



# Tough on crime but tougher on the causes

Harsher punishment may seem like a solution to Ireland's criminal justice woes but it does not equate to lower crime writes Siddhartha Bandyopadhyay

**P**oliticians like wading into crime policy. In particular, they like to appear 'tough on crime'. Irish Senator Michelle Mulherin waded into this debate

criticising the sentence passed on Brian Hennessy for the murders of Sharon Whelan and her daughters Zsara and Nadia, calling the law 'not fit for purpose'. Before elections, almost all politicians like to project a tough on crime image. The UK's ex-Prime Minister David Cameron plunged into the criminal punishment debate a few years ago by throwing his support around proposals to impose incredibly long sentences (100 years or so) for some murders as a way to circumvent the EU court's ban on life sentences without parole. And politicians of all stripes and colours as well as lobby groups had much to say about gang murders in Dublin before the last Irish elections.

Mulerin's comments will resonate with victims of violent crime and politicians adopt a tough on crime plank because it sounds attractive to voters; crime remaining a top cause of concern to the public in most parts



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of the world. Similarly, Cameron's proposal certainly appealed to members of the public who remained deeply aggrieved at what they saw as European interference in the country's sovereignty. The evidence on 'tough on crime' as useful policy, however, is minimal and its moral credentials are just as dubious.

There is very little consensus on what optimal crime and punishment policy is. This holds not just for murder, but for almost any type of crime. In debates over penal policy, two apparently opposing schools of thought seem to mainly talk at each other rather than engage in meaningful conversation. The so-called liberal left mainly emphasises the fact that criminals are often the product of socio-economic circumstances (poverty, broken homes, lack of education and employment opportunities), and advocate for a focus on reforming the criminal

and, more ambitiously, reforming society.

Meanwhile, the traditional right-wing law and order camp believe crime is a moral choice, and call for policing and punishment to both reprimand the wrongdoer and deter others from similar behaviour. When particularly horrendous crimes are committed, their call for draconian punishment clearly resonates with public opinion. Nowhere is this more apparent than when particularly dreadful murders are committed. In these cases, public calls for the return of the death penalty as well as ‘locking the door and throwing away the key’ are common. While part of Europe (not necessarily in line with public consensus) have reduced the use of prisons, the main political parties in the UK and Ireland remain more committed on prison and tough sentences as a solution. For example, for all the criticism about murder sentences being too low, the average time in prison served by those sentenced to life in Ireland has increased since the 1990s and reached 20 years in 2015 for only the third time in the history of the State, as demonstrated by research carried out by Diarmuid Griffin.

It was the predominance of academic criminologists in shaping crime policy in the 1960s and 1970s that kept public perceptions about harsh penalties from shaping policy in the Western world. However, a crime wave in the USA turned the tide of public opinion even more strongly against the ‘liberal’ treatment of criminals, and started the draconian sentences that characterised the US penal system. To this day, non-violent offenders spend long years in American prisons; the number of people sentenced to death has seemingly plateaued, but life without parole sentences remain a major feature of US penal policy.

While the death penalty has never made its way back into British and Irish law, sentencing has become tougher. The Crime and Disorder Act of 1998 in the UK led to a surge in prison population. This trend has continued, and Kenneth Clarke MP’s brief push for a ‘rehabilitation revolution’ became just a memory in the UK under Chris Grayling’s tough approach. Even nomenclature ignites controversy in the UK with current Justice Minister criticised as the new Prison and Courts Bill, proposed by Liz Truss, tells prison governors they must protect the public, reform and rehabilitate offenders, prepare prisoners for life outside and be safe and secure but does not mention the word ‘punish’ causing criticism even within her party, showing the political landmine that crime policy can become. And average life sentences in Ireland have increased as we have discussed.

As always, there is more than a grain of truth to both views. Better policing certainly works, at least in a limited number of ways, and long sentences for a small group of offenders

may help reduce crime. Prison itself works via incapacitation and deterrence: locking up murderers prevents them from re-offending, while long sentences may also deter others from committing the same crime. This is the case for ultra-long murder sentences for instance, and it enjoys popular support – but it is only superficially compelling.

It has been thoroughly established that murderers are among the lowest repeat offenders, which hampers the incapacitation argument. Meanwhile, there is only equivocal evidence that even the most serious deterrent, the death penalty, actually has a deterrent effect – many people argue it has no clear effect at all.

Put simply, there is not a strong empirical case for either deterrence or incapacitation. The best argument for extra-long sentences might therefore seem to be a moral one – but even here, we are on increasingly shaky ground. A growing body of new research suggests that some murderers have underdeveloped brains. Rather than being victims of social circumstance, their actions may yet turn out to stem from neurological development rather than moral depravity. From this point of view all crime is not necessarily a moral choice – violent crime perhaps even less so. If this holds, we would be back to deterrence as an attempt to justify ultra-long sentences.



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If we accept the logic behind long sentences is weak, we must admit that they are nothing more than a way to pander to public sentiment. Most politicians’ claim that their policies will lower crime and especially violent crime, even though that is even less sensitive to laws passed by politicians. Indeed, as Sense about Science has pointed out, politicians have had little success (or failure) in crime control and the best evidence suggests there is only a weak link if any between the way offenders are punished and the number of offences they commit. Rather than admit that there are great grey zones of uncertainty in ‘what works’ in crime policy; politicians cherry-pick evidence at best or at worst lie (sometimes convincingly) with figures. It is a disservice to informed policy debate on a matter of such enormous importance when evidence based policy making is replaced with policy posturing. Imaginative ways to tackle the problem of crime and disorder require solutions rooted in science and may need solutions beyond what the criminal justice system currently offers. New technology brings new challenges i.e. the growing threat of what is broadly labelled ‘cybercrime’ but it can also bring scope for newer ways to deter crime. ■

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