also been criticised over many years (Hamilton 2007; Bacik 2002; Hamilton 2005), and considered to be inimical both to consistent sentencing and research.

Recently, the Irish Sentencing Information System, a pilot project undertaken by the Courts Service of Ireland, has made a database of hundreds of District and Circuit Court cases and sentences publicly available through its website, [www.irishsentencing.ie](http://www.irishsentencing.ie) (last accessed April 3 2012). This database contains information on the sentence received for those cases captured by the database and some basic information on the person sentenced, but the information is not always recorded consistently, not all information is present and the information is not presented in a way that makes it easy for the sentencing researcher to work on.

There is no information given in ISIS on whether the sample sizes for particular offences can allow for meaningful statistical analyses for example. Some offences have only a few entries and it might be considered whether resources would be better directed in targeting certain offences, perhaps those attracting presumptive or mandatory minimum sentences. The data could also be presented in a format which a researcher could transfer easily into a statistical package for analysis. It is respectfully submitted that the Central Statistics Office be involved in either the development of the system or in the collection of sentencing information in the future.

The Irish Sentencing Information System is a potentially valuable development in increasing understanding of sentencing and the factors taken into account by judges. However, the database could be developed in a way that would give researchers an excellent tool for understanding what influences sentencing.

As well as deficiencies in sentencing data, our understanding of who our prisoners are and the backgrounds they come from is limited and our knowledge is garnered from a small number of one-off studies. These studies have provided us with essential and rich data on where prisoners come from, go home to and the type of lives they have had prior to imprisonment. We know that the Irish prison population is characterised by poor

educational achievements, socio-economic disadvantage (O'Mahony 1997), homelessness (Seymour 2005), high incidences of mental illness (Smith et al. 1996), especially amongst women (Carmody and McEvoy 1996) and physical disease, especially blood-borne viruses (Smyth, Barry, and Keenan 2005).

These investigations have enriched our understanding of those we send to prison. However, there are systemic barriers to conducting such research. The fact that the Prisoner Information System is not publicly available (with appropriate, robust safeguards to ensure anonymity, see further (Rogan 2012, forthcoming)) means that each study required individual applications for access, ethical clearance and data collection. This is time-consuming, expensive and labour intensive. It also means that each study provides a 'snapshot' of a particular population or point in time, with no ability to link the data to other studies or to give a longitudinal perspective.

The Irish research community has the ability to turn its attentions more closely to the criminal justice and prison systems. However, as O'Donnell et al correctly state, the hurdles to research "make[s] it difficult to assemble and accumulate the basic knowledge about crime and justice issues that is required to put things into perspective for concerned citizens and to guide decisions by policy makers" (O'Donnell, Hughes, and Baumer 2009, at 124).

### **Deficits of imagination: criminal justice policy and social policy**

There are also deficits of imagination. It strikes me almost every time there is a debate about prison policy, we encounter a blind spot. We are very experienced in talking about prison solutions to criminal justice problems or criminal justice solutions to prison problems, but we lack the insight and tools to understand prison policy as one facet of a much larger question of social policy. We are still struggling to pose, never mind answer, the questions of what the role of the prison is in improving society and how prison is part of broader social policy problems.

A further barrier to research is the fact that we remain unable to link criminal justice data to existing data repositories on health, education, and elsewhere. In this regard, we could take inspiration from the public health domain and, particularly, its focus on the development of

large population registries which seek to examine a wide range of factors which may have influence upon disease.

When developing our statistical infrastructure in criminal justice, we should ensure whatever we create gives us the possibility of linking to other government data repositories. This would give us a fuller picture of what our current prison population is like, as well as proper, robust statistical evidence of its needs.

There are precedents elsewhere which indicate what could be possible. For example, in Western Australia, a study has been undertaken to link the records of those in prison with health records in order to investigate the morbidity and mortality of the prison population (Larney and Burns 2011). A large project has also been undertaken to link the records of young people in conflict with the criminal law and health, education, child protection and disability data to examine developmental outcomes in children (Ferrante 2009).

We know that the nature of our current prison population and prison policies mean we will find a picture of multiple disadvantage for many, but without the ability to capture this information repeatedly, our capacity to argue about the need to see criminal justice as just one aspect of social policy is sorely diminished.

Population registries which examine the distribution of crime are open to the charge that they cement views of what crime is and who it is committed by. A database would find it easy to capture data on burglaries, thefts and street-crimes, but white collar and financial wrongs may not feature, not because they do not occur, but because they are not defined as crimes or are not prosecuted. This is not something a criminal justice population registry can resolve. It may be the case that the data analysis it would engender would cement stereotypical views of what crime is, but there is no reason why definitions of crime within the registry would not capture 'white collar' offences, once these are created and prosecuted. As noted above, data alone cannot alter criminal justice ideologies or policy objectives, however, it can assist in drawing attention to their outcomes. A further advantage is that a generalised criminal justice registry would not specifically 'target' regularly studied populations, but would collect data across the population as a whole. In

this regard, robust data protection measures are essential and some possibilities to ensure that data is collected in accordance with legal requirements are discussed in (Rogan 2012).

### *Training for lawyers*

Improving data collection is important, but it is of little use if we do not have a wide range of people able to analyse it. Lawyers and law students have some very interesting perspectives on sentencing. However, they are generally not trained in statistics, nor in research methods outside traditional legal methods, which are mainly desk-based. It is submitted that this to be a major inhibitor to research and change.

Those of us who are involved in the education of law students are in default when it comes to providing them with a rounded and socially useful training. Legal education should be broadened to equip our students with a basic training in statistics and some grounding in quantitative and qualitative methods. This would enrich their education and facilitate them to take up employment in a wider variety of positions. It is further submitted that we are also depriving our policy formation process of the talents of a group of people with potentially socially useful things to say about sentencing and criminal justice data.

### **Penal reform movements in Ireland**

The third and final part of this lecture will examine aspects of the experience of penal reform movements in Ireland.

First, it is of note that there are very few reform movements to speak of. Historically, penal reform organisations have been linked with the Republican movement and, particularly, the Civil War period, the Emergency and the 1970s.

The Churches in Ireland were also, historically, strangely absent from public discourse on the prison system. Individual exceptions from the Catholic Church had a significant impact at particular points in history, such as the intervention of Fr. Flanagan, of 'Boys Town' fame, in the 1940s, Fr. Séamus Conway's work in establishing a post-release hostel in the late 1960s and early 1970s, and the report of the Council for Social Welfare in the 1980s. There are likely to be others of whose work there is little on public record. More currently, the Chaplains, from all denominations, supplement their demanding work within prisons with

contributions to public debate and critique of prison policy (see, for example, Chaplains 2011). The Jesuit Centre for Faith and Justice ([www.jcfj.ie](http://www.jcfj.ie)) also advocates for a different approach to penal policy than that pursued at present.

The Irish Penal Reform Trust ([www.iprt.ie](http://www.iprt.ie)), established in 1994, is the country's leading non-governmental organisation advocating for the rights of all those in the penal system, imprisonment to be a measure of last resort, and for penal policy to be based on a commitment to combating social injustice. I am the Chairperson at present of this organisation and anything I say about it must be read in that knowledge.

The Irish Penal Reform Trust has established itself as an organisation which presents evidence-led, constructive, policy proposals based on its core principles, as well as engaging in public debate, amongst other activities. The fact that a dedicated penal reform organisation developed so late in Ireland by comparison with the United Kingdom indicates something quite significant about how penal matters have been viewed in Irish society, as well as the role of civic organisations generally, both of which merit further research.

In the past, prison interest groups appeared intermittently at times of conflict. A most interesting interest group from the Civil War and Emergency period is the Women's Prisoners' Defence League, known also as 'the mothers'. The group was established by Maud Gonne MacBride, a former prisoner herself. Incidentally, later in life she set up a jam making factory in Roebuck House to provide employment to former prisoners. She was also the mother of Seán MacBride, noted penal reformer. Seán MacBride was counsel for Seán McCaughey's family at the inquest into his death and also Chair of the eponymous Commission examining the prison system in the 1980s amongst many other things.

The League also involved Charlotte Despard, later active in the Workers' Party, Helena Molony, Dr. Kathleen Lynn, and Dorothy MacArdle. The activities of this group revolved around protest and publicity. The League's members would engage in hunger strikes outside prisons; its leaders would make public speeches, particularly around O'Connell Street and Cathal Brugha Street in Dublin. The League's members also engaged in prison visiting (see further Rogan 2011).

Their impact on prison policy at the time was minimal and it appears they caused little but frustration and annoyance on the part of those in Government. For example, Alec McCabe T.D. declared: “why not let out these prisoners and put an end to the campaign of these wild women who spend their Sundays and the time they should spend in their homes, orating from the ruins in O’Connell Street?” (Dáil Debates, vol 7, col 1135, 21 May 1924). Then Minister for Home Affairs, Kevin O’Higgins T.D. took a similarly dim view, describing those involved as “hysterical young women who ought to be playing five-fingered exercises or helping their mother with the brasses” (Éire, 19 February 1923).

In assessing their impact we must remember, however, that the State in these periods considered itself under attack and the prison system was part of its defensive strategy. The association of these groups with Republicans meant they were not ‘acceptable’ to policy-makers, to use Mick Ryan’s term (Ryan 1978) . But to say that or critique them on that basis is to miss their point. They weren’t interested in cooperating; they were a protest movement aligned to a political agenda against a very particular backdrop in Irish political history.

### **Influencing policy**

Penal reform organisations and criminal justice interest groups seeking to influence policy can take some interesting lessons from Alex Stevens’ research conducted ‘undercover’ in an unnamed section of the UK’s Home Office (Stevens 2011). Stevens worked with a group of civil servants responsible for responding to requests for information by senior civil servants and elected officials, and developing policy proposals. Stevens encountered a group of people not lacking in research resources but in fact swamped by them. He found that the volume of this material, most of which was, in the academic way, inconclusive and filled with caveats, meant that those he observed engaged in a process of ‘selling’ policies to more senior colleagues. Solutions were presented as irresistible; uncertainty was to be avoided at all costs, and the complexity and qualifications attaching to research or proposals erased. These civil servants were also aware of proposals that would not ‘fly’, given the ideological or political commitments of the special advisers they would present their ideas to. For example, arguments that increased use of imprisonment was not a good use of

public resources were left out of their presentations as they knew they would not be welcomed.

Much of what Stevens found is depressing for those who desire a genuinely 'evidence-based' policy making process. However, his insights show us that reform organisations must work in ways that are likely to have the greatest impact upon those involved in that process. Being to the point and making the best use of busy policy-makers' time are two valuable lessons in this regard.

There are, however, clear dangers in denying the complexity of issues. Governments don't always listen to or use evidence but reform organisations can't do without it. It is essential for the credibility of the proposal and the organisation putting it forward that there is a strong basis for it. In my experience, the most effective strategy is to present solutions to policy-makers, but to ensure these are based in much more complex, detailed and considered positions.

It is also important that reform organisations, if they are in the lucky position of being able to influence policy decisions, do so in ways that ensure they remain at a critical distance from Government. Mick Ryan writes forcefully and critically about the elitist policy-making-pressure group circles at Whitehall, where decisions were made in dining clubs and other comfortable surroundings (Ryan 2003). The democratic deficit inherent in such activity is of obvious concern.

The Irish experience also points us to a very particular dynamic in the policy-making process which reform groups might do well to remember. The history of Irish prison policy tells us that individual Ministers and civil servants can have enormous and long-lasting influence over the future direction of the penal system. Recognising the power of individuals and the importance of personality is essential to ensure policy ideas are translated into practice.

### **Conclusion: Remembering Martin Tansey**

My lecture has attempted to sketch the history of rehabilitation in Irish penal thinking, to draw attention to some barriers to research, and suggest ways to reduce them. I have also provided a brief examination of reform movements in Ireland and one or two practical ideas about how to influence change. From what I have read and heard of Martin Tansey, I know

he was an advocate of a penal policy based on a rehabilitative ethos, and was committed to research led policy. He was someone who desired reform and, crucially, worked hard to achieve it. For all these things, a fitting way to thank him would be by trying to pursue those actions in the time that is given to us.

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