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# **Criminal Justice Culture(s) in Ireland: *Quo Vadis?***

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- Irish criminal justice ‘culture’
- Policing, penal and legal subcultures
- *Quo Vadis?*

# Part 1: Irish Criminal Justice Culture

# The Importance of Culture

‘To get answers on [matters of crime and punishment] we need to tackle interpretative problems such as how different societies conceive ‘disorder’, and how differences in social, political and legal culture inform perceptions of crime and the role of criminal justice agencies in responding to it.’  
Nelken (2010: 5)

‘Over the past decade a long list of institutional failures have been attributed ultimately to the prevailing culture of those institutions, including FÁS, the system of childcare, Fianna Fáil, the Central Bank and financial regulator, the Department of Finance, juvenile prisons, various hospitals and the HSE as a whole, the Gardaí, property developers, the political system, the civil service and so on. Strong words were used by respected commentators to characterise particular cultures, words like cover-up and collusion, denial, deference, irresponsibility, entitlement, corruption, clientelism, cronyism, secrecy, extravagance, greed and ‘gombeen man’ (Molloy, 2011).

# Definition: criminal justice culture

- ‘Legal culture, in its most general sense, is one way of describing relatively stable patterns of legally oriented social behaviour and attitudes. The identifying elements of legal culture range from facts about institutions such as the number and role of lawyers or the ways judges are appointed and controlled, to various forms of behaviour such as litigation or prison rates, and, at the other extreme, more nebulous aspects of ideas, values, aspirations and mentalities. Like culture itself, legal culture is about who we are not just what we do’ (Nelken 2004: 1).
- Cultures\_ rather than culture? Yes, but some cross-cutting features.
- Level of interdependence (Zedner, 2005).

# Irish Criminal Justice Culture

- The critical mediating effects of local culture and national psyche (Hamilton, 2014)
- Features:
  - Importance of discretion
  - Gap between policy and practice
  - Primacy of individuals (agency)
  - Humanitarianism?

# Importance of discretion

- ‘There is still in this country a certain pride attached to the exercise of personal discretion in the face of strict rules’ (Duncan, 1994: 452).
- Cultural preference Irish people often exhibit for resolving matters informally:
  - ‘There isn’t such a black and white approach to everything’ (Irish interviewee #3)
  - ‘The Blairite stuff of targets and quotas... maybe it’s one way of doing it but it’s repugnant to the Irish psyche... I mean the Irish media would be horrified if they saw a circular saying you are to catch, you are to increase your detection rate for burglars by 18 per cent....they’d say what kind of nut decided that.’ (Irish interviewee #8) (Hamilton, 2013).
- Disparity between recorded crime rates and victimisation rates in Ireland (ICVS). Lower reporting rates and perhaps a greater use of police discretion (Parsons, 2016)?

# Gap between policy and practice

- Interest is often lost when criminal justice ‘crises’ are managed or averted (Fennell, 1993; O’Donnell and O’Sullivan, 2001), with measures introduced as a response to a crisis often not fully effectuated and occasionally completely abandoned (Kilcommmins et al, 2004).
- A sizeable number of policies have been introduced into the Irish criminal justice system which have not been translated into practice such as presumptive ten year sentences for drug trafficking, anti-social behaviour orders and seven day detention for questioning (Hamilton, 2014).
- ‘Saving grace’ (Hamilton, 2014) or inertia (O’Donnell, 2005; 2008)?



# Primacy of Individuals

- ‘Penal policy in Northern Ireland and the Republic of Ireland highlights the crucial role of agency: individual Ministers can have decisive influence, in some cases reversing what seem to be embedded policy directions, with the actions of Ministers Haughey, Shatter and McDowell in the ROI being instructive cases in point’ (Rogan, 2016: 446).
- Smaller jurisdictions may more easily facilitate dramatic changes in either direction (Hamilton, 2014)

# Humanitarianism?

- Is the release of prisoners at Christmas ‘a remnant of the humanity that continues to characterize the Irish system, for all its flaws?’ (Kilcommins et al, 2004: 265; O’Donnell and Jewkes, 2011).
- At least historically, a ‘humanitarian ethos in relation to prisons...motivated by empathy and a respect for prisoners as people’ (Brangan, forthcoming).
- ‘Despite an increasing focus on risk and public protection in recent years, contemporary probation practice remains largely welfare oriented’ (Healy and Kennefick, 2017: 15).

# The 'Penal State'

- Culture should not neglect the role played by institutions (Blankenberg, 1997; Smulovitz, 2010).
- Garland (2013) has moved on from a focus on a punitive 'culture of control' in western societies to argue for a focus on the 'penal state'. Culture is only in a position to shape penal power to the extent that it is backed by an administrative force.
- 'It matters where control of the power to punish is located, and it matters who controls its deployment' (Garland, 2012: 500) eg shift from judicial to prosecutorial power in US.

# Control of the power to punish in Ireland

- An Garda Síochána as the fulcrum of the Irish criminal justice system?
  - ‘they are a much bigger, more powerful, more significant culturally ... institution in this state than police forces are in most other states... so that crime control in Ireland was always going to be front loaded, because that’s where the power of the criminal justice system in this country actually lies’ (Irish interviewee #7) (Hamilton, 2014)
  - ‘historically in Ireland it has been considered almost traitorous for a politician to criticise an Garda Síochána. Those who did so were almost considered subversive’ (Conway, 2014)
- Important implications for criminal justice culture and for policy eg Garda Diversion Programme.

## Part 2: Policing, Prison and Legal Subcultures

# ‘Cop culture’

- Police culture has been the subject of sustained academic inquiry since the 1960s in most developed democracies including the US, UK, Canada and Australia.
- Reiner’s (2000) work has identified a number of characteristics such as machismo, racism, solidarity/isolation, thirst for action and conservatism among others.
- Despite recent transformations in policing work, researchers have observed a remarkable durability of cultural themes, probably owing to the fact that the basic pressures associated with the police role have not been removed or attenuated (Loftus, 2010).

# Policing culture in Ireland

- Recent focus on this area has revealed extent of problem of speaking up (solidarity) and problems with promotion/competition process (Garda Cultural Audit, 2018).
- Important not to divorce these findings from broader culture (Chan, 1997) such as the 'weak rules/strong relationships' balance that authors such as Niamh Hourigan (2015) argue are a reflection of the Irish value system.
- Calls from the media and the public for greater Garda accountability should not ignore the need for discretion in policing (within a human-rights based framework). Reiner (2017: 4) warns of a view of police culture present in managerial and political debates about police reform that assumes 'they must be rigidly controlled from the outside, or at least from the top'.

# Culture of the Department of Justice

- Toland Report (2014) described ‘a closed, secretive and silo driven culture’, where ‘secrecy was part of its DNA’ together with a ‘deferential relationship with An Garda Síochána’.
- Strongly linked to terrorist threat which has dogged the state since its foundation and the ‘Troubles’ in Northern Ireland (Rogan, 2011, 2016; Hamilton, 2017).
- Cultural constraints are equally as important in ‘hinterlands’ of criminal justice. Need for more research on civil service culture and prosecutorial culture in particular (Zedner, 2005)
- Commitment to ‘developing a culture of research... ensuring that research and analysis becomes part of the ‘DNA’ of the policy and decision making process of the organisation’ (DOJ, 2018: 6).



# Culture in the Irish Prison System

- Like the Gardai, the penal system has been the subject of intense scrutiny and critique (Thornton Hall Project Review Group, 2011 ; PPRG, 2014; Oireachtas Sub-Committee, 2013; Oireachtas Joint Committee, 2018; PPRG Implementation Oversight Group, 2015, 2016, 2017a, b, 2018a, b).
- Inspector of Prisons (2015): ‘Closed mindset’, ‘silo driven culture’, problems with management of prisons and unprofessional behaviour.
- Progress has been slow (IPRT, 2018) but commitment to implementation not seen in the past?

# Legal Culture in Ireland

- Vaughan and Kilcommmins (2008); Kilcommmins (2015):
  - Irish judicial *habitus* ('assumptions, values and beliefs that shape actors' relationships to the social world) acts as an important buffer and sets up a 'legal dialectic' which continues to deliver significant protections to those accused of crime.
  - 'the liberal ideology of legalism and constitutionalism' in Ireland.
- Hamilton (2014):
  - Interviewees spoke of judges' 'liberal instincts' & connected this with the legal training or education they would have received.
  - Some respondents argued that this culture also extended to legal practitioners.
- Mac Cormaic (2016):
  - (citing Brian Walsh) 'perhaps not surprisingly, our views do not find full favour with the police authorities or indeed with the Department of Justice'.
  - 'The man on the Crumlin omnibus was not the man on the Clapham omnibus'.

# Legal Culture in Ireland

- Shift from a welfarist to a retributivist perspective on crime has brought with it a renewed emphasis on the rights of victims (Garland, 2001). The 'culture of control' in Ireland has not overlooked procedural rights (Campbell, 2006; Hamilton, 2014) .
- *DPP v. JC* (2015): Reversal of *People (DPP) v. Kenny* (1990) as the highwater mark of due process:
  - “[Post *JC*] It seems likely that the values of *Kenny* have been so internalised by the legal profession, from which trial judges are drawn, that Clarke J.'s test will be applied strictly. But only time will tell’ (Doyle and Feldman, 2015: 48-49).
- However, there has also been a ‘levelling up’ of rights driven by EU legislation and ECtHR case law (*DPP v. Gormley and White*, 2014).



## Part 3: *Quo Vadis?*

# More Change, less Stagnation?

- Stagnation and change: strength of organized labour within the prison, police and probation services, reluctance among politicians to take on powerful vested interests (O'Donnell, 2008).
- A time of unparalleled change?
  - Significant corpus of critical reports in past 5 years on Gardai, Prisons and DOJ.
- Pressures towards convergence
  - Strong emphasis on European and international human rights standards.
  - Pre-existing norms that are local, informal, subjective, and relational may potentially be challenged by the turn toward more formality and objectivity
  - Brexit?

# Globalisation and relational legal cultures

- Nelken (2012):
  - ‘relational’ legal culture *ie* the extent to which attitudes and behaviour in one legal culture are influenced by information about what is happening in legal cultures elsewhere.
  - Countries ‘try to come into line so as not to be too distant from the norm or average of other countries’.
- Karstedt (2015)
  - Tendency of countries to emulate ‘cultural peers’.
  - Ireland’s tendency to emulate UK legislation:
    - ‘this is simply one more example in the ignominious parade of legislation masquerading under an Irish title... which is a British legislative idea taken over here and given a green outfit with some silver buttons to make it look native.’
    - J. M. Kelly, Dail Debates, 3rd May 1983.

# A World of Difference

- And yet...‘It is precisely under globalising conditions that people’s sense of place and of differences between here/there, inside/outside, us/them – takes on a renewed force as a structuring feature of social relations and culture’ (Loader and Sparks, 2002).
- The longing ‘for a lost (if mythical) world of secure and settled identities’ (Morley, 2000: 152) seems to be at the forefront of contemporary political debate.

# Ideological divisions

- *DPP v. JC* [2017] 1 IR 417:
  - Per O'Donnell J.: 'it seems clear that *Kenny* represents a near absolute exclusion which is the most extreme position adopted in the common law world.'
  - Per McKechnie J.: 'This is what I have seen: as great as the show may be, it is not for me and I suspect not for a great number of others whose bedfellow is the 1937 Constitution of Ireland.'



# ‘Recovering’ our Criminal Justice Culture?

- Brangan (forthcoming) speaks of ‘pastoral penalty’ :
  - Distinctively Irish penal culture whose aims are driven by compassion and community cohesion, not criminal correction.
  - ‘The logic underpinning Irish pastoral imprisonment regimes was to work upon prisoners’ familial and social bonds, their moral connections to ‘the flock’, rather than treating their individual transgressions or recovering them from criminality, recognising their poverty and suffering within the prison’.
  - Imperative of ‘recovering Ireland’s penal culture, revealing its aims and ambitions –provides us with new ways to imagine our futures’.
- Healy and Kennefick (2017: 14):
  - ‘Our study supports the contention that Ireland’s unique penal trajectory was not so much a ‘catch up’ exercise with England and Wales, but arose instead from a series of local political, social and cultural circumstances.... their accounts reveal a practice philosophy embedded within Catholic social values and characterized by a deep sense of vocation.’

# Conclusions

- Increasingly self-aware and relational criminal justice culture(s)
- Cultural hybridity ('glocalisation') (Robertson, 2012) rather than convergence
- Irish criminal justice values?
  - 'patience, humanity, courage, an understanding that there are competing human rights and the capacity to balance those rights... belief that the rehabilitation of offenders was a supremely rational social objective' (Martin Tansey, ACJRD website).



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**Thank you for listening**

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