“Classism and other failures of the Irish Prison System: An Abolitionist Perspective.”

# INTRODUCTION

The Irish prison system is in a state of crisis as evidenced by chronic overcrowding, budgetary cuts,[[1]](#footnote-1) high recidivism rates, endemic fear of crime, poor prisoner conditions,[[2]](#footnote-2) and in particular accusations of discrimination as elements of the crisis;[[3]](#footnote-3) yet the existence of prison remains largely unquestioned.[[4]](#footnote-4) This article, while relying on an interdisciplinary approach of critical perspectives on law, sociology, penology and criminology uses an abolitionist perspective to determine whether prison is a viable solution in dealing with offenders of the criminal law in the context of these failures, especially in terms of its arguable classist nature. More particularly, relative abolitionism seeks the abolition of prison for the majority of prisoners that pose no known physical danger to the public, while acknowledging the need to physically confine a minority of dangerous offenders but not in a prison-like system. The need to abolish prisons resides not only in its clear failure to reduce offending but also in the proposed classist nature of the Irish prison system which means the majority of prisoners are likely to come from poor socio-economic backgrounds.

The article asks; what purpose does prison supposedly serve, whether this is a valid purpose, what its impacts are, and whether it actually achieves that goal, and how prison persists if it does not achieve its aims. [[5]](#footnote-5) Finally, the article considers whether partial abolitionism is a laudable and practical solution.

## CPL

 The article is rooted in the critical perspectives on law (CPL) standpoint. CPL invites us to critically assess taken-for-granted institutions in the legal environment from a theoretical and empirical/effectual standpoint that have thus far have remained largely unquestioned.[[6]](#footnote-6) One such institution that is physically and socially engrained in modern society as self-serving, self-perpetuating and self-evident is the prison. A key foundation of CPL is the lack of free will which many legal foundations rely upon, particularly the criminal law and the use of imprisonment.[[7]](#footnote-7) This article looks at how the socio-economic backgrounds of criminals play a major role in why those of poorer socio-economic demographics in Ireland are more likely to be incarcerated. In the tradition of the CPL scholarship, a holistic radical overhaul of the system is proposed in the form of abolitionism, rather than a tinkering of the use of and treatment in prison within the current system.

# The Theoretical Justifications for and Objectives of Prison

## Retribution

Much legal and philosophical scholarship has been undertaken on the state’s power to punish and imprison.[[8]](#footnote-8) The author agrees with the consensus amongst the majority of academics who agree that, to at least some degree, the state has the power punish transgressors of the criminal law. However from a CPL lens, the theoretical justifications for prisons and punishment under the criminal law (and the validity of these objectives) need to be reviewed before critically evaluating their effectiveness.

According to traditional legal thinkers, social contract theory is the theoretical basis for the criminal law itself,*[[9]](#footnote-9)* and retributivism the key moral justification for administering punishment.[[10]](#footnote-10) When an offender breaks the criminal law, he has unfairly gained an illegitimate advantage over the remaining law-abiding citizens by breaking the social contract.[[11]](#footnote-11) However, this “theory only applies if our society is a just one in which all citizens are genuinely equal. Otherwise there is no equilibrium to restore.”[[12]](#footnote-12)

Criminal law infractions, as opposed to civil law breaches, can be differentiated based upon the ‘moralness’ supposedly associated with criminal law offences. For example, clear moral breaches of physical harm are generally universally seen as warranting the force of the criminal law, under most circumstances.[[13]](#footnote-13) However, beyond these core inherently immoral and criminal acts, it has been argued that the criminal law has become a mechanism whereby the norms and morals of one particular group in society are being imposed on another.[[14]](#footnote-14)

Different theories have been developed to provide justifications, and act as the goals for such punishment. While there are many purposes which are interrelated[[15]](#footnote-15) and muddled,[[16]](#footnote-16) Hart’s belief on the paramountcy of the grand justification of retributivism has emerged as the primary justification. However, varied justifications for prison expressed by its proponents and administrators can be divided into two main rationales – reductivism and retributivism. The prison system acts to reduce crime in some way and/or to give offenders their just desserts for gaining an illegitimate advantage by breaking the rules of the game. The commendability of prison’s retributivist purpose is less clear cut than reductivism. Beyond the inherent gut-feeling of retaliation that a criminal violation ‘deserves’ to be punished, a sounder justification for retributive punishment lies in the fact that the morality of the wrong must be punished as a matter of justice.[[17]](#footnote-17) However, punishment need not take the form of prison.[[18]](#footnote-18)

## Reductivism

The other expressed justification for punishment and prison is more practically beneficial to society. Reductivism, if achieved, does serve a valid purpose, and benefits society if deviant and harmful behaviour (which is consensually construed as criminal in nature) is discouraged. Reductivism, with its roots in utilitarianism,[[19]](#footnote-19) can be subdivided by the manner in which prison seeks to reduce and control crime - deterrence and reform.[[20]](#footnote-20) Prison purports to provide deterrence for that particular offender[[21]](#footnote-21) and other members of society, by making it less attractive to commit crimes in the future.[[22]](#footnote-22) A reformist approach can reduce the incidence of crime by reforming the individual prisoner into a law-abiding citizen.[[23]](#footnote-23) Crime can also be reduced through the physical incapacitation that prison provides, where the offender is deprived of the opportunity to commit crime, and thus protects society.[[24]](#footnote-24) Additionally, prison can be seen as a symbolic expression, denouncing and condemning breaches of society’s moral standards.[[25]](#footnote-25) But again this can be perceived as coming from a reductivist background, given that such condemnation seeks to reaffirm and maintain such standards.[[26]](#footnote-26)

Initially during the inception of the modern prison, reform and repentance were the primary motivations.[[27]](#footnote-27) Prison, in its current form, falls excessively on the side of retribution, even though the language used by politicians is framed in reductivist terms.

On balance, the author agrees with the consensus of the law theorists that punishment can be lawful and moral under certain circumstances, and so the question of distribution of punishment becomes vital.[[28]](#footnote-28) Given that the state has the power to punish and imprison, to what extent can it do so? Becarria believed that the answer lies again in the social contract; citizens of a state would not allow a state to punish excessively, and so proportionality is a requirement for legitimacy.[[29]](#footnote-29) The excessive[[30]](#footnote-30) and discriminatory distribution of punishment through prison is now placing the prison, and by extension, the rule of law under question.[[31]](#footnote-31)

# ASSESSMENT OF PRISON

## Failure to achieve its own goals

Research shows "the prison does not have a defence, the prison is a fiasco in terms of its own purposes".[[32]](#footnote-32) While it is difficult to assess the success of prison in terms of retribution, it seems that prison in Ireland operates in an overly retaliatory and excessive manner.[[33]](#footnote-33) In relation to prison’s other key objective, recidivist studies have shown that prison manifestly fails to reduce crime. In 2013 62.3% of prisoners reoffended within three years.[[34]](#footnote-34) The ineffectiveness of general deterrence and reform is reflected in the fact that prison numbers since 1970s have increased relatively consistently, and yet crime levels have not increased to the same degree.[[35]](#footnote-35) Not only does prison fail to reduce crime, prison itself can actually be criminogenic as a result of processes such as labelling.[[36]](#footnote-36)A key reasons its failure to reduce crime and “reform most prisoners (is) because we fail to deal with the systemic social and economic causes and inequities which contribute to criminality.”[[37]](#footnote-37) At the crux of the argument in this article is that prison is not only a symptom of poverty, but a driver of it.

## Classism

Not only does prison fail to meet its own objectives, it has separate negative effects in by operating in a classist manner.[[38]](#footnote-38)

#### How Classism Operates

1. The drafting of the criminal law can criminalise the lifestyle of those from poor socio-economic backgrounds.[[39]](#footnote-39) Cavadino and Dignan argue that the legislature’s bias[[40]](#footnote-40) has a tendency to leave the interests of the powerless unaccounted for, as evident in the criminalisation of begging,[[41]](#footnote-41) drugs, prostitution and other offences such as drunk and disorderly.[[42]](#footnote-42) Many of these offending behaviours can be seen, from the perspective of offenders for such offences (the majority of whom are of poor socio-economic background) as alternative sense-making tools[[43]](#footnote-43) (as opposed to the mainstream tool of consumption) or as attempts to make a living in order to consume (as opposed to legitimate sources of income).[[44]](#footnote-44)From the perspective of the public, they can be perceived as “annoyance” crimes, albeit framed in a ‘protectionist’ manner.[[45]](#footnote-45)

2. The implementation of criminal law also has a disproportionate effect on the poorer classes. Discretionary selective police enforcement of the law in working-class neighbourhoods,[[46]](#footnote-46) and judicial bias can lead to a higher likelihood that citizens from poor socio-economic backgrounds will get arrested, convicted and receive harsher sentences.[[47]](#footnote-47) Discrepancies emerge in the prosecution of ‘white collar’ fraud criminals compared to other property related crimes.[[48]](#footnote-48) Similarly, up until very recently the operation of the courts system in relation to the imprisonment for the failure to pay debts or court fines clearly had a more onerous effect on the poor who are less likely to be able to repay despite no differential in terms of behaviour.[[49]](#footnote-49) This discrepancy in the criminal law was, however, recognised in Section 19 of the Fines (Payment and Recovery) Act 2014 that introduces a presumption of community service orders upon failure to pay a fine. Imprisonment should only arise where the Court deems it not possible to make a community service order or a community service order is not complied with. The IPRT do however point to certain failings of the new legislation, in particular its impact on poorer sections of the community. For instance, note that the ability to pay fines via instalments is restricted to fines over a value of €100 despite that some families may struggle to make a lump sum payment of up to €100.[[50]](#footnote-50)

3. It is submitted that it is more difficult for the poor to refrain from breaking the criminal law, particularly in relation to its protection of private property.[[51]](#footnote-51) This comes about as a result of the unequal distribution of wealth brought about by “accident of birth”.[[52]](#footnote-52) The criminal law can perpetuate this inequality by prohibiting ‘illegitimate’ appropriation of the current holders’ property, and by making the “fundamental crime of capitalist society, the expropriation of property”.[[53]](#footnote-53) Indeed property related offences of theft, robbery, burglary, fraud and property damage made up 20.5% of new committals to Irish prison.[[54]](#footnote-54)Society’s obsession with property, and its inherent value to the being, has reached new heights in the consumerist era.[[55]](#footnote-55) Such property related offences are an attempt by the ‘underclass’,[[56]](#footnote-56) who are denied access to the social capital (such as education and other support) that would otherwise entitle them access to such consumer goods, to participate in the societal need of consumerism[[57]](#footnote-57) Indeed, Hall et. al., make a fascinating argument that low level criminality has increased as a means to participate as a consumer, which gives all citizens meaning and identities in modern life.[[58]](#footnote-58) This argument is a departure from the traditional Marxist criminological hypothesis where most instances of crime are perceived as class battles and expressions of the proletariat’s frustration with the system.[[59]](#footnote-59) The former is more applicable to modern Irish society. Given that the essence of one’s being and identity is now expressed through conspicuous consumption of designer branded goods,[[60]](#footnote-60) the innately unequal opportunities and distribution of wealth based on accident of birth[[61]](#footnote-61) allows the upper-half of society (who are productive and gain income to consume) to engage with society, leaving the underclass without the means of becoming fulfilled[[62]](#footnote-62); except through crime.[[63]](#footnote-63) Most crimes are now committed out of economic necessity– necessary in consumer culture does not mean to physically survive, but to survive socially in a world of conspicuous consumption;[[64]](#footnote-64) or as a form of escapism from the daily reminders of ‘losing’ in such a competitive world.[[65]](#footnote-65)

#### Evidence of Classism

Irish statistical data supports the assertion that the criminal law, criminal justice system and prison system disproportionately impacts and criminalises the poor. O’Mahony calls these “undeniable facts”.[[66]](#footnote-66) Numerous domestic studies have expressed the disproportionate imprisonment of those from poorer socio-economic backgrounds;[[67]](#footnote-67) as well as the tendency for prisoners to exhibit characteristics indicative of poverty or deprivation[[68]](#footnote-68) including low levels of education,[[69]](#footnote-69) unemployment,[[70]](#footnote-70) addiction problems,[[71]](#footnote-71) mental health,[[72]](#footnote-72) and homelessness.[[73]](#footnote-73)

The geographic dispersion of prisoners’ addresses in 2011[[74]](#footnote-74) is indicative of this trend when compared to the most recent Census in 2011.[[75]](#footnote-75) The notoriety of inner-city communities in Dublin and Limerick as criminogenic areas is backed up by these statistics.[[76]](#footnote-76) Dublin accounted for 27.7% of Ireland’s total population in the 2011 Census, and yet almost a third (32.4%) of committals to prison gave Dublin as their residence.Again, Limerick accounted for 4.2% of the Irish population, but 7% of Irish prisoners were from Limerick. Incorporating unemployment rates into this analysis is also useful.[[77]](#footnote-77) Limerick and Dublin were designated as having the most unemployment ‘blackspots’ in 2011, [[78]](#footnote-78) with Limerick City having the highest unemployment rate in Ireland at 28.6%.[[79]](#footnote-79) When applying the same analysis to other groups in prison; foreign nationals[[80]](#footnote-80) and Irish travellers[[81]](#footnote-81) are overrepresented in prison, again related to their unemployed and poverty status.

#### Why Classism Exists

While a conspiracy against the poor is not being alleged, a tacit exploitation of the poor for political and power purposes exists in Ireland. Prison, its architecture and its raw materials (the poor) act as physical representations and proof of political promises to find a solution to the endemic fear of crime and to criminal sections of the population.[[82]](#footnote-82) Prison is being used not only to gain votes,[[83]](#footnote-83) but on a more subversive level is dividing society in two. The hallowing out of the middle class leaves the privileged upper classes on one side (the interests of whom the politicians represent) and the poor on the other. The criminal law and prison[[84]](#footnote-84) play key roles in the process of making the lines between ‘us’ and ‘them’, [[85]](#footnote-85) the ‘useful’ and ‘useless’,[[86]](#footnote-86) more pronounced. The underclass are economically redundant[[87]](#footnote-87) in a globally competitive Irish economy which is delineated along the lines of highly skilled jobs and low end service jobs.[[88]](#footnote-88) The former traditional jobs of the working class in lowly skilled manufacturing have been eradicated and off-shored to cheaper locations.[[89]](#footnote-89) The underclass, who are largely unemployed, are a surplus population in capitalist society,[[90]](#footnote-90) and certain portions can pose a threat to economic growth.[[91]](#footnote-91) McMahon and Roberts note the ongoing transition shift from a welfare to a criminal justice state characterised by inequality.[[92]](#footnote-92) Prison and the criminal justice system (‘CJS’) serve to deal with the volatile segments of society[[93]](#footnote-93) who Sptizer called the social dynamite.[[94]](#footnote-94) By predominantly criminalising young men (almost half, of the total prison population are males under 30[[95]](#footnote-95))from poor socio-economic backgrounds,[[96]](#footnote-96)social inequality is exacerbated with the poor in general being tainted with the label of criminality and treated as a homogenous group.[[97]](#footnote-97) It is arguable that certain aspects of the criminal justice, judicial and political processes discussed in this article culminate in the criminalisation of poverty.[[98]](#footnote-98) While the complex intricacies of the direct links between poverty, criminalisation and ways of life should not be underplayed and a more nuanced multitude of factors are at play, it nonetheless is an argument with some weight. Logan describes the phenomena as the ‘social apartheid’of the poor.[[99]](#footnote-99)

# ABOLITIONISM

Having considered the appropriateness and morality of the objectives of prison, as well as its intended, actual and other effects, it is apparent that prison is an untenable option. It is an inappropriate and ineffective tool to deal with, first, the surplus populations (the poor), and secondly, offenders, who not only fail to become more contributing and law-abiding citizens but whose criminal tendencies are often exacerbated in prison. We should bear in mind here the other unintended collateral consequences to the wider community.[[100]](#footnote-100)

Any effective alternative to prison will inevitably involve a number of key fundamental changes in different sectors of society, not limited to the CJS.[[101]](#footnote-101) A complete re-appraisal of how we deal with violators of the criminal law and the non-productive in society is needed.[[102]](#footnote-102) However, the most immediate concern, particularly for the poor who are most directly impacted, is the removal of prison from the social landscape.[[103]](#footnote-103) The abolitionist perspective is useful in attempting to envisage and implement such sweeping changes throughout society. It seeks to address the underlying roots of crime, without perpetuating the divide and power imbalance by oppressing the underclass through the use of imprisonment.

The abolitionist perspective should be set apart from the prison reform and decarceration movements. It involves a more radical and systemic overhaul of society.[[104]](#footnote-104) The failures of the latter movements have removed legitimacy from possible open discussion on the merits of an abolitionist solution. [[105]](#footnote-105) For example, the net-widening effect of certain reformist alternative programs has not only expanded the carceral archipelago into society,[[106]](#footnote-106) but actually diverted offenders into the CJS and prison.[[107]](#footnote-107)

Proposals to close prisons are likely to meet widespread public and institutional defiance on foot of the failures of the previous movements; a misunderstanding of what abolitionism entails; and certain vested interests (the Irish version of the Prison-Industrial Complex, involving primarily politicians and the mass media[[108]](#footnote-108) who use the fear of crime and criminals to gain votes and consumers). Scull describes the likely reaction to a proposal of abolitionism from such actors and the general public - “(t)o allow criminals violate the law, with something approaching impunity, significantly weakens the incentives to conform while simultaneously provoking public outrage. It is likely to trigger vigilante responses, thus threatening the state’s monopoly of legal violence… undermin(ing) the legitimacy of a social and political order.”[[109]](#footnote-109) This is an example of how critics of the abolitionist movement often misinterpret what penal abolitionism involves; relative abolitionism is probably a more apt and informative term. Relative abolitionism still involves the destruction of prison and any prison-like alternatives, but does concede that “incapacitation of some kind or another will still need to be reserved for society’s most violent” criminals.[[110]](#footnote-110) This small minority of criminals who actually pose a danger to society, such as those sentenced for assaults, homicides and sexual crimes should still be restrained. However, the relative abolitionist solution does allow for the reintegration into society “for a substantial percentage of the imprisoned population”.[[111]](#footnote-111)

The physical institutions of prison should be shut down. Any prisoner sentenced for dangerous offences, those who will actually pose a threat to society, must be relocated to “something other than cages or fortress(es),” [[112]](#footnote-112) such as entirely new incapacitative homes or communal compounds. These offenders should be afforded the same human rights as other citizens so far as they are not required to be forfeited in order to protect society. They should also be assumed to be capable of changing their ways[[113]](#footnote-113) and being capable of contributing members of society in the future. In this regard, they should receive treatment (anger management, addiction, counselling etc) that tackle the causes of the crime for which the offender was prosecuted.[[114]](#footnote-114) The determination in regards to their liberty and perceived threat to society should be re-evaluated periodically by a panel of jurors.[[115]](#footnote-115)

An amnesty should be not only granted to former prisoners to allow them truly integrate into society and employment without permanent labelling,[[116]](#footnote-116) but also to current prisoners sentenced for non-dangerous crimes. This would account for 65% of Ireland’s prison population.[[117]](#footnote-117) They should be de-institutionalised as a matter of priority and re-immersed into their communities. The savings from the current cost of €165,5396,524 housing of these 2,531 prisoners (at €**65,404** per annum[[118]](#footnote-118)), should be invested in a variety of programs to which offenders must avail of. These programs should address the underlying issues of criminality and poverty such as education, training, addiction etc. They would operate alongside the Community Service Order hours, which would also be compulsory and increasing in length relative to severity of punishment in order to provide some general deterrent value and retribution on the part of society.[[119]](#footnote-119)

In order to bring about a less discriminatory and classist society, abolitionists argue that other societal and criminal law changes will be needed in conjunction to penal abolitionism, such as the challenges posed by the decline of the welfare state[[120]](#footnote-120) as well as the decriminalisation of drugs and prostitution - which are two examples of a quasi-criminalisation of the lifestyle of the underclass.[[121]](#footnote-121) Furthermore, by reserving prison solely for dangerous prisoners, the poor will be less likely to violate the criminal law both in the future (given the criminogenic effect of prison in many cases), and more importantly in the first instance due to incarceration for drugs and non-violent offences.

# CONCLUSION

Relative penal abolitionism, and the concurrent societal changes, can provide a viable solution to how we deal with those who violate the criminal law according to whether they are in need of help, or should be incapacitated for the safety of others. It also provides an anvenue for finding less punitive and more appropriate ways of dealing with those who fail to ‘make it’ in consumer society as evidenced by wealth and consumption. Abolitionism has been labelled a utopian notion,[[122]](#footnote-122) but surely a utopian society is one worth discussing and striving for? The public are acutely aware of some of the failings of prison discussed in this article such as unsatisfactory conditions and its inability to reduce crime.[[123]](#footnote-123) Yet, institutional vested interests in maintaining the prison myth mean that the public are unwilling to confront some of the deeper social inequality issues at the heart of the prison system, and continue to demand more punitive sanctions to crime without appreciating the socio-economic causes of it, nor indeed its criminogenic and other negative effects.[[124]](#footnote-124) Abolitionism as an academic discourse may not immediately be enforceable in Irish society, but certain trends internationally[[125]](#footnote-125) and domestically[[126]](#footnote-126) suggest that public and political appetite for decarceration in this regard is increasing. However, decarceration will be insufficient to remove the classist effects of the CJS;[[127]](#footnote-127) relative penal abolitionist is a preferential approach.

1. Stephen Delaney, ‘Prison Officers Association Annual Conference 2011’. [↑](#footnote-ref-1)
2. Approx. 500 prisoners are still ‘slopping-out’ in Irish prisons. Jane Mulcahy, ‘Doing Nothing Is Not an Option’, 10 (2013) *Irish Probation Journal* 143. For other unsatisfactory conditions including violence, *see* the European Committee for the Prevention of Torture, *Report to the Irish Government* (1999, CPT) 30; Ian O’Donnell,. ‘The Re-Integration of Prisoners’ 50 (2002) 2 *Administration* 87; the European Committee for the Prevention of Torture, *Report to the Government of Ireland* (CPT 2011) 21. [↑](#footnote-ref-2)
3. Joe Sim, ‘The abolitionist approach: a British perspective’ in Duff, Marshall, Dobash and Dobash (eds.), *Penal Theory and Practice: Tradition and Innovation in Criminal Justice* (Manchester University Press 1994) 275-276. [↑](#footnote-ref-3)
4. Michael Cavadino and James Dignan, *The Penal System: An Introduction* (Sage Publications 2007) 75. [↑](#footnote-ref-4)
5. Andrew Scull, *Decarceration* (Prentice Hall 1977) 4. [↑](#footnote-ref-5)
6. Mark Kelman, *A Guide to Critical Legal Studies* (Harvard University Press 1987) 9. [↑](#footnote-ref-6)
7. *Ibid* 9. [↑](#footnote-ref-7)
8. David Garland and Peter Young, ‘Towards a Social Analysis of Penality’, in Garland and Young (eds.), *The* *Power to Punish* (Heinemann Educational Books Ltd 1983) 11. [↑](#footnote-ref-8)
9. Cavadino and Dignan (n4) 45. [↑](#footnote-ref-9)
10. HLA Hart, ‘The Presidential Address: Prolegomenon to the Principles of Punishment’ 60, (1959 – 1960) *Proceedings of the Aristotelian Society New Series* 21; Lucia Zedner, ‘Dangers of Dystopias in Penal Theory’ 22 (2002) 2 *Oxford Journal of Legal Studies* 341 344–345. [↑](#footnote-ref-10)
11. Cavadino and Dignan (n 4) 45. [↑](#footnote-ref-11)
12. Cavadino and Dignan (n 4) 45-46 [↑](#footnote-ref-12)
13. Steve Hall, Simon Winlow and Craig Andcrum, Criminal *Identities and Consumer Culture: Crime, exclusion and the new culture of narcissism* (Willan Publishing 2008) 142. [↑](#footnote-ref-13)
14. Hall, et al, (n 13) 142. [↑](#footnote-ref-14)
15. Paul O’Mahony, ‘A Critical Analysis Of The Irish Penal System’ (2002) 1*Journal of the Institute of Justice and International Studies* 1 3. [↑](#footnote-ref-15)
16. Robert Sommer, *The End of Imprisonment*, (Oxford Unviersity Press 1976) 17. [↑](#footnote-ref-16)
17. Kant, *Metaphysics of Morals* at 552-553 as referred to in Thom Brooks, ‘Kant's theory of punishment’ 15 (2003) 2 *Utilitas* 206 <<http://dro.dur.ac.uk/10792/1/10792.pdf>> accessed 04 April 2014; LA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Open University Press 2008) 4-5. [↑](#footnote-ref-17)
18. Sommer, (n 16) 45. [↑](#footnote-ref-18)
19. Darryl K. Brown, ‘Criminal Law Theory and Criminal Justice Practice’ 49 (2012) *American Criminal Law Review* 73 86. [↑](#footnote-ref-19)
20. Cavadino and Dignan, (n 4) 37. [↑](#footnote-ref-20)
21. Calvert Dodge, *A World Without Prisons* (Lexington Books 1979) 8. [↑](#footnote-ref-21)
22. Cavadino and Dignan (n 4) 38. [↑](#footnote-ref-22)
23. Dodge (n 21) 8. [↑](#footnote-ref-23)
24. Cavadino and Dignan (n 4) 40. [↑](#footnote-ref-24)
25. O’Mahony (n 15) 3. [↑](#footnote-ref-25)
26. Cavadino and Dignan (n 4) 47. [↑](#footnote-ref-26)
27. Dodge (n 21)at 4. [↑](#footnote-ref-27)
28. Hart (n 10). [↑](#footnote-ref-28)
29. Cavadino and Dignan (n 4) 51. [↑](#footnote-ref-29)
30. Paul O’Mahony, ‘Punishing Poverty and Personal Adversity’, in Bacik and O’Connell (eds.), *Crime and Poverty in Ireland.* (Round Hall, Sweet and Maxwell 1998) 52. [↑](#footnote-ref-30)
31. Garland and Young (n 8) 140. [↑](#footnote-ref-31)
32. Thomas Mathiesen, *Prisons on Trial* (Waterside Press 2005) 141. [↑](#footnote-ref-32)
33. Laurie Taylor and Ian Taylor, ‘We Are All Deviants Now’ (1968) *International Socialism* 29; Sommer (n 16) 194. [↑](#footnote-ref-33)
34. IPS, *IPS Recidivism Study* (2013, IPS) 9. [↑](#footnote-ref-34)
35. Eoin O’Sullivan and Ian O’Donnell, ‘Imprisonment and the Crime Rate in Ireland’, 34 (2003) 1 *The Economic and Social Review* 33 40, 45-46; I. O’Sullivan, and E. O’Donnell, ‘Why is Crime Decreasing?’ 11 (2001) 1 *Irish Criminal Law Journal*, 2. [↑](#footnote-ref-35)
36. Randall Shelden, and William Brown, ‘Crime Control Industry and the Management of the Surplus Population’, 9 (2000) *Critical Criminology*. 58; James Samuel Logan, *Good Punishment? Christian Moral Practice and U.S. Imprisonment* (2008, Wm. B. Eerdmands Publishing Co.) 10-11; Todd Clear, ‘Backfire’ in Fullbright (ed.) *The Unintended Consequences of Incarceration : Conference* *Papers*, (1996, Vera Institute of Justice 1996) 5; Sommer (n 6) 45; David Cayle, *The Expanding prison: The Crisis in Crime and Punishment and the Search for Alternatives* (Pilgrim Press 1988) 1. [↑](#footnote-ref-36)
37. Logan (n 36) 237; IPRT, *The Vicious Circle of Social Exclusion and Crime: Ireland’s Disproportionate Punishment of the Poor* (IPRT 2012) 16; National Crime Council *Tackling the Underlying Causes of Crime: A Partnership Approach. A Consultation Paper* (the Stationery Office 2002) 30. [↑](#footnote-ref-37)
38. Logan (n 36) 237. [↑](#footnote-ref-38)
39. IPRT (n 37) 11; Kaaryn Gustafson, ‘The Criminalization of Poverty’, 99 (2009) 3 *Journal of Criminal Law and Criminology* 643, 714. [↑](#footnote-ref-39)
40. Cavadino and Dignan (n 4) 68 and 73. [↑](#footnote-ref-40)
41. IPRT (n 37) 11. [↑](#footnote-ref-41)
42. Kelman (n 6) 97. [↑](#footnote-ref-42)
43. Hall, et al. (n 13) 11, 13 and 17. [↑](#footnote-ref-43)
44. Hall, et al. (n 13) 34. [↑](#footnote-ref-44)
45. Robert C. Ellickson, ‘Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning’ (1995–1996) 105 *Yale Law Journal* 1165, 1181. [↑](#footnote-ref-45)
46. A. Mulcahy and E. O’Mahony *Policing and Social Marginalisation* (Combat Poverty 2005) 30; Shelden and Brown (n 36) 59. [↑](#footnote-ref-46)
47. I. Bacik, et al, ‘Crime and Poverty in Dublin: an analysis of the association between community deprivation, District Court appearance and sentence severity’ in Bacik and O’Connell (eds.),*Crime and Poverty in Ireland* (1998, Round Hall Sweet and Maxwell) 19 and 21: Shelden and Brown (n 36) 58; Michele Benedetto Neitz, ‘Socioeconomic Bias In The Judiciary’ 61 (2013) *Cleveland State Law Review* 137 148. [↑](#footnote-ref-47)
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51. Cavadino and Dignan (n 4) 47; Healy, et al., *Crime, Punishment and Inequality in Ireland* (GINI 2013) 16 and 41. [↑](#footnote-ref-51)
52. O’Mahony (n 15) 5. [↑](#footnote-ref-52)
53. Taylor and Taylor (n 33). [↑](#footnote-ref-53)
54. IPS (n 49) 25. [↑](#footnote-ref-54)
55. Zygunt Bauman, *Work, Consumerism And The New Poor* (McCraw-Hill 2004) 82 and 116. [↑](#footnote-ref-55)
56. Hall, et al. (n 13) 4; Paul O’Mahony, *Mountjoy Prisoners: A Sociological and Criminological Profile* (Stationery Office 1997); at 61. [↑](#footnote-ref-56)
57. Garland and Young (n 8) 133; Hall, et al. (n 13) 34, 39 and 35. [↑](#footnote-ref-57)
58. Hall, et al. (n 13) 7. [↑](#footnote-ref-58)
59. Taylor and Taylor (n 33). [↑](#footnote-ref-59)
60. Hall, et al. (n 13) 7. [↑](#footnote-ref-60)
61. Hall, et al. (n 13) 10. [↑](#footnote-ref-61)
62. Reza Barmaki, ‘Criminals/Refugees in the Age of Welfareless States: Zygmunt Bauman on Ethnicity, Asylum and the new ‘Criminal’’, 2 (2009) 1 *International Journal of Criminology and Sociological Theory*, 251 261. [↑](#footnote-ref-62)
63. Hall, et al. (n 13) 34. [↑](#footnote-ref-63)
64. *ibid* 7. [↑](#footnote-ref-64)
65. *ibid* 11, 13 and 17. [↑](#footnote-ref-65)
66. Paul O’Mahony, ‘Social Deprivation and Criminal: A Critique Of The U.C.D. Faculty Of Law Criminal Justice Committee’s Views’ (2003) *Irish Criminal Law Journal* 1, 23-29. [↑](#footnote-ref-66)
67. O’Mahony (n 30) 55; O’Mahony (n 56) 39 and 61; Christina Quinlan, *INSIDE: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011) 243; I. O'Donnell, et al., ‘Punishment, social deprivation and the geography of reintegration’, 17 (2007) 4 *Irish Criminal Law Journal* 3. [↑](#footnote-ref-67)
68. ‘Deprivation’ captures the more complex linkages at play. See O’Mahony, n X; Richard Wilkinson and Kate Pickett,‘The problems of relative deprivation: Why some societies do better than others’, (2007) 65 *Social Sciences and Medicine*, 1965-1978. See more generally KM Neckerman, and N Torche, ‘Inequality: Causes and Consequences’, (2007) *Annual Review of Sociology*, 33: 335–57 and Richard Wilkinson, ‘Inequality: the obstacles between us’ *Criminal Justice Matters* 74, 1, 2-3 [↑](#footnote-ref-68)
69. M. Morgan and M. Kett, *The prison adult literacy survey* (2003 IPS) 45; O’Mahony (n 56) 57; Mairead Seymour and Liza Costello, *A Study of the Number, Profile and Progression Routes of Homeless Persons before the Court and in Custody* (Department of Justice, Equality and Law Reform 2005) 52. [↑](#footnote-ref-69)
70. O’Mahony (n 30) 55; I. O’Donnell al., ‘Recidivism in the Republic of Ireland’ (2008) 8 *Criminology and Criminal Justice* 130; Rosemarie Mc Hugh, *Tracking the Needs and Service Provision for Women Ex-Prisoners* (Association for Criminal Justice Research and Development 2013) 6. [↑](#footnote-ref-70)
71. A. J. Carr, et al., ‘Irish Drug Abusers I: Their Social Background’73 (1980) 12 *Irish Medical Journal* 453 459; O’Mahony (n 56) chapter 5. [↑](#footnote-ref-71)
72. HG Kennedy, et al., *Mental Illness in Irish Prisoners Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners*, (2004, National Forensic Mental Health Service) 17; O’Mahony (n 15) 5; Patricia Carmody and Mel McEvoy, *A* *Study of Irish Female Prisoners* (Stationery Office 1996) 20. [↑](#footnote-ref-72)
73. C. Hickey, (2002) *Crime and Homelessness*. (Focus Ireland and Pace 2002). [↑](#footnote-ref-73)
74. Irish Prison Service, *Annual Report 2011* 20. [↑](#footnote-ref-74)
75. For this reason, statistics relating to geographic location/residency of new committals prior to incarceration will be taken from the Irish Prison Service’s 2011 Annual Report. [↑](#footnote-ref-75)
76. Niamh McNamara, et al., ‘Citizenship Attributes as the Basis for Intergroup Differentiation: Implicit and Explicit Intergroup Evaluations’, 21 (2011), *Journal of Community & Applied Social Psychology*, 243 251. [↑](#footnote-ref-76)
77. For a discussion on the links between unemployment and crime see Marc Hooghe, and others ‘Unemployment, Inequality, Poverty and Crime: Spatial Distribution Patterns of Criminal Acts in Belgium, 2001–06’ *British Journal of Criminology* (2011) 51, 1–20, 1. [↑](#footnote-ref-77)
78. CSO, *This is Ireland Part2: Census 2011*, (CSO 2012) 19. [↑](#footnote-ref-78)
79. *ibid* 17. [↑](#footnote-ref-79)
80. *Ibid* 25; IPS. *Annual Report 2011* 20. [↑](#footnote-ref-80)
81. Anne Drummond and Brigid Quirke, *All* *Ireland Traveller Health Study: Travellers in Institutions,* (UCD 2010) 134. [↑](#footnote-ref-81)
82. Mathisen (n 32) 143. [↑](#footnote-ref-82)
83. Eric Scholosser, ‘The Prison-Industrial Complex’ 282 (1998) 6 *The Atlantic Monthly* 4-5. [↑](#footnote-ref-83)
84. Cavadino and Dignan (n 4) 74. [↑](#footnote-ref-84)
85. Shelden and Brown (n 36) 49. [↑](#footnote-ref-85)
86. Steven Spitzer, ‘Toward a Marxian Theory of Deviance’ 22 Social Problems 5 (1975) 638 647. [↑](#footnote-ref-86)
87. Bauman (n 55) 83. [↑](#footnote-ref-87)
88. M. Mauer, ‘Thinking about prison and its impact in the twenty-first century’, 2 (2005) *Ohio State Journal of Criminal Law*, 607 609. [↑](#footnote-ref-88)
89. Hall, et al. (n 13) 4 and 23. [↑](#footnote-ref-89)
90. For a brief discussion on the direct links between capitalism and the expanding penal state see Richard Garside, ‘Capitalism and penal policy’, (2008) 74 *Criminal Justice Matters* 1, 47-48. [↑](#footnote-ref-90)
91. Logan, (n 33) 38-39, and 237; Lucia Zedner, *Security* (2009, Taylor & Francis)87. [↑](#footnote-ref-91)
92. Will McMahon and Rebecca Roberts, ‘Criminalisation and social structure’, (2008) *Criminal Justice Matters* 74, 1. Also note the merging of criminal justice policy and social welfare policy, where a breach of welfare rule brings the ‘offender’ into the CJS. Kaaryn Gustafson, *Cheating Welfare: Public Assistance and the Criminalization of Poverty* (New York: New York University Press, 2011) 96. Wilkinson and Pickett describe how “Welfare regimes and penal regimes are ultimately different mechanisms for addressing underlying social antagonisms, inequalities and the problems they give rise to.” (n 68) [↑](#footnote-ref-92)
93. Bauman (n 53) 116; Shelden and Brown (n 33) 58; Paul O’Mahony, ‘The Penal System’ in O’Mahony (ed.), *Criminal Justice in Ireland.* (Institute of Public Administration 2002).at 620. [↑](#footnote-ref-93)
94. Spitzer (n 86) 646. [↑](#footnote-ref-94)
95. IPS (n 48) 20. [↑](#footnote-ref-95)
96. The unemployment rate for Irish males under 24 years of age is 36.4%.CIA, ‘The World Factbook: Ireland’. [↑](#footnote-ref-96)
97. Bauman (n 55) 82. [↑](#footnote-ref-97)
98. *ibid*; Zygunt Baumann, *Postmodernity and its Discontents* (Polity Press 1997) 44. In an Irish context, Quinlan has argued that the Irish criminal law has been unable to ‘distinguish between poverty and crime’. Quinlan (n 67) at 248. [↑](#footnote-ref-98)
99. Logan (n 36) 98. [↑](#footnote-ref-99)
100. See Jessica Breen, ‘Secondary Effects of Imprisonment: The New Direction of Prison Research’, 7 (2010) *Irish Probation Journal* 46, 47. See also Hirschfield’s fascinating examination of labelling-like experienced of inner city communities at large due to their mass incarceration. He captures the criminogenic effect prison can have on those other than the prisoner himself or herself. Paul Hirschfield, ‘The declining significance of delinquent labels in disadvantaged urban communities’ (2008) *Sociological Forum*, 23(3), 575-601. Also note Hirschfield’s finding that of limited negative social implications of imprisonment for such communities (due to the normalisation or ‘badge of honour’ effect. Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City* (W.W. Norton and Company, 1999) The ineffectiveness of deterrence is also experesed in the limited opportunistic effects of incarceration (as education and employment opportunities are low for all the community in any event). [↑](#footnote-ref-100)
101. Angela Davis, *Are Prisons Obsolete?* (Seven Stories Press 2003) 111. [↑](#footnote-ref-101)
102. *ibid* 113. [↑](#footnote-ref-102)
103. *ibid* 108-109. [↑](#footnote-ref-103)
104. *ibid* 9; Logan (n 36) 299. [↑](#footnote-ref-104)
105. Robert Martinson ‘What Works? - Questions and Answers About Prison Reform’ 35 (1974) *The Public Interest* 22 25; Davis (n 101) 100. [↑](#footnote-ref-105)
106. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Books 1977) 301. [↑](#footnote-ref-106)
107. Scull (n 5) 179. [↑](#footnote-ref-107)
108. The National Crime Council, *Fear of Crime in Ireland and its Impact on Quality of Life* (the Department of Justice, Equality and Law Reform 2009) 21. [↑](#footnote-ref-108)
109. Scull (n 5) 180. [↑](#footnote-ref-109)
110. Logan (n 36) 239. [↑](#footnote-ref-110)
111. Angela Davis, ‘Black Women and the Academy’ 17 (1994) 2, *Callaloo* 422, 430. [↑](#footnote-ref-111)
112. Logan (n 36) 239. [↑](#footnote-ref-112)
113. Kelman (n 6) 88. [↑](#footnote-ref-113)
114. *ibid* 89 and 93. [↑](#footnote-ref-114)
115. Sommer (n 16) 16. [↑](#footnote-ref-115)
116. IPRT (n 37) 20. [↑](#footnote-ref-116)
117. IPS (n 49) 21. [↑](#footnote-ref-117)
118. Irish Prison Service, *Annual Report 2012* (IPS 2013) 2. [↑](#footnote-ref-118)
119. Dermot Walsh and Paul Sexton, *An Empirical Study of Community Service Orders* (The Stationary Office 1999) 98. [↑](#footnote-ref-119)
120. Wilkinson, (n 68). [↑](#footnote-ref-120)
121. Davis (n 101) 108-110; Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (Verso Books 1999) 242. [↑](#footnote-ref-121)
122. Nick Herbert, ‘The abolitionists' criminal conspiracy’, *The Guardian*, 27 July 2008. <<http://www.theguardian.com/commentisfree/2008/jul/27/prisonsandprobation.youthjustice>> accessed 07 November 2014. [↑](#footnote-ref-122)
123. Colm Brown, *Garda Public Attitudes Survey 2008* (An Garda Siochana 2008) 61. [↑](#footnote-ref-123)
124. *ibid* 60. [↑](#footnote-ref-124)
125. Scandinavian experience of implementing mass decarceration, a quasi- relative abolition approach, indicates that relative abolitionism can be implemented without significant impacts on crime rates. T., Lappi-Seppala, ‘Imprisonment and Penal Policy in Finland’ (2012) *Scandinavian Studies in Law* 335, at 366. [↑](#footnote-ref-125)
126. Proposed policy of decarceration under the Oireachtas Committee on Justice, Defence and Equality, *Report on Penal Reform* (2013). [↑](#footnote-ref-126)
127. Note the interrelated problems of changing ongoing penal expansion and inequality discussed by Wilkinson and Pickett. (n 68) [↑](#footnote-ref-127)