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Experiencing human rights protections in prisons: The case of prison monitoring in Ireland

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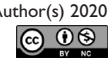

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Abstract

The protection of human rights in prison gives rise to unique challenges. The power differentials and dynamics involved, the need to balance considerations of security with those of dignity, and the lack of openness to the outside world mean that the implementation of human rights principles takes on a particular importance in these environments. International human rights law has increasingly emphasized the importance of external oversight of prisons as a way to prevent torture and ill-treatment and to uphold fundamental rights more generally. Although the monitoring of prisons is now quite well established as a principle of European and international human rights provisions, we know surprisingly little about how people in prison experience and understand monitoring bodies. This gap in our understanding is part of a wider lack of literature on how prisoners experience their rights and protections of their rights. This article addresses that gap a, reporting on qualitative findings from a study with people in prison in Ireland on their views and perceptions of a monitoring body: the Inspector of Prisons. The article finds evidence of a lack of awareness of, and a deficit of trust in, monitoring. However, this picture is complex, with people in prison also viewing the concept of monitoring as a good way to protect rights, believing that the visibility of monitors, clarity in their role and powers, and ensuring that a variety of voices are heard by monitoring bodies are important elements of a good system of prison oversight.

Keywords

Human rights and imprisonment, prison life, OPCAT, Mandela Rules, European Prison Rules, prison monitoring

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Introduction

Human rights frameworks offer the promise of the protection of fundamental rights in places where they are vulnerable. As Kerr states, prisons 'present a special context for the interpretation of constitutional rights' (2015: 483), where respect for the rule of law, the promotion of human dignity, and the maintenance of security all come into sharp relief in day-to-day decision-making. These challenges mean that, all too often, there is a gap between the promise offered by human rights protections and their realization (Cliquennois and Snacken, 2018; van Zyl Smit and Snacken, 2009). One strategy aimed at bridging this gap is through visits from independent bodies with the purpose of overseeing what happens in prison. The monitoring of prisons has now become a well-established principle of international human rights law. Prison monitoring bodies were a requirement of the 1955 formulation of the United Nations' Standard Minimum Rules for the Treatment of Prisoners (SMR); a similar requirement is found in the European Prison Rules (EPR) and other human rights instruments. Further advances were made in this field through the adoption of the Optional Protocol to the Convention against Torture (OPCAT), which established National Preventive Mechanisms, with the remit to visit places where people are deprived of their liberty with the intention of supporting the prevention of torture and ill-treatment thereby (Bicknell and Evans, 2017; Murray et al., 2011). This development has been followed by strengthened provisions concerning prison monitoring bodies in the SMR of 2015 (also known as the Mandela Rules – United Nations, 2016) and in recent revisions to the EPR.

Although the monitoring of prisons is a well-established principle of international human rights law, how such bodies and their activities are experienced by prisoners, prison staff and the staff of such bodies remains poorly understood (Padfield, 2017). This article seeks to contribute to the understanding of how monitoring bodies are viewed and experienced by prisoners by presenting findings from a broader study of prison oversight mechanisms. Here, we examine how people in prison view Ireland's prison monitoring body: the Inspector of Prisons. Through its focus on the perspectives of people in prison, the article also seeks to respond to Piacentini and Katz's call for a greater analysis of how prisoners actually experience rights-protecting structures. By helping us to understand how prisoners view bodies established to protect their rights and prevent rights violations, this study gives us an insight into how prisoners view their position as rights-holders and responds to their call for criminologists to ask 'how do prisoners themselves conceptualise their own rights?' (Piacentini and Katz, 2016: 221).

Inspection and monitoring of prisons: Defining the terms

Thus far, we have referred to prison monitoring, but other terms also exist in the domain of prison oversight, including 'inspection'. Prison inspection and monitoring are provided for in several international human rights instruments and these terms need some clarification. Rule 9 of the European Prison Rules states the basic principle that 'all prisons shall be subject to regular inspection and independent monitoring', drawing a distinction between these two concepts (Council of Europe, 2020). Under the EPR, inspection is carried out by bodies internal to the prison system, called a 'State agency'

in the revised Rule 92, whereas monitoring is carried out by independent bodies. The role of independent monitoring, according to the Rules, is to monitor the conditions of detention and the treatment of prisoners to ensure that the rights and dignity of prisoners are upheld at all times in line with the requirements of international and national law; the findings of such monitoring are to be made public (Rule 93). Inspection bodies are tasked under the Rules with assessing whether prisons are administered in accordance with national and international law and the EPR. In practice, this distinction can be confusing, because many external bodies that assess prison conditions describe themselves as inspectorates. van Zyl Smit and Snacken (2009) posit that the difference in terminology under the 2006 version of the Rules is unimportant, though it is notable that it has been retained in the revised EPRs. A similar distinction is made in the 2015 version of the SMRs, the Mandela Rules. These describe a two-fold system for 'regular inspections of prisons and penal services', one that is internal or administrative, and the other independent.[1] In both cases the objective of inspections shall be 'to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected' (Rule 36(2)).

The body under consideration in this article is the Inspector of Prisons. Despite its name, here we use the term 'monitoring' when describing its activities, because the Inspector of Prisons is external to the prison system and is, under law, independent of it. This is not to say that the independence of the Inspector of Prisons should be accepted uncritically; its functional independence is called into question by the fact that the Inspector relies on the Department of Justice for funding, which is not uncommon for prison oversight bodies (Steinerte, 2014). As Steinerte shows, the independence of oversight bodies generally should be interrogated closely in light of the many ways in which prison oversight bodies rely on the agencies they are designed to oversee, for example for human or other resources. Here, we do not examine these questions in depth, but rather use the term 'monitoring' as the closest fit under the EPR to what the Inspector of Prisons does, while at the same time hoping that its findings will be of relevance to considerations of the work of other types of prison oversight body.

Other terms also exist in this context. OPCAT requires its States Parties to establish 'National Preventive Mechanisms' (NPMs) as forms of domestic oversight. NPMs must be provided, at a minimum, with the power to choose where they visit and to whom they speak, and with access to all information referring to the treatment of those in detention (Article 20, OPCAT).

These provisions refer to domestic-level prison oversight. Prison monitoring also exists at the international level. Within Europe, prison monitoring has a relatively long and venerable history (Daems, 2017). The Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) was established in 1989 with the remit to visit places where people are deprived of their liberty in all Council of Europe Member States,[2] with a view to supporting the prevention of torture and ill-treatment. At a global level, OPCAT created the Subcommittee for the Prevention of Torture, which has the mandate to visit places where people are deprived of their liberty in countries that have signed and ratified this Protocol.

Whatever the nomenclature used, prison oversight bodies vary in their organization, functions and scope from country to country (Vagg, 1994). The differing ways in which countries have designated NPMs illustrates the variety of approaches used (Aizpurua and Rogan, 2020). Methods of conducting monitoring can also vary. At best, however, prison visits for the purposes of protecting human rights are rooted in understanding the experience of people, which adopt a 'flexible, diverse and qualitative approach' to information gathering (Bennett, 2014).

Inspection and monitoring bodies in practice: How are rights protections experienced?

Although the inspection and monitoring of prisons is now a well-recognized principle of international law, there is still limited empirical assessment of the experience and impact of these activities in practice. In the recent past, however, there have been signs of increasing interest within legal, penological and socio-legal literature in the effects of inspection and monitoring and in human rights in punishment more generally.

Recent work on the inspection and monitoring of prisons has, wisely, started by mapping the frameworks that exist for such activity in prisons, notably in Europe and the USA, and seeking to understand the impact of them at the national level (Cliquennois and Snacken, 2018). This work has also explored the responsivity, or otherwise, of states to forms of human rights monitoring, be that through the European Court of Human Rights, or the European Committee for the Prevention of Torture (Bicknell and Evans, 2017; Daems, 2017; Daems and Robert, 2017; Cliquennois and De Suremain, 2017; Lappi-Seppälä and Koskenniemi, 2018). At the same time, we see the interesting perspective emerging that European and United Nations' monitoring mechanisms are becoming 'tighter' forms of control of states (Cliquennois and Snacken, 2018), placing increasingly onerous obligations on states and subjecting them to more scrutiny. There has also been a large amount of work concerning the legal implications of OPCAT, and a great deal of scholarly attention paid to the interpretation and application of OPCAT in domestic legal systems (Steinerte, 2014; Murray et al., 2011).

Monitoring bodies themselves have garnered remarkably little attention, though the limited work that exists can be critical of their operation. Bicknell and Evans (2017) argue that there remains some way to go before it can be said that NPMs operating in Europe have achieved a human rights-focused approach within domestic penal practice. Monitoring bodies more generally have been criticized for not having sufficient powers (Behan and Kirkham, 2016), and also for ignoring social structures of power and inequality, focusing instead on the narrow in-prison context (Scott and Codd, 2010).

Whereas the frameworks and impact of prison oversight bodies on national systems, policies and protocols are beginning to be understood, the experiences of those who are to be the direct beneficiaries of such bodies remain more opaque. Those examinations that do exist suggest some cynicism amongst prisoners about these mechanisms. For example, Crewe (2009) found a good deal of scepticism amongst prisoners concerning Independent Monitoring Boards in an English prison. Similarly, Morgan and Liebling (2007) question the credibility of Independent Monitoring Boards, even following

reform. As part of a study of prisoners' right to vote in Ireland, Behan (2016: 167) noted that participants in his study had 'a sense of resignation at the lack of response from Visiting Committees', (discussed in more detail below), which have a role in visiting prisons. Participants also reported seeing such bodies as partial and providing little assistance in upholding rights.

In general, we know relatively little about how prisoners feel about themselves as holders of rights or beneficiaries of rights protections, with some very welcome recent exceptions (Damboeanu, Pricopie and Thiemann, in this Special Issue). Piacentini and Katz describe research into prisoners' rights as 'almost absent' from prison sociology (Piacentini and Katz, 2016: 222). Those studies that do examine prisoners' views of human rights reveal interesting and, at first glance, paradoxical findings. Liebling, Crewe and Hulley argue that 'some prisoners are well informed about their rights' (Hulley et al., 2011: 20). However, Karamalidou (2017) identified an almost total lack of awareness of human rights amongst prisoners in English prisons. Calavita and Jenness (2015) found that prisoners in California had deeply conflicting views of legal rights, exhibiting an enduring faith in the law but a concurrent cynicism about the fairness of particular legal structures.

What might be termed a 'rights scepticism' is also increasingly evident within the scholarship. Hannah-Moffat (2001), for example, argues that using the language of rights in punishment disguises the power that is always at play in prisons. Scott (2013) argues further that human rights frameworks do very little to improve the experience of prison in practice, instead becoming things to measure. Piacentini and Katz (2016) have also found that Russian officials used rights as a form of performance or portrayal when dealing with Council of Europe standards. Armstrong perhaps goes furthest in this type of critique, positing that 'rights-led prison reform contributes to prison bureaucratisation and through this, transforms, extends and legitimates, forms of penal control' (2018: 401).

The complex dynamic involved when human rights protections actually meet the reality of prison life requires more assessment of the lived experience of how people in prison understand and experience those mechanisms designed to protect their rights. In the sections which follow, this article addresses that gap in the literature by exploring how people in prison in Ireland experience and understand the purpose and practice of monitoring in the protection of their rights. Ireland provides an interesting case by which to examine prison this issue. As a Member State of the Council of Europe, it is subject to the European Prison Rules. Having been an early example of prison inspection in the nineteenth century (Rogan, 2011), it passed a law establishing an independent prison inspection body in 2007 (The Prisons Act 2007). Unlike most EU countries, however, Ireland has not ratified OPCAT, although it has signed the Protocol. Given the lack of empirical literature on prisoners' experiences of prison monitoring bodies, it is hoped that this study will also provide something of a stimulant for more examinations of the operation of these bodies in different contexts.

Prisons and prison monitoring in Ireland

The Irish prison rate, presently 80 prisoners per 100,000 population, sits at the mid-range within Europe (Irish Prison Service, 2019). There are 12 prisons in Ireland. Aside from two open prisons, no formal security categorization of prisons is in place.

Prison oversight has a perhaps surprisingly long history in Ireland. The first Inspector of Prisons took up office in the 19th century, but this post seems to have gone into abeyance until the early 2000s for reasons that are unclear, but likely relate to general neglect of penal policy (Rogan, 2011), despite references to establishing a statutory office since at least 1948 (Kilcommins et al., 2004). The Prisons Act 2007 placed the Office of the Inspector of Prisons on a statutory footing. The Inspector visits all prisons and publishes reports on visits to individual prisons, which are known as inspections, as well as providing an annual report and thematic reports. Section 30(5) of the Prisons Act 2007 states that 'the Inspector of Prisons is independent in the performance of his or her functions'. The Inspector of Prisons[3] is obliged to carry out regular inspections of prisons and for that purpose may 'at any time enter any prison or any part of a prison ', and 'request and obtain from the Governor [prison director] a copy of any books, records, other documents . . . or extracts therefrom kept there'. Governors, other prison officers, other persons employed in prisons and, interestingly, prisoners are obliged, as far as reasonably practicable, to comply with any request for information that the Inspector may make in the performance of his or her functions. This formulation does not, however, provide for any particular sanctions or consequences for non-compliance (Rogan, 2014). Ireland does not have an internal or prison-run form of inspection.

The Inspector of Prisons (or 'Inspector') has published a series of standards for the inspection of prisons, which are based on Irish and international law. These standards guide the process for visits and the presentation of reports, but the methodology for the office has not been formalized into a standardized Protocol. Though no formal documentation on the methods of the office currently exists, in inspections to date the Inspector of Prisons has tended to use conversations, formal and informal, with prisoners, staff and others, observation, and review of documents. At present, the role is undergoing significant change, with a new Inspector in post and plans to launch a revised methodology for visits, as well as more frequent ones.

The Inspector of Prisons is also responsible for investigating all deaths in custody and conducting reviews of issues requested by the Minister for Justice and Equality. At the time of the fieldwork, these activities constituted the bulk of the Inspector's activity, with formal inspection visits occurring with much less frequency. As for the three prisons studied here, some time has elapsed since formal reports have been published on inspections. The Inspector has, however, carried out visits to those prisons in the interim.

As mentioned, Ireland has signed, but has not ratified, OPCAT, and no NPM has yet been designated. Plans have been published by the Department of Justice to designate the Office of the Inspector of Prisons as the NPM for places where liberty is deprived in Ireland.

Visiting Committees (VCs) are also attached to each prison. These are groups of lay people, appointed by the Minister for Justice, to undertake regular visits to prisons, write annual reports, and bring matters of concern to the attention of prison staff. VCs have developed a role in seeking resolutions, on an informal basis and without the power of sanction, to prisoners' complaints and concerns. VCs have been subject to a range of criticisms concerning their (perceived lack of) independence, the selection process for members, a lack of consistency in report writing and the ability to resolve issues (Behan, 2016). Though VCs are not the primary focus of this article, participants did refer to them and they are thus included here.

Data and methods

This study engages in a qualitative examination of prisoners' views and perspectives on domestic prison inspection bodies and the protection of their rights that those bodies might provide. It is part of a broader cross-sectional, mixed-methods study involving quantitative analysis, further qualitative analysis, and documentary analysis examining prisoners' experiences of oversight, including complaints mechanisms and access to the courts.[4] The findings presented from this part of the study derive from interviews conducted between October 2018 and January 2019 in three prisons for men in Ireland. Though no formal security categorization of prisons exists in Irish law, the prisons in this sample can be considered to be medium security prisons. Of the 12 prisons in Ireland, only one is considered high security, and there are two open centres. In terms of security status, demographic profile and sentence type, the prisons selected are broadly representative of the Irish prison population.

Random sampling of participants was used in order to seek views from prisoners both with and without direct experience of prison inspection and other oversight mechanisms, in order to examine awareness and perceptions of bodies that are designed to protect the rights of all prisoners, not just those who encounter them directly. Because prison inspection and monitoring bodies are in place to protect all prisoners from inhuman and degrading treatment, and not just to support those who deal directly with them, we wanted to understand the views of those who had never met inspectors as well as those who had. Random sampling was also used as a way to ensure prisoners did not have to self-identify as those who wished to complain about their experiences in prison.

To be eligible to participate, prisoners had to be serving a sentence and to have been in the prison for more than one month, to avoid interviewing prisoners in the early and more vulnerable stages of imprisonment, and to ensure they had some familiarity with prison life and possible exposure to the relevant bodies. A research liaison officer was appointed to each prison to assist the researcher. The officer assisted in the random selection of participants from those in custody who met the criteria, as well as in first approaches and introducing potential participants to the research.

The research liaison officer was provided with a briefing prior to assisting with the research. This asked that, if a prisoner was to be excluded, the reason should be noted down and provided to the researcher. These reasons could have included: the prisoner was absent for attendance at court or for medical treatment, or a risk assessment suggested the researcher should not meet the prisoner. The randomization was conducted in the presence of the researcher as an additional protection.[5]

The liaison officer was also provided with a written and oral briefing on the importance of voluntary participation and avoiding coercion in an environment where prisoners may feel obliged to respond to requests from staff. The researcher checked for consent throughout the process and emphasized that the research was independent of the prison.[6] The first author conducted the first meetings with prisoners and the interviews. Participants were asked if they were aware of the various bodies for the oversight of prisons and their roles, as well as their experience of interacting with them, along with their views on the important characteristics of monitoring bodies.

In prison one, 25 people were approached in total, in prison two 31, and in prison three 25. Some declined to meet the researcher from the outset, some declined after the initial approach, and some were unavailable at the time of the research. In all, 43 interviews were conducted in the prisons. The shortest interview was 12 minutes[7] and the longest was 59 minutes, with the majority being around 30 minutes. Two pilot interviews with released prisoners were also included in the sample, giving rise to a total number of interviews of $n = 45$. Interviews in prison took place in areas of the prison for professional visits and for education, all out of the hearing of prison staff. A semi-structured interview guide was used for interviews. Interviews were all recorded with the permission of the participants and later transcribed and coded using NVivo, employing thematic analysis. The participants' names were coded to ensure anonymity.[8]

It was a key objective of the study to examine the views of those who had directly encountered the inspection process through, for example, speaking with the Inspector, as well as those who did not have this experience. All prisoners should have the benefit of the work of the Inspector of Prisons and feel able to bring concerns to its staff, regardless of whether they have had direct experience of engaging with those bodies or not. The low levels of direct engagement we found in this study mean, however, that there are particular limitations in our findings about how prisoners experience meeting with the Inspector of Prisons or engaging directly with that office's work.

'They're not here': Prisoners' awareness of the Inspector of Prisons

In general, participants were unaware of the existence of the Inspector of Prisons. Many stated that they had never heard of or seen an Inspector of Prisons, with others speaking about other oversight bodies, specifically VCs, when they were asked about the Inspector of Prisons.

> There's no such thing. They're not here. (Participant 18)

> I've heard of them, but I've never seen them . . . Since I been in jail I never seen anybody sit down with a group of people and say 'here, I'm the Inspector if you have any complaints or anything'. (Participant 19)

> I heard of the Inspector, but I wouldn't know anything about him. (Participant 38)

In discussing the body with one participant who had served a number of sentences over a period of more than 30 years, the following exchange took place:

> Participant 05: [H]ow long is there, or has there been, an Inspector?
>
> Researcher: Since 2007.
>
> Participant 05: Since 2007? That is the first I have heard of it now. Like, what has he done since he came in, do you know?

There was a general sense of uncertainty concerning 'who is who' in the prison and reports that people from the outside did not routinely identify themselves to prisoners, giving rise to confusion. One participant reflected this feeling: 'I think I have seen an old man and woman around the place, is that them?' (Participant 08).

This lack of familiarity with prison monitoring can be linked to a lack of opportunities for engagement by prisoners in the inspection process. It is notable that a body to which prisoners may write in confidence under Irish law is not widely known amongst this group. One reason for this might be the lack of frequency of visits by the Inspector in recent times in Ireland; for example, no formal full inspection report of a prison has been published since 2017.[9] Frequency of contact with the monitoring body matters. Participants were much more familiar with VCs, the members of which visited prisons more regularly than the Inspector. As described further below, however, simple regularity of visiting is not enough for prisoners to understand the role of the Inspector of Prisons. The quality of that contact came through as being very important, not only for awareness but also for the credibility of the inspection body. Another factor was a generalized lack of information on rights and avenues of raising concerns about rights. Many prisoners said they would have to be very proactive in looking for information about opportunities to highlight concerns and would rely on other prisoners rather than staff for this kind of information. This also contributes to the reasons for a lack of awareness of and engagement with monitoring.

Trust and credibility

A feeling of a lack of trust amongst prisoners concerning monitoring was manifested across several dimensions. There was a lack of trust that monitoring bodies would be permitted by the prison authorities to do their work properly, as well as a lack of belief in the ability of those bodies to make any real change. Several participants also reported that they did not feel they had an opportunity to ask questions of or seek to speak to the Inspector of Prisons, resulting in a credibility gap, with many feeling that there was no chance of a real encounter with a prison monitoring body. Of those who were aware of the Inspector of Prisons, many reported that they would become aware of a visit from the Inspector only after the inspection team had been through the landing. One participant stated his view that the inspection team 'always come when prisoners are locked up' (Participant 01). This was echoed as follows: 'but they don't come around announcing that the Inspector's in the prison, or anything looking in, . . . you know, if they are in, they do lock up bleeding up' (Participant 11). Another said: '[N]ah – you wouldn't see them like' (Participant 20).

The reality of a visit was also questioned by participants, leading to another credibility gap. Scepticism about the truth or representativeness of a visit was very apparent. Prisoners did not feel that visits were authentic, leading to disengagement with the process.

> Everyone is made well aware of it [the visit]. The place is painted and refurbished and made to look like a hotel when it is not an actual proper representation of the rest of the prison and they are brought into that section and made [to] interact with prisoners who are trustees who are not going to act in any sort of a way. (Participant 01)

Another said:

> As in everything, when the main man is coming in, you're getting to have everything spick and span for him. The place is clean enough, but they put their extra bit of effort in just to show off. (Participant 12)

This participant did not confine himself in these remarks to describing only announced visits, but felt that all visits from the inspection team were choreographed by prison staff and focused on the prison's 'best face', such as the workshops, rather than the landings. Other participants did not feel that the mechanisms by which prisoners came to talk to the inspection team were fair or representative. Some prisoners felt that staff actually chose the prisoners to whom the inspection team would speak. In general, there was a feeling that there was no real interaction between the Inspector of Prisons and prisoners: 'there's kind of no interaction there, you know, so you are not getting, they are not getting exactly to see from a prisoner's point of view, what problem there is, or what problems they are having' (Participant 18).

Visits as acts of authenticity

In both the group who were aware of the Inspector and those who were not, there was a strong feeling that authentic and real engagement with a wide variety of prisoners by monitors was important. Interestingly, one participant used the example of the research methods for this study as a valuable way to select prisoners who may wish to speak to the inspection team.

> I think the way that you set this up, random people get picked and they come and tell the particular person about their experience and what their views are, because if you're picking people at random, you're going to get people that are positive, people that are negative, people that have genuine issues, the full range of what's going on . . . (Participant 22)

Another prisoner felt more awareness should be raised of the role of the Inspector, and that prisoners could play a part in this:

> [T]he Inspector probably would need to be a bit more upfront with the prisoners by sitting down or calling some – calling maybe two or three fellas into a meeting and even leaving them pass it around to the rest of the prisoners [allowing prisoners to disseminate information about inspection]. So that would make more sense. (Participant 24)

This reinforces prisoners' clear desire expressed here for visits to be authentic and for a wide variety of voices to be heard in the process. Most participants did not have direct experience of talking to the Inspector of Prisons, but all were asked to describe what would make for a good process from their point of view. Prisoners described the importance of being able to talk freely and that talking to certain prisoners in particular would lend a good deal of credibility to the process. They felt that the participation of, in particular, prisoners serving life sentences or those who are involved in Listening Schemes,[10] who would be regularly in contact with other prisoners, would lend credibility to the process:

> [W]here you have people who are kind of on the landing, you know, trying to keep things going or whatever. And maybe their opinions might be valued. (Participant 19)

The desire simply to be listened to was also evident: 'just, I don't know, just listening, 'cos no one seems to be listening' (Participant 26). Another stated similarly that prisoners would receive a morale boost from talking to an outside body and having the chance to make their views known.

A singular feature of the system of prison monitoring in Ireland is that the previous incumbent had been a judge of the District Court, responsible for sentencing. Prisons can be environments of low trust, containing people who often do not have good prior experience with the authorities (Calavita and Jenness, 2015). The fact that the previous Inspector of Prisons was a former judge of the criminal courts meant that some participants recognized him and were more likely to engage in a conversation with a figure they had experience of, but, for many, it was difficult to untangle the role of Inspector from his previous position.

This insight raises important questions for the expertise and prior experience that monitoring teams should include. More generally, however, and not linked to the particular prior role of the Inspector, the fact that monitoring teams can be viewed as figures of authority created distance between them and some prisoners. Monitoring teams could be just another group of people in suits, subjecting prisoners to their gaze, without ever truly understanding their experience.

> I find it very hard to think that some professional – ex judge, politician – is going in to prisons to help prisoners. . . . I don't trust professional people, do you know what I mean. (Participant 23)

The importance of relatability in terms of class was noted by one participant, who felt that a member of an inspection team should be 'someone who has more experience in where they [prisoners] were brought up and where they come from, do you know what I mean' (Participant 05).

Monitoring and effecting change

The participants' lack of clarity about the Inspector of Prisons was also reflected in uncertainty about the role. Some participants were unsure about the purpose of the Inspector and focused on the ability to solve individual complaints. These participants thought that the Inspector of Prisons had the function of resolving individual complaints, which the Inspector is not able to do under current legislation. This confusion then led to dissatisfaction when a matter that a prisoner did bring to the attention of the Inspector was not resolved.

There were mixed views on the ability of inspection and monitoring bodies to achieve change. In general, a great deal of scepticism was expressed about the ability of oversight bodies to get things done.

> The VCs and the bodies and all this. It's waffle to me. . . . You sit down with this fella, he'll talk a lot of shit to you, he'll talk shit and he'll do nothing. (Participant 23)

> They'd [inspection bodies] take it into consideration, like, but they'd do nothing. (Participant 21)

> I don't think they're doing fuck all . . . to be honest. (Participant 17)

One prisoner who had actually spoken to the Inspector of Prisons spoke of disappointment about being listened to attentively by its staff, but there being no follow-up:

> That is the only time that I really met the Inspector of Prisons to complain about a couple of things and they were kind of agreeing with what we were saying and saying it was a disgrace as well but there was nothing done about it. (Participant 06)

Another said: '[the Inspector] made promises, [they] did make promises to us that [they] would get this stuff sorted out, but they didn't' (Participant 09).

Yet Participant 06 also felt that the Inspector of Prisons 'has the power to change stuff', suggesting that his frustration was with the authorities' response as much as the actions of the Inspector. Another Participant (36) highlighted the importance of following up on an inspection report: 'they didn't really act on it the first time but . . .. he must have kind of asked to kind of enforce it or something and then changes happened, you know what I mean.'

This complexity in views about prison oversight is striking. However, Calavita and Jenness (2015) found similar cynicism about the possibilities of change by using formal mechanisms in their examination of the grievance or complaints procedure in Californian prisons. Prisoners interviewed in this study placed importance on the ability of bodies to get things done, and this affected their view of the process. When things were not done, their view of monitoring was damaged. This indicates that being visible, being accessible and making an effort to follow up on particular issues are important ways of establishing trust in oversight bodies. Where a prison monitoring body cannot resolve individual complaints, this should be made clear. Setting realistic expectations is important.

Monitoring as valuable: What is important for those in prison

Although prisoners were critical of and expressed distrust in some of the specific structures and practices of monitoring by the Inspector of Prisons in Ireland, there was nonetheless a residual faith in the concept of monitoring at a theoretical level. This complexity is interesting because it suggests that prisoners share the belief evident in human rights instruments about the value of prison oversight as a means of protecting people but have some reservations about how they see it as impacting upon them personally:

> I suppose all prisons have to be inspected, all places do. You know. Work places have to be inspected to be safe. Prisons have to be inspected for people. Some people are vulnerable. Some people have disabilities. Some people are dyslexic; they can't read and write. And when people are vulnerable other people will take advantage, especially in prison. (Participant 04)

> [Monitoring] could be [a good thing], if it was done properly, like. (Participant 05)

> The option [having access to a monitoring body] has to be there for every prisoner. (Participant 13)

Good monitoring practices as perceived by prisoners

Participants were also asked for their reflections on what would make for a good prison monitoring model.[11] Their views resonate with some of what is already contained in the international human rights standards and additional commentary from the CPT. This suggests that the powers contained in those human rights standards are those respected and welcomed by prisoners themselves. These findings also raise questions about the rights-scepticism evident in some scholarship emerging in criminology at present. Although the participants in this study showed some scepticism about the role of the Inspector of Prisons, there was strong support for the human rights principles that should govern the process, such as full and unannounced access to all parts of the prison and the opportunity to talk with prisoners.

Access

Participants emphasized that it was essential that the body be able to visit all parts of the prison during a visit. Although both the Inspector and VCs have the power to access all areas of a prison at any time, the reality of this was questioned by some participants. Participants identified the yards and landings as particularly important areas to visit. This focus was driven in part by a sense that these were the areas that were most authentic and least likely to be shaped by the prison staff, but also because of the visibility of the visiting team so that prisoners more generally could see them. This desire for visibility is linked closely with the perceptions described earlier that prison monitoring visits are not credible unless the monitors engage meaningfully with people in prison, have time to listen to them, and ensure they go everywhere. One participant warned oversight bodies: 'Don't be fooled by the flowers' (Participant 06), reflecting a view that inspections need to look past material conditions and the presentation of the prison in order to understand the experience of imprisonment for those in the prison.

There was also a sense that there was a basic need for monitors to take the time to introduce themselves to people in prison, so that it is clear who the individuals who have come into prison actually are. Clearly explaining the role and listening to prisoners' concerns were viewed as ways to boost confidence in the role of the team. This research reinforces the positions in the Mandela Rules, the revised EPR, OPCAT and the CPT concerning the importance of wide-ranging access and depth in inspection. For example, Rule 84(b) of the Mandela Rules requires prison inspectors to have the authority to choose which prisoners to interview. Frequent announced and unannounced visits are the required CPT standard (CPT, 2018). Unannounced visits were viewed by prisoners as important safeguards and ways of avoiding the perception that the visit is being stage-managed. As noted by one participant (41):

> I think they should just land in [arrive] instead of letting the prison prepare people to talk to them. I think they should just come in and grab someone without the officers' kind of telling them what to say I suppose.

The CPT has also criticized bodies that engage in a review only of documents, urging inspectors to enter into contact with prisoners and not just meet those who have requested

to talk to them (CPT, 2011, 2015) and emphasizing the need for direct contact with prisoners and prison staff. The CPT has also argued that inspectors and monitors must be able to enter all areas of a prison and walk around freely (CPT, 2013). These principles in particular were viewed as meaningful by participants in this study.

Confidentiality

Confidentiality is a core feature of the human rights standards applicable to inspection and monitoring, reflected in the Mandela Rules, the EPRs and OPCAT and emphasized by the CPT (CPT, 2015, 2017).

Interestingly, prisoners did not tend to mention confidentiality spontaneously when asked about the important features of a monitoring process. However, confidentiality was considered critical when making complaints. This interesting finding warrants further consideration and may be related to the sense amongst prisoners in this study that their interactions with monitoring bodies were fleeting and somewhat superficial and thus did not require a heightened level of protection.

That said, some viewed confidentiality as an important safeguard to be able to talk freely and ensure staff are not aware of what has been said. The participant who suggested that random selection should be used as a method in inspection for selecting people to talk to felt that this was a protection because 'some other lads would be very paranoid' and might be suspicious of a person talking to an outside body (Participant 22).

Understanding prison monitoring and the perspectives of prisoners: Future directions

Human rights protections in the context of prisons are not just about the experiences of prisoners, but are also ways of ensuring that the rule of law is upheld in institutions that are very far from public view. However, these rather abstract concepts also have a direct impact on the lives of those they are designed primarily to protect. Understanding how those people view, experience and interact with such frameworks is important to the sociology of punishment but also, more broadly, to the functioning and drafting of human rights standards.

This study provides a first glimpse into prisoners' perceptions and experiences of monitoring bodies. Though limited to Ireland, this study is a useful first step in developing our understanding of how prisoners conceive of, engage with, and experience prison monitoring. The findings here suggest that prisoners have a strong belief in the value of monitoring and deem the principle that an independent body comes to visit prisons is a good one. This is heartening. This finding also indicates that critiques of human rights frameworks should recognize that the principles those frameworks are trying to protect are ones that prisoners themselves approve of.

The findings presented here also have implications for policymakers, prison authorities, and inspection and monitoring bodies across jurisdictions. First, it is submitted that inspection and monitoring bodies and those drafting human rights protections would do well to consult with prisoners to examine what is important, from their perspective, for human rights standards and the protocols of such bodies to include. Reports of the

Inspector of Prisons refer to visits being unannounced, and that inspectors spoke with prisoners and staff. However, some prisoners were sceptical of how inspections were carried out, feeling that inspectors did not see the real prison. It is not possible to conclude that prison inspectors are not conducting random interviews or avoiding talking to prisoners, but it is worrying that some prisoners have this perception. It is also of concern that many prisoners were not aware of the body. Inspection and monitoring bodies might be advised to make more efforts to raise awareness of their work, their process and the limitations of what they can do.

Secondly, this research indicates that many human rights requirements such as the freedom of the body to walk around without limitation are valued by prisoners. This work also indicates that the visibility and proximity of the monitoring team are important factors in countering what can be a deficit of trust in outside bodies. Authenticity of the process was very important for prisoners.

Further research into how particular groups of prisoners, such as women, older people in prison or those with disabilities, experience prison inspection and monitoring would be very valuable. Variations or similarities across countries would also be highly informative.[12] Perspectives from other countries would support this developing 'sociology of oversight' or studies of what we might call 'accountability work'.

This work indicates that prisoners' experience of bodies designed to protect their rights is complex and nuanced. Although we found a lack of confidence in some of the structures and processes of monitoring, particularly when it comes to follow-up, we also found prisoners were open to and supportive of the idea of a prison monitoring body, feeling that it had the potential to truly support the promotion of human rights and make things better for them in prison. The perspective that prisoners value human rights protections should not be lost in analyses of the potential of human rights frameworks to extend and entrench the power of the state, and suggests a more nuanced picture. The failings of those specific structures and the consequences for those in prison indicate that more scholarly and policy engagement with those whose rights are most at issue is required by sociologists of human rights in the area of punishment.

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Notes

1. The SMRs note that this independent inspection can include competent international or regional bodies (Rule 36(1)(b)).
2. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted by the Member States of the Council of Europe on 26 November 1987.
3. Although the legislation refers to an 'Inspector of Prisons', a small team of people make up the office and carry out visits.
4. This broader study is taking place currently in three prisons in Ireland and four prisons in Germany. Other work examining prisoners' perspectives on international monitoring bodies is being conducted in Norway, Scotland and Ireland.
5. No exclusions were reported to the researcher, though the participation of two prisoners was kept under review by staff to assess if they would be suitable to participate on the day. They were interviewed.
6. Inspired by Mary Bosworth, the first author wore university-branded clothing throughout the data collection. For an engaging discussion, see Prof. Mary Bosworth – The Ethics and Challenges of Research in Immigration Detention, URL (accessed 4 September 2020): https://www.youtube.com/watch?v=-c4KQPuKwdI&t=1s.
7. This interview was with a participant who provided very short answers to questions and ended the interview at an early point, but, following the researcher's enquiries during the interview, wished to be included in the research.
8. The relevant ethical and access permissions were granted by the Research Ethics Committee of the Faculty of Arts, Humanities and Social Sciences at the the University of Dublin, Trinity College Dublin and the Irish Prison Service.
9. The Inspector published reports on deaths in custody, Thematic Reports and Annual Reports during this time.
10. Listening Schemes involve prisoners trained as Samaritans to provide confidential peer-to-peer support within the prison to other prisoners.
11. Questions asked about the Inspector of Prisons included: 'What are your views on the Inspector of Prisons and their staff?' This was preceded by 'have you heard of the Inspector of Prisons?'
    Probe: Have you ever met the Inspector of Prisons or their staff?
    What was that like?
    What is it like when they are here?
    What is your understanding of what they do?
    - In your opinion, who do you think the Inspector of Prisons is for? And what is it for?
    - In your opinion, what makes for a good Inspector?
        - *Probe: Confidentiality*
        - *Probe: Powers of enforcement*
        - *Probe: Powers of access*
        - *Probe: Independence*
        - *Probe: Transparency*
        - *Probe: Frequency*

- Do inspections make prisons better? How? Or not – why?
- Does knowing there is an Inspector of Prisons impact on your view of the prison system? Explain
- If you could change something about the current inspection of prisons, what would that be?

12. This research is being replicated in Germany.

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