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Paul O'Mahony, Crime and Punishment in Ireland

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Donal E.J. Mac Namara

Abstract

Only within the last decade, however, have courses in comparative justice systems proliferated, usually in schools or departments of criminology, criminal justice, police and/or corrections administration, and more frequently in graduate than undergraduate programs. Several factors contribute to the lack of interest in comparative criminology. First, the United States has had a long history of isolationism. A second area of difficulty arises from the paucity of readily available source materials available to professors and students. English on the criminal justice systems of non-English speaking nations are much more limited and of widely varying quality. Courses on comparative criminal justice, offered in U.S. universities, focus, primarily on the national systems of the United Kingdom, Japan and Russia with somewhat lesser attention focused on Scandinavian, French, German, Italian and Israeli practices and problems. Africa, Latin America, the Islamic nations, and particularly smaller countries, such as Ireland, are almost totally neglected. In recent years, a number of cross-cultural and transnational surveys of criminal justice have been published. O'Mahony's Crime and Punishment in Ireland is a welcome addition to the existing literature, and would have been deserving of a more enthusiastic cead mile failte had it appeared some years ago when, in response to student requests, I included units on the criminal justice system of the Republic of Ireland ("Ireland") in my comparative course.

BOOK REVIEW

CRIME AND PUNISHMENT IN IRELAND. By Paul O'Mahony. Dublin, Ireland: Round Hall Press, 1993. 252 pp. ISBN1-85800-0246 paper ISBN1-85800-029 cloth. US \$24.50

*Reviewed by Donal E.J. Mac Namara**

American universities usually include courses in comparative government, comparative literature, and comparative religion within the vast range of classes offered. U.S. business schools teach the commercial laws of America's major trading partners; the curricula of U.S. law schools, moreover, generally include private and public international law. Only within the last decade, however, have courses in comparative justice systems proliferated, usually in schools or departments of criminology, criminal justice, police and/or corrections administration, and more frequently in graduate than undergraduate programs.

Several factors contribute to the lack of interest in comparative criminology. First, the United States has had a long history of isolationism. Even among academics, there remains a narrow parochialism that evaluates things foreign against an American paradigm, emphasizing invidiously those aspects that differ even in minor ways from our laws, institutions and practices. This tendency has been especially evident in the area of comparative criminal justice studies, and is especially ludicrous, since most objective studies of crime and its control or prevention make abundantly clear that our approaches have been somewhat less than effective, either in crime prevention or in the rehabilitation of offenders.

A second area of difficulty arises from the paucity of readily available source materials available to professors and students. There is, of course, a plethora of publications, many of them highly critical, describing our own system (or, as it has been referred to by some, our "non-system"). An ample supply of material also exists on English police, courts and prisons. Books in

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English on the criminal justice systems of non-English speaking nations are much more limited and of widely varying quality. Courses on comparative criminal justice, offered in U.S. universities, focus, primarily on the national systems of the United Kingdom, Japan¹ and Russia,² with somewhat lesser attention focused on Scandinavian, French,³ German, Italian and Israeli practices and problems.⁴ Africa, Latin America, the Islamic nations, and particularly smaller countries, such as Ireland, are almost totally neglected.

In recent years, a number of cross-cultural and transnational surveys of criminal justice have been published.⁵ Paul

1. See, e.g., DAVID H. BAYLEY, *FORCES OF ORDER: POLICING MODERN JAPAN* (1991) (providing background on police and criminal justice in contemporary Japan); TED D. WESTERMANN & JAMES W. BURFEIND, *CRIME & JUSTICE IN TWO SOCIETIES: JAPAN & THE UNITED STATES* (1991) (providing comparative analysis of criminal justice in Japan and the United States).

2. See, e.g., FYODOR DOSTOEVSKY, *CRIME AND PUNISHMENT* (Oxford Univ. Press, trans. 1953) (fictional account of Russia's criminal justice system); ROBERT CONQUEST, *KOLYMA: THE ARTIC DEATH CAMPS* (1978) (examining Soviet gulag); EUGENIA S. GINZBURG, *JOURNEY INTO THE WHIRLWIND* (1967) (presenting autobiographical account of Russian woman's experience in Siberian prison camps); 1-7 ALEKSANDR I. SOLZHENITSYN, *THE GULAG ARCHIPELAGO: 1918-1956* (2d Ed. 1992) (providing in-depth study of Soviet gulag); KARLO STAJNER, *SEVEN THOUSAND DAYS IN SIBERIA* (1988) (providing autobiographical account of imprisonment in Soviet gulag).

3. See, e.g., RICHARD J. TERRILL, *WORLD CRIMINAL JUSTICE SYSTEMS* (2d ed., 1991) (providing international overview of criminal justice).

4. See, e.g., GAD J. BENSINGER, *JUSTICE IN ISRAEL: A SURVEY OF CRIMINAL JUSTICE* (1989) (providing overview of Israeli criminal justice); RONALD J. TROYER, *SOCIAL CONTROL IN THE PEOPLE'S REPUBLIC OF CHINA* (1989) (analyzing administration of criminal justice in the People's Republic of China); ALASTAIR L. STEWART, *THE SCOTTISH CRIMINAL COURTS IN ACTION* (1990) (examining Scotland's criminal court system).

5. See, e.g., TERRILL, *supra* note 3; FREDERICK ADLER, *NATIONS NOT OBSESSED WITH CRIMES* (1983) (providing comparative analysis of criminal law including chapter on Ireland); DANE ARCHER & ROSEMARY GARTNER, *VIOLENCE AND CRIME IN CROSS NATIONAL PERSPECTIVE* (1984) (providing cross-cultural analysis of crime); DAVID H. BAYLEY, *PATTERNS OF POLICING: A COMPARATIVE INTERNATIONAL PERSPECTIVE* (1985) (analyzing international police practices); ANDRE BOSSARD, *TRANSNATIONAL CRIME AND CRIMINAL LAW* (1990) (presenting transnational overview of crime and criminal law); FRANCES HEIDENSOHN & MARTIN FARRELL, *CRIME IN EUROPE* (1991) (examining criminal justice in Europe); DONAL E.J. MAC NAMARA & PHILIP J. STEAD, *NEW DIMENSIONS IN TRANSNATIONAL CRIME* (1982) (analyzing transnational criminal offenses); JAY R. NASH, 1-6 *ENCYCLOPEDIA OF WORLD CRIME: CRIMINAL JUSTICE, CRIMINOLOGY & LAW ENFORCEMENT* (1990); FRANK PEARCE & MICHAEL WOODIWISS, *GLOBAL CRIME CONNECTIONS: DYNAMICS & CONTROL* (1992) (presenting overview of international organized crime); see also OFFICE OF INTERNATIONAL CRIMINAL JUSTICE, *CRIMINAL JUSTICE: INTERNATIONAL, CRIMINAL JUSTICE: THE AMERICAS, and CRIMINAL JUSTICE: EUROPE* (University of Illinois, Chicago) (presenting changes in criminal justice occurring in response to major events including German reunification, and dissolution of former Soviet Union).

O'Mahony's *Crime and Punishment in Ireland* is a welcome addition to the existing literature, and would have been deserving of a more enthusiastic *cead míle fáilte* had it appeared some years ago when, in response to student requests, I included units on the criminal justice system of the Republic of Ireland ("Ireland") in my comparative course. O'Mahony has had long experience with the Irish Prison system and in the Justice Department. O'Mahony also received assistance from John Lonergan, the Governor of Mountjoy Prison, in preparing *Crime and Punishment in Ireland*. O'Mahony now teaches at Trinity College of the University of Dublin, where Mary Robinson, who is now President of the Republic of Ireland, formerly taught criminal law and criminology, and was actively involved in campaigns for prison and juvenile justice reform. Others who might well have been accorded passing mention include the nineteenth-century Irish prison reformer Sir Walter Crofton, prison reform activist Joe Costello,⁶ and former Irish Health Minister Noel Browne. Browne, during his term in the Dail⁷ and in the cabinet, addressed many of the social concerns O'Mahony correctly relates to Ireland's incidence of crime and delinquency.

O'Mahony's work reads, and is organized, very much like a doctoral dissertation. Unlike many American criminological theses, O'Mahony is analytical, critical and descriptive, rather than empirical, in testing his hypothesis. This is not said in denigration for, in fact, I have long decried the purely quantitative approach favored by U.S. graduate faculties. I found much of value and interest in *Crime and Punishment in Ireland*, even though I have had long familiarity with the topic and, in fact, taught Irish police and correctional personnel at the Institute of Public Administration in Dublin.

O'Mahony organizes his work clearly and simply. The book begins with a short introduction, followed by a fifty-page chapter on "Trends in Crime," which is studded with useful graphics and tables.⁸ O'Mahony's follows with a major section on "Trends in Punishment," and concludes with what I consider the most valuable section, "Overview and Synthesis."⁹ *Crime and Punishment in*

6. Joe Costello is a member of Seanad Éireann. Mark Brennock, "Election 1992," *IRISH TIMES*, Dec. 5, 1992 at 4.

7. Dail Éireann is the lower house of the OIREACHTAS (The Irish Parliament).

8. PAUL O'MAHONY, *CRIME AND PUNISHMENT IN IRELAND* 20-72 (1993).

9. *Id.* at 207-41.

Ireland includes no bibliography, but O'Mahony's 138 footnotes include references to many valuable Irish, British and American sources, and a few sources from France, Sweden and Denmark.¹⁰ Missing are the many fine publications of the Institute of Public Administration,¹¹ the books on Garda Síochána by Seamus Breathnach and Conor Brady,¹² such critical works on Northern Ireland as John Stalker's *The Stalker Affair*,¹³ and citations from the Irish Constitution and the British and Irish statutes and cases that have shaped crime and its punishment. The Index is woefully incomplete and unhelpful, with many matters referred to in the text omitted.¹⁴

What do we learn about crime and punishment in Ireland? Quite a lot. Despite alarmist horror stories in the media, and Dail debates on crime in Ireland, although crime has increased as Ireland has urbanized and industrialized, the incidence of crime in Ireland is low, compared to its neighbors in the British Isles, Northern Ireland, Scotland, England and Wales. Ireland's crime rate is equally low, as compared to the nations of Europe, and infinitesimal, when compared to the crime rate in the United States.

We also learn that despite the doubling of Ireland's prison population, Ireland's prisons still house less than one-tenth of the number of prisoners incarcerated in United States detention facilities.¹⁵ Ireland's prisoners, moreover, share many demographic characteristics with their American counterparts. For example, Irish prisoners are predominantly male, in their late teens and twenties, and come mainly from the lower socio-economic classes. There are few female convicts, and most Irish

10. See, e.g., MICHAEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1979) (providing anthropological analysis of prisons); JAN J. VAN DIJK, PAT MAYHEW & MARTIN KILLIAS, *EXPERIENCES OF CRIME ACROSS THE WORLD: KEY FINDINGS OF THE 1989 INTERNATIONAL CRIME SURVEY* (1990).

11. With the exception of *OSBOROUGH, BORSTAL IN IRELAND* (1975).

12. See SÉAMUS BREATHNACH, *THE IRISH POLICE* (1974) (providing history of police in Ireland); CONOR BRADY, *GUARDIANS OF THE PEACE* (1974) (history of *Gárda Síochána*).

13. See JOHN STALKER, *THE STALKER AFFAIR* (1988) (recounting difficulties faced by English Deputy Chief Constable Stalker in investigating Royal Ulster Constabulary's "Shoot to Kill" policy).

14. For example, political prisoners, Northern Ireland, the names of courts and confinement institutions (with the exception of Mountjoy Prison), and the training of prison staff.

15. Forty-four prisoners per 100,000 population in Ireland, versus 445 per 100,000 in the United States. "Incarceration Worldwide," *TIME*, Feb. 7, 1994, at 58.

prisoners have prior convictions and sentences (some have as many as ten or more non-concurrent convictions and sentences). Both crime and prisoner statistics have increased faster than population growth.¹⁶ What we do not find, of course, is any significant minority underclass equivalent to the disproportionate percentage of African-American and Hispanic inmates in U.S. prisons. O'Mahony's study includes no information on the so-called Irish "gypsies," whose many social pathologies and conflicts with the law have made them unwelcome neighbors in most Irish communities, and send a significant number of them to gaol.

Among the more significant trends in crime, we learn that car theft peaked at more than 20,000 cases in 1981, but totalled only 11,570 in 1991.¹⁷ Such figures for Ireland are far lower than those for England, Scotland and Northern Ireland. As in many countries throughout the world, white collar crimes, such as the beef and sugar scandals including many millions of Irish punts,¹⁸ are seldom successfully prosecuted in Ireland.

In 1991, there were thirty-one cases of murder and manslaughter¹⁹ in Ireland. In the same year, there were 110 rapes and six reported cases of incest.²⁰ Neither felonious woundings (aggravated assaults) nor armed robberies reached the level of 100, but drug cases (possession and/or sale) numbered 2724. Of greater significance is the low rate of clearance — only thirty-three percent of known crimes are cleared by arrest, far fewer by conviction and imprisonment, and of course the so-called "dark area" of unreported or undiscovered criminality is immense.

O'Mahony introduces us briefly to Ireland's jails, prisons

16. O'MAHONY, *supra* note 8, at 59 (citing "Trends in Indictable Crime and Population Change: 1973-91"); *id.* at 88 (citing "Trend in Daily Average Prison Population: 1973-88").

17. *Id.* at 52-54. The decrease may be due to increased safety consciousness among drivers, including removing keys from the ignition, locking car doors, parking in well-lighted areas, and installing car alarms.

18. The punt is Ireland's official currency. As of Mar. 6, 1994, the interbank exchange rate for large transactions was 1 punt = U.S.\$1.43. "Foreign Exchange," MIAMI HERALD, Mar. 20, 1994, at 15F.

19. This is the number of murders in an average week in New York City. STATISTICAL ABSTRACT OF THE UNITED STATES, 1993: THE NATIONAL DATA BOOK 194 (1993). New York City in 1991 reported a total of 2,318 homicides, a weekly average of more than 44. *Id.*

20. O'Mahoney, *supra* note 8 at 46. Rape and incest are generally under-reported in every country.

and juvenile facilities, almost all of which (with the exception of Wheatfield) date from the colonial period, and many of which were not originally designed as penal institutions. Irish prisons tend to be over-crowded, deficient in adequate sanitary facilities, dark and dismal, with minimal space for education, recreation, and therapy. Selection criteria for prison staff, their training, supervision and discipline are not discussed. My own extensive interviews with political prisoners, some of whom had served time in English and Northern Ireland institutions, as well as in several Irish prisons, suggested that brutality, discrimination and neglect were as frequently encountered in Irish as in English or Northern Ireland penal facilities. O'Mahony does not cover up the Irish criminal justice system's many deficiencies and glacial rate of progress. Moreover, O'Mahony's study, which is confined to Mountjoy prisoners, does not study the scores of political prisoners imprisoned at Portlaoise, during the period of his study.

Those who have studied American penal institutions will notice that O'Mahony fails to discuss homosexuality in Irish penal institutions. I found this omission of any mention of homosexual activity astonishing, especially since homophobia is rife among lower class Irish males. I have already identified the absence of ethnic hostilities in Irish prisons, that are, for the most part, homogeneously Irish. Gay-bashing is a particular problem for police in Dublin, Cork, Limerick and even in some smaller Irish communities that have attained fame or notoriety for artistic, musical and similar activities.

O'Mahony makes several major recommendations. There have been several thoughtful surveys of Irish prison conditions over the past ten or twenty years and, like many such surveys in the United States (including some of my own), authorities have not always followed-up aggressively, and implementation of their suggestions has been spotty. O'Mahony provides well thought out, practical suggestions, which are in line with current criminological theory in the United States and Europe. In Ireland's current favorable political and social environment, O'Mahony's recommendations may attract implementing legislation and administrative action. O'Mahony's recommendations may be summarized as follows:

- (1) fully computerize all crime, police, prosecutorial, court,

prison, probation, and related information;²¹

(2) provide better coordination of the policies and practices of the major elements of the criminal justice continuum;

(3) focus increased attention on the socio-economic factors central to the etiology of crime and delinquency;²²

(4) conduct a special study on the problem of recidivism; far too many Irish prisoners are serving only a relatively small fraction of their prison terms; some start their criminal careers as early as age twelve, and continue into their forties;

(5) provide more consistent sentencing and greater resort to alternatives to confinement for petty, non-violent offenders;

(6) study the possibility of reducing the number of remands of persons awaiting trial, and of confinement of indigents demonstrably unable to pay fines;

(7) introduce more advanced classification procedures, and provide for the separation of inmates;²³

(8) update the current Prison Rules, which were enacted in 1947;²⁴

(9) build sufficient new and purpose-designed penal facilities to replace the Victorian gaols inherited from the British, and to relieve over-crowding currently inhibiting modern, progressive correctional practices; and

(10) recognize that Ireland enjoys a very low crime rate²⁵ and a very low rate of penal confinement, which should encourage the populace, the media, politicians and criminal justice professionals²⁶ to approach matters of crime and punishment objectively, compassionately and pragmatically.

Paul O'Mahony's *Crime and Punishment in Ireland* is a long step forward.

21. This computerization should not be limited to aggregates or averages, but should include individual case records.

22. These factors include poverty, unemployment, bad housing, homelessness, alcohol and drug abuse, and domestic violence aimed at women and children.

23. Remands from sentenced, violent from non-violent, first-time and younger offenders from long-time offenders, mentally disturbed and physically handicapped from the general population.

24. REPUBLIC OF IRELAND, DEPT. OF JUSTICE, PRISON RULES (1947).

25. The incidence of violent crime in Ireland is particularly low.

26. Criminal justice professionals include academic criminologists, prison and social reformers, and the moral leaders of Irish society.

