How and to what extent does a custodial sentence influence a convict's rehabilitative and reintegrative prospects?

A comparative study into French and Irish contexts

INTRODUCTION

While there is extensive literature concerned with the efficiency of alternative or community sentences in achieving desistance and reintegration, the influence of custodial sentences on post-prison rehabilitation in a comparative framework is rarely evoked. A custodial sentence is a judicial sentence requiring an offender to be imprisoned[1]. It involves a form of modern penal confinement, accompanied with sentencing practices that often relate to punishment, deterrence and rehabilitation[2]. However, after penal servitude, the condemned criminal facing life after bars is confronted with inevitable challenges attached to re-entry, in preparation for effective reintegration. Indeed, in the collective imaginary, prison has shifted from being a place solely aimed at punishing offenders to a setting for transformation of deviant individuals[3]. What this dissertation intends on developing is how these rehabilitative processes and goals practically unfold.

In that regard, the Council of Europe recommends that the governments of member States review their legislation and their practice relating to criminal records with a view to 'organise, within penal institutions, activities aimed at strengthening the convicted person's links with the community in order to promote his social integration'[4]. This particular emphasis on the rehabilitative aim of imprisonment at the European scale is highly relevant at a time when prisons tend to show no demonstrable effects in reducing offending and achieving reintegration[5].

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[1] "custodial" in Oxford English Dictionary online (Oxford University Press, 3rd edn 2016) https://www.oed.com/view/Entry/46299?redirectedFrom=custodial+sentence accessed 21 January 2021.
[2] Mary Bosworth, « prisons » in Peter Cane and Joanne Conaghan, *The New Oxford Companion to Law* (Oxford University Press 2008)
[3] Mary Rogan, 'Rehabilitation, Research and Reform: Prison Policy in Ireland' (2012) 9 Irish Probation Journal 6, 9
[4] Council of Europe, Recommendation No. R (84) 10 of the Committee of Ministers to Member States on the criminal record and rehabilitation of convicted persons (21 June 1984) para 14
[5] Nicola Carr, 'Not so 'Smart Justice'' (2019) 66(4) Probation Journal 395

Because there are very few cross-national studies of desistance from crime[6], this paper focuses on the influence of custodial sentences on rehabilitative prospects in two western countries that respectively use civil law and common law, France and Ireland. Farrall argues that there is a need for comparative studies of desistance to better reflect on the impacts of cultures and criminal justice systems on the reintegration processes, especially with regards to France[7]. Further, the complexity of how penal systems are organised and how penal policy operates in the countries at hand needs to be captured[8]. Therefore, choosing France and Ireland as comparator countries allows for an examination of the extent to which two Western European countries resemble one another and also differ from each other in term of post-prison rehabilitation, as well as permits an overall assessment of the importance of structural processes[9] in the construction of reintegrative prospects.

Prior to the demonstration, it is primordial to note that the same amount of factual data will not be accessible in the two jurisdictions. In Ireland, there are important data deficits and a certain lack of scrutiny that make it very difficult to link information across the criminal justice system. However, in a 2018 report publication, the Joint Committee on Justice and Equality argued "… there is systematic overuse of imprisonment as punishment in Ireland, and… far more needs to be done to rehabilitate offenders, reduce recidivism"[10], laying ground for interesting research in that context.

In the first chapter, theoretical and practical meanings of the words used to describe former convicts' transition from prison to community are assessed. Indeed, depending on the language that is used, the reality depicted can vary. The second chapter engages with the theoretical frameworks of reintegration. Section 1 focuses on the factors that influence desistance processes to identify a best practices model in section 2. The third chapter compares and contrasts the Irish and French models to the model laid down in the previous chapter, after having briefly presented both prison systems. Lastly, a comprehensive conclusion is provided.

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[6] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 7
[7] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 23
[8] T. Jones and T. Newburn, 'Comparative criminal justice policy-making in the United States and the United Kingdom' (2005) 45(1) British Journal of Criminology 58
[9] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 19
[10] Joint Committee on Justice and Equality, *Report on Penal Reform and Sentencing* (32/JAE/19, 2018) 3

CHAPTER 1: THE TRANSITION FROM PRISON TO THE COMMUNITY IN WORDS

The literature uses many words such as reintegration[11], reinsertion[12], rehabilitation[13] or re-entry[14] to evoke former prisoners' transition from prison to the community. These expressions are not randomly employed: they convey different ideas of convicts' post-release experiences.

Definitions from dictionaries and the academic literature will be used to explore core concepts. Dictionaries, legal and ordinary, provide an etymological framework that is beneficial to understand the origin and the plain meaning of words. Once words have been traced back to their roots, referring to academics is highly relevant as it allows for greater understanding and contextualisation.

The terms reintegration[15], reinsertion[16], rehabilitation[17] and re-entry[18] have been chosen for they are the most employed to describe ex-convict's return to the society. Arguably, academics, desisters and policy-makers do not use these words interchangeably; and it is important to understand what meaning(s) they attribute to the latter. In that regard, Rogan asserts that how policy-makers refer to term such as 'rehabilitation' says a lot about their thoughts and perception of punishment[19].

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[11] Iain Crow and Gwen Robinson, *Offender Rehabilitation: Theory, Research and Practice* (SAGE Publications Ltd 2009)

[12] Adeline Hazan, 'Repenser le système pénal et pénitentiaire' (2020) 7 Les cahiers de la justice

[13] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) Legal and Criminological Psychology

[14] Christy A. Visher and Jeremy Travis, 'The Characteristics of Prisoners Returning Home and Effective Reentry Programs and Policies' in the *Oxford Handbook of Sentencing and Corrections* (ed. J. Petersilia & K. Reitz 2011)

[15] Claire Hamilton, *Reconceptualising Penalty: A Comparative Perspective on Punitiveness in Ireland, Scotland and New Zealand* (Taylor & Francis Group 2014) ch1

[16] Adeline Hazan, 'Repenser le système pénal et pénitentiaire' (2020) 7 Les cahiers de la justice

[17] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) Legal and Criminological Psychology

[18] Christy A. Visher and Jeremy Travis, 'The Characteristics of Prisoners Returning Home and Effective Reentry Programs and Policies' in the *Oxford Handbook of Sentencing and Corrections* (ed. J. Petersilia & K. Reitz 2011)

[19] Mary Rogan, 'Rehabilitation, Research and Reform: Prison Policy in Ireland' (2012) 9 Irish Probation Journal 6, 8

Definitions

Reintegration

Reintegration can be defined in two relevant ways in the context of adapting to societal norms after an incarceration. The first idea is the restoration of a person to a previous condition or status[20], which makes sense here in that the former convict is restored to his original freedom and liberties. However, this definition also includes the return of the subject to his pre-conviction environment. In most cases, the adversity of those initial conditions makes the restoration undesirable.

The meaning of reintegration in the collective imaginary is that of a successful passage from the life behind bars to the life outside bars, whereby the individual manages to find a place in the community and desists from reoffending. It does not really encompass the hardships and challenges that can be encountered while working towards this successful reintegration[21]. 'Reintegration' vehiculates more the idea of an outcome than that of a realistic process.

'Reintegration' can also be understood in terms of reincorporation into a whole[22]. This strict literal definition represents well the reintegration of a former prisoner into the whole formed by his or her family and loved ones, or into the society at large. Academics view reintegration as broad term that puts the onus on the offender's will to change and on the society that he or she left as well as the one he or she goes back to once released from prison[23]. This particular emphasis on society is important because its help and acceptance are needed to help the person find his or her way back into the community after an incarceration[24].

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[20] "reintegration" in Oxford English Dictionary online (Oxford University Press, 3rd edn 2016) https://www.oed.com/view/Entry/161656?redirectedFrom=reintegration accessed 21 January 2021.
[21] Iain Crow and Gwen Robinson, *Offender Rehabilitation: Theory, Research and Practice* (SAGE Publications Ltd 2009)
[22] "reintegration" in Oxford English Dictionary online (Oxford University Press, 3rd edn 2016) https://www.oed.com/view/Entry/161656?redirectedFrom=reintegration accessed 21 January 2021.
[23] Ilina Taneva, 'Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective' (2019) 16 US-China Law Review 258, 264
[24] Ilina Taneva, 'Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective' (2019) 16 US-China Law Review 258, 264

Thus, although 'reintegration' depicts part of the process this paper wishes to delve into, the use of this word does not suffice on its own because of the idealistic connotation that is attached to it.

Reinsertion

In French-speaking countries, the word 'reinsertion' is preferred. In the *Larousse* dictionary, reinsertion is the action of permitting someone, whether that person is disabled, an ex-convict or an ex-addict, to readjust to normal community life[25]. It illustrates better that idea of a process, as it refers to the act of permitting and not to the state of being effectively readjusted to normal community life. Although the English sense is just the plain literal action of inserting something again[26], it is metaphorically relevant in terms of transitioning from life behind bars to the community.

However, terms have official and subjective meanings. As former convict Laurent Jacqua underlines, "70,000 prisoners [in French prisons] equals 70,000 ways to look at prison and release from prison"[27]. Having spent 25 years in custody, he personally does not like the word 'reinsertion' as he feels it carries an institutional connotation which does not represent adequately an ex-detainee's perspective of life on the outside. Laurent Jacqua prefers the word 'readaptation' which gives the opportunity to try and "strike a balance after experiencing an imbalance"[28], namely finding what resembles stability after having been through exclusionary formal regulatory systems[29] in which former convicts do not fit.

Indeed, debating the use of words is only relevant if the study encompasses the great variety of post-prison experiences. The concept of reinserting may not speak to a certain category of ex-detainees – and that is a very valid opinion –, nonetheless that does not make reinsertion obsolete as it may be relevant to others and reflect their subjective experiences. Moreover, it is part of the official terminology in France. Therefore, 'reinsertion' will be used again this article.

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[25] « réinsertion » in *Dictionnaire Larousse* (Larousse 2021)
[26] "reinsertion" in Oxford English Dictionary online (Oxford University Press, 3rd edn 2016) https://www.oed.com/view/Entry/274223?redirectedFrom=reinsertion accessed 21 January 2021.
[27] Romain Gouloumes for *Juste un Droit*, Interview with Laurent Jacqua "Comment refaire sa vie après la prison ?" (Paris, 23 August 2019)
[28] Romain Gouloumes for *Juste un Droit*, Interview with Laurent Jacqua "Comment refaire sa vie après la prison ?" (Paris, 23 August 2019)
[29] Deirdre Healy, 'Structuring desistance: Exploring socio-cultural pathways to change in Ireland' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019)

Re-entry

In a similar logic, the Americans Visher and Travis imagined the phrase 're-entry', literally as a word to say what happens when an incarceration ends[30]. Re-entry is an inevitable consequence and is not a legal status, nor a programme to reintegrate. It is simply a description of the passage from prison to society, that is juxtaposed against the experience of reintegration, although it has sometimes been considered a "buzzword" that is hardly defined[31].

Visher distinguishes between the process and goal that is reintegration, viewed as an individual's reconnection with the institutions of a given society, and re-entry which depicts blankly the challenges of returnees. She puts an interesting focus on the fact that former prisoners do not form a homogeneous group and therefore do not necessarily share the same post-release experiences, although there may be common characteristics. Some factors that usually differentiate between former detainees are the length of the sentence, the actual prison experience, the age and the existence of solid familial relationships or lack thereof. Even though the concept of re-entry has not yet been exported outside of the United States, its unicity has proven to be of great relevance in this brief study of lexical semantics. Indeed, 're-entry' describes pragmatically the experience of returning to the society rather than a goal of social inclusion.

Rehabilitation

Richard Korn makes the point that "No one but an academic simpleton will even use the word "rehabilitation" without apprehension"[32]. Indeed, Ward and Maruna argue that it carries a long and well-known "baggage" which does not always serves its goal. However, they believe that those experiences should be acknowledged rather than ignored to draw more adequate tools, "and not just reinvent a broken wheel"[33]. Interestingly enough, despite its lengthy history, the science of offender rehabilitation remains a very young field[34].

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[30] Christy A Visher, 'Re-entry and Reintegration after Incarceration' (2015) Elsevier Ltd 61
[31] Tony Ward and Maruna Shadd, *Rehabilitation: Beyond the Risk Paradigm* (London, Routledge 2007) 5
[32] Tony Ward and Maruna Shadd, *Rehabilitation: Beyond the Risk Paradigm* (London, Routledge 2007) 1
[33] Tony Ward and Maruna Shadd, *Rehabilitation: Beyond the Risk Paradigm* (London, Routledge 2007) 7
[34] Devon LL Polaschek, 'An Appraisal of the Risk-Need-Responsivity (RNR) Model of Offender Rehabilitation and its Application in Correctional Treatment' (2012) 17 Legal & Criminological Psychology 1

In the English-speaking world, rehabilitation refers to the restoration to normal activity via treatment, therapy or counselling, e.g. the reintroduction of servicemen and women into civilian life[35]. Although a consensus on the legal definition of the elastic concept of rehabilitation has not been reached by academics, Rotman asserts it "can be defined tentatively and broadly as a right to an opportunity to return to (or remain in) society with an improved chance of being a useful citizen and staying out of prison; the term may also be used to denote the actions of the State or private institutions in extending this opportunity"[36]. This view is interesting as Rotman idealistically believes imprisonment should be restricted to the denial of freedom, and therefore that the shaming and stigma offenders face outside the walls are illegal.

Taneva argues that rehabilitation deals with the root causes of crime, as indeed a problem cannot be cured if its source has not been identified. Therefore, she believes rehabilitation is a solution to crime[37], although it appears the causal link between rehabilitation and renouncing to criminal activity is more extended than that. She rightfully points out that rehabilitation deals with the offender and not directly with the offence[38]. Thus, it would be more accurate to envision reintegration as a readaptation process the individual undergoes after release, and through this return to 'normal' community life desists from crime.

By comparison, Zedner describes rehabilitation as a process to change those aspects of the offender's personality, traits, views, lifestyle and life chances that predispose them to crime and to develop such qualities, skills and opportunities as might enable them to desist from offending[39]. It fosters practical interaction between several professionals, such as health and social workers. Similarly, on the theoretical side, McNeill advocates for the development of interdisciplinary perspectives gathering criminological theory, historical and philosophical underpinnings, psychological work as well as insights from the sociology of law and

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[35] "rehabilitation" in Oxford English Dictionary online (3rd edn, Oxford University Press 2016) https://www.oed.com/view/Entry/161448?redirectedFrom=rehabilitation (accessed January 21 2021).

[36] Edgardo Rotman, *Beyond Punishment: A New View on the Rehabilitation of Criminal Offenders* (Praeger 1990) 3

[37] Ilina Taneva, 'Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective' (2019) 16 US-China Law Review 258, 262

[38] Ilina Taneva, 'Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective' (2019) 16 US-China Law Review 258, 262

[39] Lucia Zedner, "rehabilitation" in Peter Cane and Joanne Conaghan, *The New Oxford Companion to Law* (Oxford University Press 2008)

punishment[40]. He identifies four main forms of rehabilitation[41], namely psychological rehabilitation, interested in initiating positive change in the offender; legal rehabilitation, concerned with the modalities for the expungement of criminal records; moral rehabilitation, focused on the redemption process former prisoners may have to go through to find their way back into the community; and social rehabilitation which regards "the informal social recognition and acceptance of the reformed offender"[42].

Rehabilitation understood in terms of diverse interventions a returning prisoner has to undergo raises the question of coercion and forms part of the debatable ideology that an end, namely restoration to community life without danger to the society, justifies any means[43]. As McNeill put it during a conference in 2009, rehabilitation is both a penal concept and a penal practice.

Review

This overview of terminological matters in respect to life beyond prison walls shows the complex role of semantics in that area of criminal justice and lays ground for greater accuracy in the following chapters.

Brangan makes the interesting point that Anglophone nations display similar penal patterns – that they often believe to be the norm[44]. This can easily be translated to subcomponents of criminal justice policy and criminology. Reflecting on the words used in other countries provides a more comprehensive and inclusive perspective. In the context of this dissertation, it was particularly important to define the official French terminology, 'reinsertion'.

'Re-entry', a US-specific terminology, has also been included. Although the concept shows greater realism and pragmatism, this paper intends on reflecting on both the process of getting out of prison and the pathway towards integration within the community. Because 're-entry'

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[40] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) 17 Legal and Criminological Psychology 18, 20

[41] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) 17 Legal and Criminological Psychology 18, 31

[42] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) 17 Legal and Criminological Psychology 18, 32

[43] Robert Martinson, 'What Works? Questions and Answers about Prison Reform' (1974) Public Interest 22

[44] Louise Brangan, "Exceptional states: The political geography of comparative penology" (2020) 22(5) Punishment & Society 596, 597

lacks this idea of a goal attached to the process, it is not the core concept the following chapters are drawn upon.

In reality, desistance from criminal activity operates through social inclusion. Based on the existing literature on desistance, Healy underlines "the experience of belonging, the capacity to participate in core societal activities and the social validation of the ex-offender as a changed person"[45]. From the above overview, the two words that encompass both the processes of change and the objective change is aimed at are 'rehabilitation', and – although not perfectly accurate – 'reintegration'.

CHAPTER 2: THEORETICAL FRAMEWORKS

The aim of the present paper is not and should not be to try and determine which rehabilitation theory works best in general, rather to identify which components of existing theories could be used to create a best-practices model[46]. Moreover, this model contains elements that may not apply to certain individuals, e.g. practices that encompass the realities of addiction do not work on drug-free ex-offenders.

This best practices model draws upon identified factors that influence the desistance process to suggest practical applications of theoretical underpinnings. As Taneva observed, successful reintegration depends on "the constant and consistent efforts for change on the part of the offender as well as on the continuity and the professional quality of the interventions by all relevant interveners"[47]. What may those interventions be in a post-prison context?

An overview of desistance processes and influential factors should be provided before exploring practices that may help to facilitate these processes. Following Farrall's partitioning, factors of influence are divided into two categories: those which relate to internal dynamics on the one hand, and those which refer to structural processes on the other hand. Based on these observations, the means to realise successful reintegration that encompass both processes are

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[45] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 181
[46] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 15
[47] Ilina Taneva, 'Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective' (2019) 16 US-China Law Review 258, 262

identified, although naturally non-exhaustive. Priority is given to suggestions that have been practically applied in prison systems across the world.

Influential Factors

Internal dynamics

Agency plays a great part in reinsertion and the desistance process[48]. Agency can be understood as "the capacity to exercise will during interactions with the social world"[49]. The most adequate interpretation of agency is multi-dimensional in that desistance, and with it rehabilitative prospects, begins with 'readiness to change', or at least openness to change, and tries to capture the environmental tools to implement that change[50]. However, it is important to note that agency does not always play a significant role in reintegrative processes. For instance, in a post-World War II historical context, structural elements such as social inclusion, employment rates, and economy were so favourable that successful rehabilitation only required minimal levels of agency[51].

Maruna argues that "to desist from crime, ex-offenders need to develop a coherent, pro-social identity for themselves"[52]. This identity can be 'storied'[53] into the building of a new self to facilitate reintegration among peers. This 'rebiographing'[54] process is not made up of lies, rather of narratives rearranging certain aspects of the former convict's past life that help the community to which he returns understand his life experience better, and perhaps to a certain extent excuse his former engagement in criminal activity. Arguably, this rebranding of the story could help the offender have a better opinion of himself and trigger 'readiness to change'. Because some invest in crime to redefine themselves and boost their self-esteem[55], it is

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[48] Deirdre Healy, 'Changing Fate? Agency and the Desistance Process' (2013) 17(4) Theoretical Criminology 557
[49] Deirdre Healy, 'Changing Fate? Agency and the Desistance Process' (2013) 17(4) Theoretical Criminology 557, 558
[50] Peggy C. Giordano, Stephen A. Cernkovich and Jennifer L. Rudolph, 'Gender, Crime, and Desistance : Toward a Theory of Cognitive Transformation' (2002) 107(4) American Journal of Sociology 990
[51] J. Laub and R. Sampson, 'Understanding desistance from crime' (2001) 28 Crime and Justice 51-52
[52] Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild their Lives* (1st edn, American Psychological Association Books 2001) 7
[53] Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild their Lives* (1st edn, American Psychological Association Books 2001) 138
[54] Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild their Lives* (1st edn, American Psychological Association Books 2001) 140
[55] M.R. Lindegaard and S. Jacques, "Agency as a cause of crime" (2014) 35(2) Deviant Behavior 85

important to change the narrative. Indeed, it is only coherent that offenders need to produce a new version of themselves, allowing them to define their person without referring to crime, and replacing criminal activity with new defining elements. As observed by McNeill, "people do not simply desist; they desist *into* something"[56].

On another note, Hunter points out the role of values and beliefs in rehabilitation, so as to emphasise emotions and sense of self[57]. Former convicts tend to search for a meaning when they re-enter life outside the walls; they thrive for finding a point to their existence. As an illustration, some of them turn to religion. Mohammed observes that "religious exits are one of the most accessible ways to stop committing criminal offences"[58], as a way to "calm inner devils"[59] and engage in a redemptive path.

From these observations on internal dynamics that influence offenders' rehabilitative prospects, it is clear that change only happens when the individual expresses and exercises his will to readapt to societal norms, whatever minimal levels of agency are required. Combined with hooks, namely tools by which change can occur, desistance can operate.

Structural processes

Desistance depends on agency, as detailed above, as well as on "wider, economic, social cultural processes" that account for structural elements[60]. In his architecture of desistance, Farrall identifies several external factors[61], that I have completed and grouped into three categories: systemic variables, social inclusion mechanisms and personal characteristics.

Systemic variables refer to products of the system that directly influence rehabilitation. As Healy wrote, "individual biographies are always situated within particular, geographical and

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[56] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) 17 Legal and Criminological Psychology 18, 31
[57] Ben Hunter, *White Collar Offenders and Desistance from Crime* (1st edn, Routledge 2015)
[58] Marwan Mohammed, "Religiosity and desistance from crime" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 163
[59] Marwan Mohammed, "Religiosity and desistance from crime" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 170
[60] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 3
[61] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 16

historical contexts"[62]. Relying on Dandoy's analysis of Bourdieu's work, each individual is indeed located inside a field, i.e. a kind of small universe that operates within a broader universe where general laws that apply to the larger set coexist with the field's own customs, called *nomos*[63]. As a social world, the field structures the *habitus*[64], i.e. a system of dispositions that guide and frame our social practices but does not promote determinism. Deriving from that structural construction, the ex-convict returns to a specific context that has its own codes but is subject to the laws of the wider universe, i.e. the system.

The first thing to consider is the importance of politics on rehabilitation through understanding the objective ins and outs of the prison system of the country under study. In that context, measuring punitiveness, punishment and sentencing practices is necessary, the latter being *de facto* interlinked with post-prison experiences and influencing reintegrative prospects. Hamilton asserts that an instrument seeking to measure state punitiveness should at least incorporate differences in police powers and policing practices, respect given to human rights instruments, the extent of procedural guarantees; and the quality of prison regimes[65]. In a very simplistic manner, punitive States that understand punishment to be the sole goal of imprisonment do not promote rehabilitative prospects. Further, the general political culture of a country constitutes one of the risk factors identified by Tonry as capable of acting as a determinant of penal policies. Yet, the dichotomy between so-called consensus systems and conflict systems[66] does not seem to operate at the European scale anymore with the over-polarisation of the political discourse.

Political regimes and historical contexts[67] may also be relevant to the desistance process in certain parts of the world. With regards to the Chilean dictatorship, Villagara asserts that the absence of democratic guarantees in the criminal justice system can have a negative influence on reinsertion[68]. In reality, the experience of offenders with politics and the law are materialised

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[62] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 183
[63] Arnaud Dandoy, "Towards a Bourdieusian frame of moral panic analysis: The history of a moral panic inside the field of humanitarian aid" (2015) 19(3) Theoretical Criminology 416, 421
[64] Arnaud Dandoy, "Towards a Bourdieusian frame of moral panic analysis: The history of a moral panic inside the field of humanitarian aid" (2015) 19(3) Theoretical Criminology 416, 421
[65] Claire Hamilton, *Reconceptualising Penalty: A Comparative Perspective on Punitiveness in Ireland, Scotland and New Zealand* (Taylor & Francis Group 2014) ch9 190
[66] Michael Tonry, 'Determinants of Penal Policies' (2007) 36 Crime and Justice 1, 18-19
[67] J. Laub and R. Sampson, "Understanding desistance from crime" (2001) 28 Crime and Justice 51-52
[68] C. Villagara, *Socio-Historical Contexts Identity and Change: A Study of Desistance from Crime in Chile* (Dpt of Criminology, University of Leicester 2016)

through the prism of their interactions with the criminal justice system[69]. Offenders often describe themselves as outcasts, excluding themselves from the system "them" and "us"[70].

The above observations tend to suggest that rehabilitation practices are highly dependent on the systemic norms the society an ex-offender returns to adopts, and on the historical and political context of when that return takes place. Therefore, from a policy perspective, it can be argued that the State can intervene and – if it so chooses – facilitate the desistance process[71].

Other influential structural factors are social inclusion mechanisms. Farrall observes that if crime is partly a consequence of social and economic processes, changes in these logically have an impact on desistance[72]. Benazeth notes that it is possible to "objectify the process of desistance as a reinforcement of the individual's capital so that he or she will invest in an extended network opportunities"[73]. Therefore, once internal dynamics have played their part, there needs to be actual socio-economic opportunities for the former detainee to desist into.

Having a stable job is actually a major integration force that helps create a new routine[74], relationships with others – that most likely do not engage in criminal activity – , and forge a non-criminal identity[75]. Between the early 1980s and 2000, employment opportunities in the industrial sector significantly dropped in England and Wales, making it consequently harder for ex-convicts to rehabilitate 'towards the mainstream'[76]. Consequently, where jobs that do not require educational qualifications are accessible, it will be easier for an offender to reintegrate within the society[77].

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[69] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 188

[70] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 146

[71] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 198

[72] Farrall S., Bottoms A., Shapland J., 'Social Structures and Desistance from Crime' (2010) 7(6) European Journal of Criminology 546

[73] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 155

[74] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 153

[75] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 192

[76] Farrall S., Bottoms A., Shapland J., "Social Structures and Desistance from Crime" (2010) 7(6) European Journal of Criminology 546, 554

[77] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 193

Moreover, important life events can increase socialisation and by extension encourage reinsertion. Benazeth gives examples of what those turning points may be: moving out of the parental home, parenthood, illness, finding a passion etc[78]. Altogether these socio-economic variables, when favourable, maintain the desister into a life "where involvement in crime becomes less and less desirable, desired and compatible"[79].

The last category of structural processes regards personal characteristics, namely age, ethnicity and criminal record[80]. Those are not delved into in the present dissertation, but if anything, their presence amongst structural factors emphasises the need for individualised rehabilitation practices. It should be recalled that there is no universal silver bullet towards this goal as each prisoner is different from the next and may not put in the same efforts towards reinsertion[81] or interact in the same manner with his reception environment.

Best Practices Model

"The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice, against him and towards his social rehabilitation."

- The United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 64

The interest in elaborating a best practices model is to draft an ideal rehabilitative framework encompassing a wide range of initiatives, and more importantly to later compare and contrast it to the two comparator countries.

To begin with, Zedner argues that the main problem with rehabilitation schemes is the mistaken bio-criminological assumption that delinquency has pathological causes that are treatable. Though, not all models endorse this belief. For one thing, the Good Lives Model (GLM) engages with moral philosophy and sociology of punishment and assists desistance based on an

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[78] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 153

[79] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 153

[80] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 16-18

[81] Ilina Taneva, 'Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective' (2019) 16 US-China Law Review 258, 262

examination of what actually helps people to stop offending[82]. Conversely, the Risks-Needs-Responsivity (RNR) principles aim to provide general parameters in which rehabilitative endeavours will operate[83], often based on social circumstances variables. Yet, it focuses more on the factors that predict crime instead of targeting the elements that forecast desistance[84]. The inevitable adverse consequence of that logic is the overprediction of crime in socially disadvantaged environments, which certainly does not explain why others who find themselves in the same social context do not engage in criminal activity[85].

The absolute priority when it comes to rehabilitation is to avoid the shaming and stigmatisation of offenders. Indeed, an offence is the result of breaking a legal rule as well as a moral standard[86], namely the value protected by the legal rule that has been violated. Hence, offenders are often labelled as deviant, which greatly undermines their potential for reintegration[87]. Although forms of public shaming used in the last centuries have mostly disappeared, offenders are often still outcasts as a result of having been ostentatiously exposed and marked as such[88]. Because it has been underlined in the first chapter that the public's perception of punishment and offenders had an impact on rehabilitation and penal policies, the first pre-requisite is to raise awareness within society and fluidify the relations between the released offender and the community. In that regard, Visher confirms the influence of the characteristics of the environment to which the ex-prisoner returns on individual transitions from prison to the community[89].

As an illustration, Canada developed the Circles of Support and Accountability as "a community-based programme designed to assist the community reintegration" of high-risk sex offenders[90]. In the inner circle, the offender is surrounded by community representatives that

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[82] Edgardo Rotman, *Beyond Punishment: A New View on the Rehabilitation of Criminal Offenders* (Praeger 1990)
[83] Devon LL Polaschek, 'An Appraisal of the Risk-Need-Responsivity (RNR) Model of Offender Rehabilitation and its Application in Correctional Treatment' (2012) 17 Legal & Criminological Psychology 1
[84] Fergus McNeill, 'Four forms of 'offender' rehabilitation: Towards an interdisciplinary perspective' (2012) 17 Legal and Criminological Psychology 18, 27
[85] Edgardo Rotman, *Beyond Punishment: A New View on the Rehabilitation of Criminal Offenders* (Praeger 1990)
[86] Neville Harris, "shaming and stigmatization of offenders" in in Peter Cane and Joanne Conaghan, *The New Oxford Companion to Law* (Oxford University Press 2008)
[87] Neville Harris, "shaming and stigmatization of offenders" in in Peter Cane and Joanne Conaghan, *The New Oxford Companion to Law* (Oxford University Press 2008)
[88] Neville Harris, "shaming and stigmatization of offenders" in in Peter Cane and Joanne Conaghan, *The New Oxford Companion to Law* (Oxford University Press 2008)
[89] Christy A Visher, 'Re-entry and Reintegration after Incarceration' (2015) Elsevier Ltd 61, 63
[90] Natasha Azoulay, Belinda Winder, Lisa Murphy and John Paul Fedoroff, 'Circles of Support and Accountability (CoSA): A Review of the Development of CoSA and its International Implementation' (2019) 31(2) International Review of Psychiatry 195

are meant to fill the gap between the society the subject has to go back to and himself, and introduce a responsibility element and accountability in the latter's relations to others. In the outer circle, professionals monitor the interactions between volunteers and the offender[91]. Consequently, offenders who participated in CoSA had a 70% reduction in sexual recidivism in contrast to the matched comparison group[92]. It would perhaps be interesting to see how this would apply to all types of offenders, as they may all be concerned by social exclusion, and not only those involved in "a small number of highly sensational cases"[93].

In that same logic of maintaining ties with the community, Visher underlines the importance of the role of family in understanding the reintegration of former prisoners, with a particular focus on the nature of the family contact and the type of support offered. Indeed, strong links between convicts and their relatives or close circle tend to have a positive impact on 'post-release success'[94]. Inglis asserts that families "are the primary institutions in terms of creating meaning and understanding of life, of identities and sense of self and of bonds of affection and belonging"[95]. Ideally, a prison system that aims to reintegrate its detainees will try to foster those interactions. Because the institution of family acts a returning point; it is not a new social bond and "the mechanism that produces the motivation to change is compensation for the supportive role of the pre-existing relationship rather than maintaining a new relationship"[96]. Spanish scholars Cid and Marti recommend favouring family visits during incarceration, and argue that reinsertion schemes should have a role set out for families[97]. This could mean support and supervision, or where applicable therapy sessions for broken families to repair what can be fixed. It should however be noted that this prominent role of family tends to be more true in countries with strong traditional values, such as Spain[98]. Alternatively, in cases where families

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[91] Robin J. Wilson, Janice E. Picheca and Michelle Prinzo, *Circles of Support & Accountability: An Evaluation of the Pilot Project in South-Central Ontario* (N°R-168, 2005)

[92] Robin J. Wilson, Janice E. Picheca and Michelle Prinzo, *Circles of Support & Accountability: An Evaluation of the Pilot Project in South-Central Ontario* (N°R-168, 2005)

[93] Natasha Azoulay, Belinda Winder, Lisa Murphy and John Paul Fedoroff, 'Circles of Support and Accountability (CoSA): A Review of the Development of CoSA and its International Implementation' (2019) 31(2) International Review of Psychiatry 195, 198

[94] Christy A Visher, 'Re-entry and Reintegration after Incarceration' (2015) Elsevier Ltd 61, 62

[95] Tom Inglis, "Family and the meaning of life in contemporary Ireland" in Linda Connolly, *The Irish Family* (Routledge 2015)

[96] José Cid and Joel Marti, "Turning points and returning points: Understanding the role of family ties in the process of desistance" (2012) 9(6) European Journal of Criminology 614

[97] José Cid and Joel Marti, "Turning points and returning points: Understanding the role of family ties in the process of desistance" (2012) 9(6) European Journal of Criminology 614, 618

[98] José Cid and Joel Marti, "Turning points and returning points: Understanding the role of family ties in the process of desistance" (2012) 9(6) European Journal of Criminology 614, 617

cannot or do not wish to intervene in the desistance process, trained members of the community could act as emotional supports and deterrents to crime, like in the CoSA example.

On a more general note, Healy contends that the concept of social inclusion, which lies at the heart of reinsertion processes and goals, needs to be defined clearly by policy-makers so as to influence practice[99], while some jurisdictions have suggested making reinsertion a right. The principle of *Resozialisierung*, translated as 'social reintegration' or 'resocialisation' has been recognised a constitutional basis by the German Federal Constitutional Court. The social state is required to provide "public care and assistance for those groups in the community who, because of personal weakness or fault, incapacity or social disadvantage, were adversely affected in their social development; prisoners and ex-prisoners also belong to this group"[100]. Morgenstern argues this principle as a legal entitlement encompasses positive rights to state action and negative fundamental rights against state infringements[101]. This approach is certainly interesting as it gives individuals released from prison more legitimacy as right beneficiaries and provides a concrete legal framework to the complex reality of re-entry. On the other hand, the risk of granting a wide-ranging right is legal uncertainty. Scholars actually regret that the concept of *Resozialisierung* remains vague and that its meaning tends to vary[102].

Mixing external and internal dynamics, bringing about socio-economic opportunities reinforce the probationer's self-confidence and as Healy observes, help him to believe in his agency[103]. Visher and Travis interviewed Eddie and summed up his situation with regards to work opportunities in one sentence: "He would come home, determined not to go back [to prison], and hoping to get a job, only to be told that there were no jobs for him"[104]. The interviewee evoked the particular drawback of having to present his criminal record when looking for a job and the overall lack of jobs available on the market. In this example, not being able to access employment was crucial in Eddie's choice to go back to selling drugs, and hop off the

[99] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 198
[100] Federal Constitutional Court, 'Lebach' (5 June 1973) BVerfGE 35, 202
[101] Christine Morgenstern, 'Der Resozialisierungsgrundsatz: Social reintegration as the dominant narrative for community punishment in Germany?' in in Gwen Robinson and Fergus McNeill, *Community Punishment: European Perspectives* (1st edition, Robinson & McNeill 2015)
[102] Sonja Meijer, 'Rehabilitation as a Positive Obligation' (2017) 25(2) European Journal of Crime, Criminal Law and Criminal Justice 145
[103] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 157
[104] Christy A. Visher and Jeremy Travis, 'The Characteristics of Prisoners Returning Home and Effective Reentry Programs and Policies' in the *Oxford Handbook of Sentencing and Corrections* (ed. J. Petersilia & K. Reitz 2011) 102S

reintegration train[105]. Therefore, practices that could increase chances of successful rehabilitation in that context would be the providing of access to work, education and cultural activities inside prisons[106].

On the outside, programmes aimed at giving the released convict tools to reintegrate are beneficial. Drawing from the general undebated finding that unemployment is significantly higher among prisoners[107], Cafferty, McCarthy and Power note that the introduction of social enterprises (SEs) within the criminal justice system in Ireland could play a role in reducing reoffending rates[108]. A SE can be defined as "a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community"[109]. The authors argue that SEs could fill the gap between training schemes in prison and employment on the outside[110].

Another primordial observation from the above overview of desistance processes was the need for individually tailored interventions aimed at promoting agency. For one thing, prisoners with addiction issues should benefit from specific expertise and treatment. Hence, they make a particularly interesting example of how individualisation could operate and be beneficial to the desister.

In *R v Briscoe*[111], the Superior Court of Justice of Ontario was invited to view law through a therapeutic lens in deciding the case of a multi-recidivist heroin addict whose convictions were directly linked to drug use. Barnes J affirmed that rehabilitation through treatment "must be a paramount sentencing objective because treatment and improvement of the individual is intricately linked to the probability of recurrence of criminal behaviour"[112]. He subsequently explained that depending on the nature of the offence, the offender could benefit from treatment interventions outside or within a custodial setting[113], laying ground for a better collaboration

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[105] Christy A. Visher and Jeremy Travis, 'The Characteristics of Prisoners Returning Home and Effective Reentry Programs and Policies' in the *Oxford Handbook of Sentencing and Corrections* (ed. J. Petersilia & K. Reitz 2011) 103S

[106] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 153

[107] Siobhán Cafferty, Olive McCarthy and Carol Power, 'Risk and Reward: The Development of Social Enterprise within the Criminal Justice Sector in Ireland – Some Policy Implications' 13 Irish Probation Journal 22, 23

[108] Siobhán Cafferty, Olive McCarthy and Carol Power, 'Risk and Reward: The Development of Social Enterprise within the Criminal Justice Sector in Ireland – Some Policy Implications' 13 Irish Probation Journal 22, 23

[109] UK Department of Trade and Industry, *Social Enterprise: A Strategy for Success* (DTI, 2002)

[110] Siobhán Cafferty, Olive McCarthy and Carol Power, 'Risk and Reward: The Development of Social Enterprise within the Criminal Justice Sector in Ireland – Some Policy Implications' 13 Irish Probation Journal 22, 34-37

[111] *R v Briscoe*, 2019 ONSC 2471 (CanLII) [8]

[112] *R v Briscoe*, 2019 ONSC 2471 (CanLII) [15]

[113] *R v Briscoe*, 2019 ONSC 2471 (CanLII) [16]

between law and treatment programmes. In particular, Barnes J reminded the purpose of sentencing: mainly to deter unlawful conduct and assist in rehabilitating offenders. He added that the latter objective could be realised through treatment where appropriate[114].

Similarly, Norway sought to adapt to the individual offender in setting out its rehabilitation schemes. Six out of ten prisoners released each year are reported to be dependent on drugs[115]. For that reason, the general approach to reintegration was adjusted to their needs. In common situations, prisoners start in high-security prisons before moving to lower-security prisons and eventually finishing their sentence under home supervision. It is established that a failure to comply with the agreed terms will cause the convict to return to the previous stage. In the case of drug addicts, testing positive for drug use will result in the person taking a step back in the process[116].

These examples of how custody and individualisation of interventions can unfold are encouraging in that they anticipate on post-prison rehabilitation.

In closing of this second chapter, reviewing internal and external factors that influence desistance enabled the construction of a set of best practices drawn upon concrete examples as well as personal and academical suggestions. Further, reflecting on impactful dynamics allowed for in-depth examination of the ins and outs of the concepts of rehabilitation and desistance.

CHAPTER 3: REFLECTION ON FRENCH AND IRISH POLICIES AND PRACTICES

As noted by Farrall, "nation-states have their own unique histories and in-built path dependencies which shape the social, economic and cultural institutions they contain and are made up of"[117]. Therefore, how the best practices model drawn in the previous chapter compares and confronts to the two comparator countries needs to be assessed in line with cultural dynamics and influential factors.

Actual practices from both jurisdictions are best described by independent bodies, which is why reports from NGOs are used in the present chapter.

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[114] *R v Briscoe*, 2019 ONSC 2471 (CanLII) [45]
[115] Bjørn Kjetil Larsen, Sarah Hean and Atle Ødegård, 'A Conceptual Model on Reintegration after Prison in Norway' (2019) International Journal of Prisoner Health 15(3) 282,
[116] Bjørn Kjetil Larsen, Sarah Hean and Atle Ødegård, 'A Conceptual Model on Reintegration after Prison in Norway' (2019) International Journal of Prisoner Health 15(3) 282, 283
[117] Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 22

Introductory Matters

Having a brief overview of both prison systems sets the scene for effective comparison between Ireland and France with regards to rehabilitative practices. Indeed, knowing who goes to prison is required to understand and reflect on the reintegration policies France and Ireland have adopted. Yet, deficiencies in the Irish data system do not permit in-depth knowledge of who prisoners are[118]. This summary of prison systems necessarily relies on measurements of punitiveness and punishment as well as sentencing practices, the latter being *de facto* interlinked with post-prison experiences and influencing reintegrative prospects.

With a 100.7% occupancy rate and 61,102 detainees[119], France heavily relies on incarceration, especially pre-trial. Indeed, remand prisoners made 32.7% of the prison population in 2020. The European Court of Human Rights has recently injuncted France to put an end to overcrowding in prisons[120]. Further, France offers very little opportunities for sentencing adjustments with only 10,549 persons not detained in penal institutions, referred to as "*écrouées non détenues*" – not counted in the total mentioned above[121]. It certainly does not help that the French Justice budget is one of the least well-resourced in Europe[122].

In Ireland, the situation is quite different. The number of people in Irish prisons, 3,729 at 1st February 2021[123], is at the middle of the European table but statistics show an excessive reliance on short-term imprisonment. Committals under sentence of less than 3 months increased from 1,070 in 2018 to 1,552 in 2019[124]. Further, 76% of all committals under sentence in 2019 were for sentences of 12 months or less[125].

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[118] Mary Rogan, "Rehabilitation, Research and Reform: Prison Policy in Ireland" (2012) 9 Irish Probation Journal 6, 24
[119] World Prison Brief, France (Institute for Crime and Justice Policy Research, University of London, November 2018)
https://www.prisonstudies.org/country/france accessed 22 January 2021.
[120] *J.M.B. and Others v France* App no 9671/15 (ECtHR, 30 January 2020)
[121] World Prison Brief, France (Institute for Crime and Justice Policy Research, University of London, November 2018)
https://www.prisonstudies.org/country/france accessed 22 January 2021.
[122] Alternatives Economiques, March 2011 n°300 'Emplois, revenus, logements… Génération galère'
[123] World Prison Brief, Ireland (Institute for Crime and Justice Policy Research, University of London, November 2018)
https://www.prisonstudies.org/country/ireland-republic accessed 18 February 2021.
[124] Irish Penal Reform Trust, 'Facts and Figures' (*IPRT*, February 2021)
https://www.iprt.ie/prison-facts-2/ accessed 18 February 2021.
[125] Irish Prison Service, Annual Report 2019
https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2019-Web.pdf accessed 18 February 2021.

Although these figures permit a superficial situational analysis, it is important to note that using data like imprisonment rates is only one indicator[126] and therefore cannot be used independently to assess the whole reality of a given prison system. It should also be recalled that the lack of criminal justice data hinders criminological research in Ireland[127].

Focusing on 'cultural dynamics', the cultural explanations around punishment differ in the two countries under study. The diverse dimensions and representations of sentencing are in fact one of the very basis of the stabilisation of certain policies under material conditions[128]. Because this paper reflects on the impact of a custodial sentence on a convict's rehabilitative prospects, those are of particular relevance here. As an example, French legal practitioners use the word "peine", which literally translates as 'sentence' but conveys the connotation of pain and hardship[129]. When the 'pain' is over, the principle of punishment disappears in favour of reinsertion[130]. Tonry makes a similar point in explaining that the words "penalty", "punitiveness", "punitivism" or "punitivity" are "ugly words" that refer to an ambiguous reality which expresses intolerance towards offenders on the one hand and support for greater severity in sentencing on the other hand[131]. Indeed, depending on the phrase chosen, the conception of sentencing and its aims may not be the same.

In addition, from an Irish perspective, Rogan writes that "how policy-makers use terms such as rehabilitation is revealing of their sensibilities regarding punishment, the objectives of punishment and the relative importance or priority between competing objectives"[132]. In the 1980s, the word 'rehabilitation' was very rarely used by policy-makers, yet in 1985 the Whitaker Committee suggested that rehabilitation should be the aim of the prison system[133]. In 1994, a shift in the terminology referring to offenders' transitions to the community was

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[126] Michael Tonry, 'Determinants of Penal Policies' (2007) 36 Crime and Justice 1, 9
[127] Mary Rogan, "Rehabilitation, Research and Reform: Prison Policy in Ireland" (2012) 9 Irish Probation Journal 6, 21-22
[128] Nicola Lacey, David Soskice and David Hope, 'Understanding the Determinants of Penal Policy: Crime, Culture and Comparative Political Economy' (2018) 1 Annual Review of Criminology 195, 202
[129] Martine Herzog-Evans, 'France: Legal Architecture, Political Posturing, 'Prisonbation' and Adieu Social Work' in Gwen Robinson and Fergus McNeill, *Community Punishment: European Perspectives* (1st edition, Robinson & McNeill 2015)
[130] Martine Herzog-Evans, 'France: Legal Architecture, Political Posturing, 'Prisonbation' and Adieu Social Work' in Gwen Robinson and Fergus McNeill, *Community Punishment: European Perspectives* (1st edition, Robinson & McNeill 2015)
[131] Michael Tonry, 'Determinants of Penal Policies' (2007) 36 Crime and Justice 1, 7
[132] Mary Rogan, "Rehabilitation, Research and Reform: Prison Policy in Ireland" (2012) 9 Irish Probation Journal 6, 8
[133] Mary Rogan, "Rehabilitation, Research and Reform: Prison Policy in Ireland" (2012) 9 Irish Probation Journal 6, 18

observed. 'Rehabilitation' became 'positive sentence management'[134], which suggested a bit of a going backwards in the taking into account of reinsertion in polity. As explained before, words used to describe the process of detainees' return to the society may depict different realities. In the 2010s, 'rehabilitation' reappeared in the language of policy-makers, reaffirming the significance of this objective[135].

Confrontation of Comparator Countries to the Best Practices Model

One of the first objectives of the set of best practices is to avoid shaming and stigma around ex-convicts. Articles 782 to 789 of the French Criminal Procedure Code organise the 'rehabilitation' of former convicts, namely the restoration of an offender in the full enjoyment of his or her rights. Thus, French practitioners envision rehabilitation as a statutory provision that carries legal force and effects, as opposed to a mere sociological concept[136]. French criminal records are construed in three parts: the first is the most comprehensive as it recounts all convictions and is only addressed to judicial authorities; the second contains most convictions and is reserved to public authorities and employers; lastly, the third only transcribes the most serious convictions. Rehabilitation operates either automatically after a certain lapse of time, depending on the seriousness of the offence, or at the request of the offender, provided it is approved by the judiciary[137]. The aim of this separation into three distinct components is to facilitate reinsertion, particularly by making employment more accessible to former detainees. Indeed, in France even the conservative side, usually supporting harsher prison and punishment policies, never questioned rehabilitation as a legitimate objective of imprisonment[138]. Recently, the newly nominated French Ministry for Justice Eric Dupond-Moretti asserted "prison, it's punishment, but it's also reinsertion"[139] and actually chose the Fresnes prison[140] as his first official visit as a Minister.

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[134] Mary Rogan, "Rehabilitation, Research and Reform: Prison Policy in Ireland" (2012) 9 Irish Probation Journal 6, 18

[135] Mary Rogan, "Rehabilitation, Research and Reform: Prison Policy in Ireland" (2012) 9 Irish Probation Journal 6, 19-20

[136] "réhabilitation" in Gérard Cornu, *Vocabulaire juridique* (11th edn, Presses universitaires de France 2015)

[137] "réhabilitation" in Gérard Cornu, *Vocabulaire juridique* (11th edn, Presses universitaires de France 2015)

[138] Martine Herzog-Evans, 'France: Legal Architecture, Political Posturing, 'Prisonbation' and Adieu Social Work' in Gwen Robinson and Fergus McNeill, *Community Punishment: European Perspectives* (1st edition, Robinson & McNeill 2015) 55

[139] Thomas Lepoutre, 'Dupond-Moretti et Klinkert prennent la prison d'Oermingen en exemple en matière de réinsertion' Dernières Nouvelles d'Alsace (Strasbourg, 9 February 2021)

[140] Fresnes is a famous prison on the outskirts of Paris.

On the Irish side, the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 provides that sentences of a maximum of twelve months will be regarded as spent after a period of seven years[141] when committed by one-time offenders[142]. The Act does not however contain anti-discrimination provisions, such that employers are legally allowed to discriminate on the basis of a spent conviction[143]. McIntyre and O'Donnell also argue that second-time offenders – excluded from the statutory provisions – are those whose desistance processes would benefit the most from these measures[144]. It remains to be seen whether the "timidity of the Irish spent convictions legislation"[145] will be overcome in the current review of the 2016 Act.

In terms of social inclusion, after the Independence, Ireland joined the 'pastoral penal culture' model[146], in which the pastoral leader, supported by the community, has the duty to reintegrate the lost sheep, i.e. the offender. It should however be noted that such a progressive approach developed as a consequence of crime being statistically low[147]. In line with McNeill's social rehabilitation, Ireland implemented CoSA, as identified in the set of best practices. CoSA works in partnership with the Probation Service and An Garda Síochána to assist sex offenders' desistance processes in Ireland[148]. Cresswell found that the results were overall positive, although failure to provide specific support with employment was often a downside[149].

Another best practice was to have a prison system which encourages contact with family members and friends. The French section of the Prison Observatory observed that it is often the case that convicts are incarcerated hundreds of kilometres away from their loved ones[150]. Based on a 2017 study from Uframa, 22% of the surveyed population lived more than 100 kilometres

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[141] Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, 5(2)
[142] Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, s. 5(3)
[143] T.J. McIntyre, Ian O'Donnell, 'Criminals, Data Protection and the Right to a Second Chance' (2017) 58 The Irish Jurist 27, 36
[144] T.J. McIntyre, Ian O'Donnell, 'Criminals, Data Protection and the Right to a Second Chance' (2017) 58 The Irish Jurist 27, 37
[145] T.J. McIntyre, Ian O'Donnell, 'Criminals, Data Protection and the Right to a Second Chance' (2017) 58 The Irish Jurist 27, 52
[146] Louise Brangan, "Pastoral penality in 1970s Ireland: Addressing the pains of imprisonment" (2021) 25(1) Theoretical Criminology 44, 58
[147] Louise Brangan, "Pastoral penality in 1970s Ireland: Addressing the pains of imprisonment" (2021) 25(1) Theoretical Criminology 44, 53
[148] Clare Cresswell, ''Why Would You Choose to Study Sex Offenders?': Assisted Desistance and Reintegration of Perpetrators of Sexual Harm' (2020) 17 Irish Probation Journal 63, 65
[149] Clare Cresswell, ''Why Would You Choose to Study Sex Offenders?': Assisted Desistance and Reintegration of Perpetrators of Sexual Harm' (2020) 17 Irish Probation Journal 63, 81
[150] Observatoire International des Prisons, "Des kilomètres d'usure" (*OIP*, 31 January 2019) https://oip.org/analyse/des-kilometres-dusure/ accessed 12 March 2021.

away from where their relative was imprisoned[151]. 41,3% of the interviewees spent between 1 and 2 hours on the road to access the prison where their relative was serving time[152]. From these statistics, it is obvious that familial relationships are not encouraged in practice. Since the 2009 Penitentiary Law, each detainee can benefit from at least one trimestral visit in a 'familial vie unit' – unité vie familiale (UVF), the duration of which is fixed proportionally to the distance travelled by the visitor[153]. In truth, these units often remain inaccessible due to a lack of staff[154].

As to Ireland, in 1982, Lee and O'Tuathaigh argued that there was "no society in Europe [that] so exalted the ideal of the family in its official rhetoric"[155]. Unsurprisingly, facilitating contact with family members was identified as an official need by the 2011 Thornton Hall review group[156]. Prisoners over the age of 18 are allowed one 30 minute visit every week[157]. Visits may not however permit physical contact, as a screen can be used[158]. In a 2009 study, it was found that temporary releases granted for family-related purposes reduced recidivism risk amongst the population surveyed[159].

In terms of opportunities and services accessible in prison, Hamilton argues that while rehabilitation remains an important mission of the Irish prison service, poor physical prison conditions actually hinder reintegration initiatives[160]. In the Irish society, Healy underlines that education holds an esteemed position[161], which is coherent with the fact that there are no more minors in Irish prisons[162]. Still, educational services are available in all prisons and they

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[151] Uframa, *A propos du vécu des familles et des proches de personnes incarcérées* (December 2017) https://www.uframa.org/docs/rub21ssr2/calb1642Synthese_Enquete_Etat_des_lieux_Familles_2017_pdf.pdf accessed 24 March 2021.

[152] Uframa, *A propos du vécu des familles et des proches de personnes incarcérées* (December 2017) https://www.uframa.org/docs/rub21ssr2/calb1642Synthese_Enquete_Etat_des_lieux_Familles_2017_pdf.pdf accessed 24 March 2021.

[153] Loi n° 2009-1436 du 24 novembre 2009 pénitentiaire, Article 36

[154] Observatoire International des Prisons, "Proches de détenus : les liens à l'épreuve des murs" (*OIP*, 31 January 2019) https://oip.org/analyse/proches-de-detenus-les-liens-a-lepreuve-des-murs/ accessed 12 March 2021.

[155] Joseph Lee and Gearoid O'Tuathaigh, *The Age of de Valera* (Ward River Press 1982) 15

[156] Mary Rogan, 'Rehabilitation, Research and Reform: Prison Policy in Ireland' (2012) 9 Irish Probation Journal 6, 19

[157] The Prison (Amendment) Rules 2007, s 35

[158] The Prison (Amendment) Rules 2007, s 36

[159] Eric P. Baumer, Ian O'Donnell, Nicola Hughes, 'The Porous Poison: A Note on the Rehabilitative Potential of Visits Home' (2009) 89(1) The Prison Journal 119

[160] Claire Hamilton, *Reconceptualising Penalty: A Comparative Perspective on Punitiveness in Ireland, Scotland and New Zealand* (Taylor & Francis Group 2014) ch7 140

[161] Deirdre Healy, "Structuring desistance: Exploring socio-cultural pathways to change in Ireland" in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 187

[162] World Prison Brief, Ireland (Institute for Crime and Justice Policy Research, University of London, November 2018)

generally follow an adult approach to schemes. Various programmes are accessible, from Leaving Certificate courses to Creative Arts or open university degrees[163]. Yet, in 1997, coordinator of education in Irish prisons Kevin Warner told the Irish Times that education in prison resembled teaching people on a bus; "they're getting on and off at every stop"[164]. More recently, Behan interviewed male prisoners in a Dublin institution. Among the respondents, the majority participated in education to prepare for release[165] and limit the impact of their lack of qualifications on their life on the outside[166]. Attendance to school was purely voluntary to allow the interviewees to retain a sense of agency[167]. Behan further argues that education in prison should resemble adult education in the community and promote integrity to counter authoritarian rehabilitative programmes that often try to shape offenders' minds[168].

In comparison, France's position on education is ambivalent. It is not rare for incarcerated minors to go days or even weeks without having class. In Ile-de-France[169] prisons, where one fourth of imprisoned minors are detained, the latter can wait up to one month before meeting their first teacher, due to a lack of human and material resources[170].

In respect to employment, while convicts are offered a chance to work in French prisons, employed detainees have no real legal status[171]. There is a real need for a contractual relationship between the prison administration and the workers. "We cannot ask of detainees that they respect society and reintegrate within the community when their dignity and rights are denied", these are the words of President Emmanuel Macron in 2018. Yet, since then, no reform project has been presented[172]. Work in French prisons is not aimed at reintegration but rather at

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https://www.prisonstudies.org/country/ireland-republic accessed 29 March 2021.

[163] Irish Prisons, 'Prison Education Service' (Irish Prisons 2021) https://www.irishprisons.ie/prisoner-services/prison-education-service/ accessed 29 March 2021.

[164] Noeleen McManus, 'Education in prison: It's like trying to teach people on a bus. They're getting on and off at every stop' *The Irish Times* (Dublin, 22 April 1997)

[165] Cormac Behan, 'Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation' (2014) 1(1) Journal of Prison Education and Reentry 20, 22

[166] Cormac Behan, 'Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation' (2014) 1(1) Journal of Prison Education and Reentry 20, 23

[167] Cormac Behan, 'Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation' (2014) 1(1) Journal of Prison Education and Reentry 20, 23

[168] Cormac Behan, 'Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation' (2014) 1(1) Journal of Prison Education and Reentry 20, 29

[169] Ile-de-France is the region in which Paris and its suburbs are located.

[170] Observatoire International des Prisons, 'La prison impossible lieu d'éducation' (*OIP*, 26 November 2019) https://oip.org/analyse/la-prison-impossible-lieu-deducation/ accessed 28 February 2021.

[171] Philippe Auvergnon, Marie Crétenot, Nicolas Ferran and Cyril Wolmark 'Propositions pour un statut juridique du détenu travailleur' (2019) 12 Droit social 1075

[172] Philippe Auvergnon, Marie Crétenot, Nicolas Ferran and Cyril Wolmark 'Propositions pour un statut juridique du détenu travailleur' (2019) 12 Droit social 1075

generating cheap labour, i.e. €1.62 hourly wage[173]. In Ireland, prisoners are offered vocational training to prepare them for employment once on the outside and develop new skills[174]. In reality, both structures of French and Irish job markets have experienced deindustrialisation and unemployment in the last decades. Herzog-Evans describes a "diploma inflation phenomenon which excludes offenders and other dissocialised people"[175].

The best practices model also insisted on the importance of agency and individualisation in the post-prison rehabilitation process. Although agency does not always play a predominant role depending on socio-economics variables, its importance is arguably renewed in the current times. Relying on Hofstede's cultural dimensions, Ireland and France are both described as individualist countries in which people look after themselves and their direct relatives exclusively[176], thus moving away for the pastoral penal culture detailed by Brangan and making desistance processes harder. Indeed, Cresswell concludes her study on the impact of community-based programmes on reintegration by arguing that desistance is not just an individual process but also a societal task[177].

In Ireland, the lack of pre-release and post-release services in relation to housing and employment prevents effective reintegration[178], as in the early 2000s Irish prisoners were among the most likely to re-offend in the world[179]. The Integrated Sentence Management (ISM) system pairs prisoners with ISM coordinators who review their progress to encourage offenders to take responsibility for their own development[180]. In reality, ISM is not adequately resourced and does not prepare prisoners adequately for release. The Irish Penal Reform Trust particularly regrets failure to accompany prisoners towards finding accommodation before release[181].

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[173] Service Public, 'Travail en prison' (Ministère chargé de la Justice, 2021) https://www.service-public.fr/particuliers/vosdroits/F14153 accessed 29 March 2021.

[174] Irish Prisons, 'Work and Vocational Training' (*Irish Prisons* 2021) https://www.irishprisons.ie/prisoner-services/work-and-vocational-training/ accessed 29 March 2021.

[175] Martine Herzog-Evans, 'France: Legal Architecture, Political Posturing, 'Prisonbation' and Adieu Social Work' in Gwen Robinson and Fergus McNeill, *Community Punishment: European Perspectives* (1st edition, Robinson & McNeill 2015) 61

[176] Hofstede Insights, 'Country Comparison' (*Hofstede Insights*, 2021) https://www.hofstede-insights.com/country-comparison/france,ireland/ accessed 27 March 2021.

[177] Clare Cresswell, ''Why Would You Choose to Study Sex Offenders?': Assisted Desistance and Reintegration of Perpetrators of Sexual Harm' (2020) 17 Irish Probation Journal 63, 81

[178] Irish Penal Reform Trust, *The Vicious Circle of Social Exclusion and Crime: Ireland's Disproportionate Punishment of the Poor* (January 2012)

[179] Ian O'Donnell, Eric P. Baumer, Nicola Hughes, 'Recidivism in the Republic of Ireland' (2008) 8 Criminology and Criminal Justice 123

[180] Irish Prisons, 'Integrated Sentence Management' (*Irish Prisons* 2021) https://www.irishprisons.ie/prisoner-services/integrated-sentence-management/ accessed 29 March 2021.

[181] Irish Penal Reform Trust, *The Vicious Circle of Social Exclusion and Crime: Ireland's Disproportionate Punishment of the Poor* (January 2012) 18-19

The French probation system aims at reintroducing humanity and care in institutional impersonal relationships between probation officers and probationers in the form of an individualised follow-up work[182]. While the overall feedback is positive, it is insufficient. 63% of released prisoners are reconvicted within 5 years[183]. NGOs have therefore developed complementary schemes. The emerging Devenirs initiative intervenes with released prisoners, whether on probation or not, and helps them to find accommodations, jobs, and training schemes in partnership with professionals from different sectors[184].

The general and logical conclusion of this confrontation of Ireland and France to the set of best practices is that far more needs to be done in the two countries to rehabilitate offenders. When interesting initiatives are put together, they do not follow through. Recidivism rates are very high in both countries: a statement of failure is inevitable.

Furthermore, the theoretical frameworks show that implementing some of the best practices identified is actually possible, especially as they often come from concrete examples from jurisdictions across the world.

CONCLUSION

In concluding, it is hoped that the present article constitutes a comprehensive cross-national study of rehabilitation after a custodial sentence. The confrontation of theoretical frameworks to actual French and Irish practices and policies aims at deepening knowledge of how post-prison rehabilitative and reintegrative prospects may vary depending on where imprisonment takes place. It also has a view to broaden current perspectives on rehabilitation in choosing a European 'Anglophone nation'[185] and another European country that has different structural realities and that had not previously been used as a comparator country in that specific context.

After release, French and Irish prisoners face similar and specific challenges attached to internal and external dynamics of desistance. Indeed, although there are interesting initiatives, they are

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[182] Valerian Benazeth, 'Desistance and the Parisian probation service: The paradox of a limited institutional effect on the processes of desistance' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 147
[183] Programme Devenirs
 https://projetdevenir.wordpress.com accessed 29 March 2021.
[184] Programme Devenirs
 https://projetdevenir.wordpress.com accessed 29 March 2021.
[185] Louise Brangan, 'Pastoral penality in 1970s Ireland: Addressing the pains of imprisonment' (2021) 25(1) Theoretical Criminology

not developed to an extent which could bring about effective reinsertion. From the findings, it is clear that internal and external dynamics identified as factors of influence on desistance are intertwined with socio-geographic variables. While France and Ireland can be distinguished on that basis, what they have in common is that they have to do a lot more to reinsert former convicts amongst the other citizens. It is not the role of NGOs or private bodies to build reintegration paths; nations actually have the potential to play positive roles in rehabilitation[186], and arguably have a responsibility to take part in that process. In light of Bourdieu's work, systemic norms have to actually permit reinsertion with a clear focus on social inclusion so it can be reflected at the field level in individuals' behaviours towards returning prisoners.

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[186] Deirdre Healy, 'Structuring desistance: Exploring socio-cultural pathways to change in Ireland' in Stephen Farrall, *The Architecture of Desistance* (Routledge 2019) 198

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