

Vocational Pilgrimage: Looking Beyond Our Borders as Legal Professionals

by John Clucas

A plaque is embedded on an outside wall of Kilmainham Gaol in Dublin. You'd be forgiven for failing to notice it – it's practically camouflaged by the gray walls of the now-closed prison. But our tour guide made a point of bringing the plaque to our attention as we stood in the courtyard on a mild, blue-skied afternoon. It reads:

Volunteers

Peter Cassidy
James Fisher
John Gaffney
Richard Twohig
Executed Kilmainham
By Free State Army
17-11-22



Our tour took place on November 16, 2022. The following day would mark the 100th anniversary of the execution of the four young men named on the plaque, whose ages ranged from 18 to 21. During their final hours, the four met with a priest, had a final Confession, and wrote letters to their mothers. They were killed by firing squad at 7 o'clock the following morning in the very courtyard where we stood. They were far from the first executed at Kilmainham, nor were they the last. But what made their execution significant was who carried it out, and why.

A Troubled Past

Kilmainham Gaol opened in 1796 and closed in 1924. For most of its existence, Kilmainham was operated by the British government that ruled over Ireland at the time. But by the time of the November 1922 executions, Ireland had declared independence from Britain. The British Crown did not execute Cassidy, Fisher,

Gaffney, and Twohig. These young Irish men were executed by the even younger Irish Free State that operated Kilmainham in its final years. Each had committed the capital crime of possessing a revolver under the Emergency Powers Act during the Irish Civil War. Their executions were the first committed by the Free State during the Civil War. Supporters of an independent Ireland that they were, in his final letter to his mother, Peter Cassidy wrote "do not worry over me, as I am proud to die for Ireland... Dear Mother, be brave and bear up the cross you have to carry, it is all for dear old Ireland."

I visited Ireland for the usual reasons: to see live music, down a few pints of properly poured Guinness, and take in the beauty of lush green countryside. But I also went to Ireland with a fascination with her history, which made a tour of Kilmainham a must. During my week in both the Republic of Ireland and Northern Ireland, I visited a medieval abbey in Kilkenny, toured some of the sites of the Troubles in Belfast, and took in several museums. But nothing had a more profound, or unexpected, impact on me than my tour of Kilmainham Gaol. It wasn't necessarily Kilmainham's history that has lodged itself in my consciousness since I visited it. What struck me was how relevant Kilmainham's history is to the current state of the United States' criminal justice system. I thought that a visit to Kilmainham would speak to me as a history lover, and it did. But, above all, it spoke to me as a lawyer.

Kilmainham's design was inspired by the Prison Reform Movement of the time, led by people like John Howard, who advocated having one person to one cell. Before its erection, prisoners in Dublin were held in one large holding area, regardless of age, sex, and the seriousness of the crime they committed. But "One Person to One Cell" was less a policy at Kilmainham than it was an idealistic delusion. Shortly after its opening, the prison became overpopulated, with up to five people sharing a single

cell. Illness, naturally, abounded.

During periods of strife, particularly during the Great Famine in the mid-19th Century, Irish citizens had intentionally gotten themselves arrested with the hope of serving time at Kilmainham. Brutal as its conditions were, people knew that if they were held in the gaol, it meant shelter and a steady source of food, meager though it was.

Kilmainham was also characterized by its executions. During Ireland's Civil War in 1922-1923 that resulted in the establishment of the Irish Free State, 81 prisoners were killed there during the 11 months of the Civil War alone. This does not account for the over 100 years' worth of executions carried out in the prison during the time of British rule, including those who were killed for their roles in fighting for Ireland's independence.

Parallels with the United States

Shortly after I returned from my visit, the *New York Times* ran a story about an epidemic of deaths, some preventable, in overcrowded American prisons. (Shailla Dewan, *Jail is a Death Sentence for a Growing Number of Americans*, N.Y. TIMES (Nov. 22, 2022).) Anyone who has worked with undomiciled persons knows that intentionally getting arrested remains a common tactic for finding shelter and food, and for avoiding the harsh environments of the streets or shelters. And on November 21, just four days after the 100th anniversary of the execution of four Irish men by the Irish Free State, Alabama suspended executions. Its decision to suspend executions did not come by way of any moral reckoning, but because the state had its third botched lethal injection – with the last one occurring just two months prior.

Our country's history with prisons parallels Kilmainham's, with prisons designed with progressive aspirations but destined to become roads to hell paved with good intentions. For example, Julia Tutwiler was a reformer who, like John Howard before her, advocated for improvements in the condition of jails in her home state of Alabama. On multiple occasions, the women's prison that bears Tutwiler's name

today has been overcrowded to the point of being found constitutionally overpopulated, holding double the number of inmates it was designed to hold. (Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* 235 (2014).)

The replication of Kilmainham's worst policies and characteristics is not a uniquely American problem. Indeed, Ireland itself continues to see overcrowded prisons and need for further reform, per a 2022 report published by the Irish Penal Reform Trust. (Kitty Holland, *Conditions in Irish Prisons Have Worsened, Report Warns*, *The Irish Times* (Feb. 7, 2022).) However, the U.S. is unique in scope; we currently incarcerate about 810 persons per 100,000 in the United States, compared to 82 per 100,000 in Ireland. (John Gramlich, *America's Incarceration Rate Falls to Lowest Level Since 1995*, Pew Research Center (Aug. 21, 2021); Facts and Figures, Irish Penal Reform Trust, <https://www.iprt.ie/prison-facts-2/>.)

A prison that has been out of commission for nearly 100 years should feel like a relic, not relevant. Instead, Kilmainham's stories are being replicated throughout the American prison system today. One might say that Kilmainham's ghosts haunt the criminal justice system to this day, but there's a problem with such a characterization: ghosts are dead, but the dehumanizing practices of Kilmainham are very much alive. When Kilmainham Gaol reopened as a museum in the 1960s, whether knowingly or not, it became a monument to the worldwide sins and failures of the criminal justice system.

A Lawyer's Pilgrimage

While my visit to Kilmainham evoked the failures of the American prison system, it did not necessarily provide any revelations about those failures. Indeed, most of the information I have shared is old news to even a casual follower of criminal justice reform. But I had a personal revelation following my visit to Kilmainham.

A pilgrimage is often a spiritual journey that seeks meaning or purpose from visiting that place. But my visit to Ireland was also a vocational pilgrimage. I went to Ireland to get a break from my law-

yerly duties for a short time. However, in visiting Kilmainham, my emotions and imagination were stirred not just as a person, but, specifically, as an attorney. When I returned home and people asked me what my favorite part of visiting Ireland was, they understandably raised an eyebrow when I replied, "going to jail." I didn't expect to find myself Googling statistics on the Irish and American penal systems on my train ride from Dublin to Belfast, but after visiting Kilmainham, I couldn't help it. This experience did not just prompt this piece of writing; it made me reconsider my future travels.

I have a long list of places I hope to visit someday, and I want to do the things that travelers to those places do. But after visiting Ireland, I find that, while I still want to do all those things, I want to make a point of finding places in my travels that speak to me as a lawyer. I don't want to do this merely out of interest, but with purpose. My experience in Ireland made me realize the value of examining the history and struggles of other countries' legal systems so we can better reexamine our own. Through travel, we can explore the similarities between the United States' justice system and the justice systems of the places we travel to. In doing so, we have the opportunity to examine how these countries have responded to the shortcomings of their own legal systems and bring new ideas home. Travel can be a way of reflecting on who we are as attorneys and why we pursued this profession in the first place.

Too often legal scholarship descends into navel gazing. We insulate ourselves to our own state or our own country's law and history when considering how to improve or reconcile ourselves with it. Such insulation can begin to feel monotonous at best and demoralizing at worst. Perhaps looking beyond our own borders can be the prompt we need to address the problems we sought to tackle when we decided to become lawyers. With respect to our justice system, if considering the challenging past of our own prison systems doesn't prompt change, perhaps considering the challenging past of others' prison systems can.

I recently found another parallel between Ireland and the United States. In my research following my visit to Kilmainham, I came across a press release from Ireland's Department of Justice. It detailed the findings of a "Review of Policy Options for Prison and Penal Reform." (Press Release, Irish Dept. of Justice, Government Publishes Review of Policy Options for Prison and Penal Reform 2022-2024 (Published Aug. 31, 2022).) Among the recommendations were reducing short-term custodial sen-

tences, making prison a last resort, and considering alternatives to incarceration time. Reading these recommendations reminded me of the Illinois Safe-T Act, the legislation notable for ending cash bail and requiring a finding that a defendant poses a threat to the community before they can be detained pretrial.

I cannot help but wonder if such a law could have spared Peter Cassidy, James Fisher, John Gaffney, and Richard Twohig. I'm intrigued by the implementation of the Act and hope that it is just

the beginning of further criminal justice reform in Illinois. As time goes by, that Act, and legislation that follows, will likely require fine tuning. When that fine tuning is prompted, I hope we look to legislation and history beyond our own borders for ideas. ■



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