

Research Article

Changing the Carceral Course: How the Carceral Shift in Human Rights Met the Good Friday Agreement and Northern Ireland's Abolitionist Imperative

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Abstract

Northern Ireland faces a growing police use of force, increased imprisonment of individuals suffering from mental ill-health, the lowest minimum age of criminal responsibility in Europe, and high reports of abuse against marginalised communities. Despite a decades-long movement for carceral abolition in the United Kingdom and a robust Northern Irish civil society human rights apparatus, reliance on police and prison as means of social control remains strong in Northern Ireland. In fact, both the immediate custody and remand populations in prison have climbed to the highest they have been in almost 9 years. Why have carceral systems, such as police and prisons, persisted in Northern Ireland? This article argues that the carceral 'turn' in international human rights and historic marginalisation of economic, social, and cultural rights were incorporated into the Good Friday Agreement with the effect of anchoring reliance on carceral responses to social harms. This has continued well into the twenty-first century, despite growing criticism of such responses at the local and international levels. In response, this article suggests strengthening the alternatives to criminal legal systems that carceral abolitionist and anti-carceral human rights advocacy organisations in Northern Ireland are already pursuing.

I. Introduction

The Good Friday Agreement ('Agreement') pulled off the remarkable feats of stopping violence in Northern Ireland, maintaining peace for the past two and a half decades, and establishing a new constitutional order. It did so by imbuing that new order with international human rights ('IHR') standards. At the same time, the Agreement replicated the increasingly carceral tenor of IHR¹³⁷ and the historic marginalisation of economic, social, and cultural rights ('ESCRs') through its language and emphasis on security apparatus and carceral system reform.¹³⁸ Since the Agreement entered into force, Northern Irish agencies and individuals have gone to great lengths to turn historically problematic criminal legal enforcement mechanisms into human rights-compliant ones.¹³⁹ Rather than causing radical change, such efforts have perpetuated the taken-for-granted status prisons and police enjoy in Northern Ireland, as seen in the growing custody and remand populations.¹⁴⁰

Importantly, these systems may be neither inevitable nor preferred.¹⁴¹ This is

¹³⁷ Karen Engle, "Anti-impunity and the Turn to Criminal Law in Human Rights," *Cornell Law Review* 100, no. 5 (2015): 1082, <https://ssrn.com/abstract=2595677>.

¹³⁸ See generally, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (with annexes), Ireland-U.K., December 2, 1999, 2113 U.N.T.S. 473 [Agreement]. Throughout this paper, the term 'carceral system' is used interchangeably with the term 'criminal legal system.' Understanding that the term 'carceral system' may be used to define the broad continuum of mechanisms of surveillance and punishment, including migrant detention facilities, schools, or public assistance institutions, it is used in this paper to refer primarily to police and prisons. Michael Foucault, *Discipline and Punish: The birth of the prison* (Penguin, 1977), 299.

¹³⁹ See Part I.

¹⁴⁰ Department of Justice, "The Northern Ireland Prison Population 2023/24," October 2024, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Northern-Ireland-Prison-Population-2023-24.pdf>. Between April 1, 2021 and April 1, 2024 alone, the prison population rose by 37%. Rebecca Black, "Prison population increases by almost 40% in three years," *Irish News*, April 22, 2024 <https://www.irishnews.com/news/northern-ireland/prison-population-increases-by-almost-40-in-three-years-3HSDQCGPCFAAF023I4YWZOTAAE/>. Indeed, in one conversation between the author and a long-time Belfast resident, said resident praised the PSNI for their ability to speak to protestors' right of peaceful assembly. This was so long as such right did not threaten the PSNI officer reciting such right himself, of course.

¹⁴¹ Mattia Pinto, "Coercive Human Rights and the Forgotten History of the Council of Europe's *Report on Decriminalisation*" *Modern Law Review* 86, no. 5 (2023): 1108, 1133, <http://dx.doi.org/10.2139/ssrn.4352583>. Pinto argues that the 'direction taken by the ECtHR, and more broadly by human rights law and activism, is not inevitable and can be reversed.'

particularly so given the historically problematic role of prisons and police in Northern Ireland, their ongoing failure to prevent or redress the social issues at the root of allegedly criminal conduct, and their distraction from the protection of ESCRs.¹⁴² Such concerns may be better addressed through non-punitive, community-led alternatives that seek the progressive realisation of ESCRs.

Part I of this essay will explore the coupling of criminal law and IHR. This Part situates the Agreement within the lineage of the carceral IHR regime, including in Europe. By expressly incorporating the European Convention on Human Rights ('ECHR'), the Agreement also incorporated the European Court of Human Rights' ('ECtHR') carceral jurisprudence. The Agreement so successfully enmeshes human rights and carceral systems that it is now argued that one cannot exist without the other. Paradoxically, this argument is both supported and undermined by relentless efforts to render Northern Ireland's carceral systems human rights-compliant through reviews, reports, and reforms. While these efforts have had potential for truly transformative change, Northern Ireland's carceral systems have instead only been strengthened by them, leading to their wider societal acceptance.

Part II explores how the Agreement also replicates the historic marginalisation of ESCRs. The continuing focus of reform has been on rendering carceral systems human rights-compliant, rather than identifying and addressing allegedly offending

¹⁴² Nate Johnson, "The Advocacy Gap: Anti-Carceral, but not Abolitionist, Advocacy in Northern Ireland," *Oxford Human Rights Hub* (January 22, 2025), <https://ohrh.law.ox.ac.uk/the-advocacy-gap-anti-carceral-but-not-abolitionist-human-rights-advocacy-in-northern-ireland/>. See also, Police Service of Northern Ireland, "Use of Force by the Police in Northern Ireland 1 April 2023 to 31 March 2024," June 2024, <https://www.psni.police.uk/sites/default/files/2022-09/PSNI%20Use%20of%20Force%20Statistical%20Report%201%20Apr%202021%20-%2031%20Mar%202022v2.pdf>; Black, "Prison population increases;" Department of Justice, "Increasing the Minimum Age of Criminal Responsibility in Northern Ireland from 10 Years to 14 Years, Summary of Consultation Responses," June 2023, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/summary-consultation-macr.pdf>; Niamh Campbell, "£1.6m spent on suspended PSNI officers accused of domestic abuse and sexual assault," *Belfast Telegraph*, October 4, 2024, <https://www.belfasttelegraph.co.uk/news/northern-ireland/16m-spent-on-suspended-psni-officers-accused-of-domestic-abuse-and-sexual-assault/a957588661.html>; Luke Butterly, "PSNI apologises for claiming migrants might make fake domestic abuse claims," *The Detail*, March 22, 2023, <https://www.thedetail.tv/articles/psni-apologises-for-claiming-migrants-might-make-fake-domestic-abuse-claims-to-avoid-deportation>; John T. Topping and Ben Bradford, "Now you see it, now you don't: On the (in)visibility of police stop and search in Northern Ireland" *Criminology & Criminal Justice* 20, no. 1 (2018): 98, <https://doi.org/10.1177/1748895818800742>.

pathways grounded in the state's failure to protect ESCRs. The ongoing fixation on carceral reform has tangibly distracted from the protection of ESCRs, with especially harsh consequences for marginalised groups. According to Northern Irish carceral abolitionists, instead of addressing social harms that lead to these offending pathways, such as a lack of employment, housing, or mental healthcare, the UK and Northern Ireland governments have preferred individualised criminalisation of them. Thus, the marginalisation of ESCRs has further bolstered the position of carceral systems within Northern Irish society by creating the very pathways that lead to interaction with the criminal legal system.

Part III places critiques of carceral systems by Northern Irish government entities and IHR scholars, practitioners, and bodies in conversation with those of the carceral abolitionists discussed in Part II. The arguments raised by this broad swathe of IHR professionals raise the question of whether a human rights-compliant carceral system is anything more than a contradiction in terms. Part III suggests that it is time to reconsider the Agreement's approach to human rights-based carceral systems and ESCRs to dismantle the former by promoting the latter. Such an argument is not radical. Indeed, IHR bodies and specific 'anti-carceral human rights advocacy'¹⁴³ organisations in Northern Ireland have successfully pursued alternatives that de-emphasise carceral solutions and promote ESCRs.¹⁴⁴ Thus, these organisations and others like them should be emboldened to continue and improve upon their work.

Based on these developments, the Conclusion envisions a broader effort to align IHR advocacy with the abolitionist goals of reducing reliance on harmful carceral systems and increasing emphasis on ESCRs.

II. Entangling International Human Rights and Criminal Law: A Northern Ireland Perspective

Given the explicit incorporation of carceral ECtHR jurisprudence, the Agreement set

¹⁴³ Chi Adanna Mgbako et al., "Anti-Carceral Human Rights Advocacy," *University of Pennsylvania Journal of Law and Social Change* 26, no. 2 (2023): 175, <https://doi.org/10.58112/jlasc.26-2.2>. This is defined as the 'de-emphasis on carceral solutions as the primary response to human rights violations in favor of social and economic interventions that prevent human rights abuses, heal survivors, and transform perpetrators.'

¹⁴⁴ Johnson, "The Advocacy Gap."

the stage for the entanglement of human rights and carceral systems in Northern Ireland. The Agreement accepted carceral systems as necessary and inevitable within society, particularly one emerging from conflict. It did so by establishing distinctions between communities that are deserving and undeserving of punishment and situating human rights-compliant carceral regimes as the standard for doling out that punishment. The Agreement and subsequent reform efforts have strengthened acceptance of these systems to the extent of making IHR and carceral systems mutually dependent.

A. Northern Ireland Enters the Carceral Landscape

While the IHR regime initially developed as a means of protecting individuals from state structures, including police and prisons,¹⁴⁵ it has increasingly called for the end of impunity through the expansion of international criminal law.¹⁴⁶ Early instances of the institutionalisation of criminal law in response to IHR violations appeared at the end of World War II,¹⁴⁷ when the Nuremberg Trials positioned individual criminal responsibility as one of the only viable responses to mass violence.¹⁴⁸ At the end of the Cold War, international criminal law and institutions proliferated. This is seen in the ‘justice cascade’ of Latin American human rights prosecutions led by grassroots activists;¹⁴⁹ the Inter-American Court of Human Rights (‘IACtHR’) jurisprudence on the obligation to investigate, prosecute, and punish human rights violations;¹⁵⁰ and the

¹⁴⁵ Engle, “Anti-Impunity and the Turn to Criminal Law,” 1073.

¹⁴⁶ Engle, “Anti-Impunity and the Turn to Criminal Law,” 1073. See also, Rocío Lorca, “Should Feminists be Worried about Impunity?” *Harvard Human Rights Journal* 37, no. 1 (2024): 53, https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2024/06/02_HLH_37_1_Roc%C2%A1o-Lorca47-80.pdf.

¹⁴⁷ See Vasuki Nesiah, “Doing History with Impunity,” in *Anti-Impunity and the Human Rights Agenda*, ed. Karen Engle, Zinaida Miller and DM Davis (Cambridge University Press, 2016), 102.

¹⁴⁸ Mahmood Mamdani, “Beyond Nuremberg: The Historical Significance of the Post-Apartheid Transition in South Africa,” in Engle, Miller and Davis, *Anti-Impunity and the Human Rights Agenda*, 351.

¹⁴⁹ See generally, Kathryn Sikkink, *The Justice Cascade: how human rights prosecutions are changing world politics* (WW Norton, 2011).

¹⁵⁰ Engle, “Anti-Impunity and the Turn to Criminal Law,” 1080. The seminal case establishing this requirement was *Velásquez-Rodríguez v. Honduras*. Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988). A long line of precedent has developed in the IACtHR striking down amnesty laws as violating states’ duties to investigate, prosecute, and punish. Engle, “Anti-Impunity and the Turn to Criminal Law,” 1082. This obligation was subsequently reiterated and amplified throughout the IHR regime in the 1993 Vienna Declaration and Program of Action and the 1997 Joint Report released by the U.N. Sub-Commission on the Prevention of Discrimination and

creation of permanent and ad hoc international criminal tribunals in the 1990s.¹⁵¹ Additionally, the IHR regime has generally accepted that criminal legal structures, including their enforcement arms, are a necessary and legitimate fixture of contemporary society.¹⁵² In fact, a search through the Office of the United Nations High Commissioner for Human Rights ('OHCHR') publications on 'detention and imprisonment' and 'law enforcement' reveals an abundance of training manuals, handbooks, and guidance on maintaining human rights-compliant prisons and police forces.¹⁵³ The Council of Europe has also issued its own 'Prison Rules.'¹⁵⁴

Like the IACtHR, the ECtHR has developed its own anti-impunity jurisprudence, 'driving penalty at the domestic, regional and international levels.'¹⁵⁵ Despite an early willingness of the Council of Europe to consider decriminalisation,¹⁵⁶ the ECtHR has established that states may only meet their obligations under Articles 2 (right to life) and 3 (freedom from torture) of the ECHR so long as they maintain investigatory mechanisms capable of leading to prosecution for violations of these rights.¹⁵⁷ Where

Protection of Minorities. Engle, "Anti-Impunity and the Turn to Criminal Law," 1083–84. As a point of comparison, this is the exact opposite conclusion as that of the South African Constitutional Court in *Azanian Peoples Org. (AZAPO) v. President of the Republic of S. Africa* of 1996, which upheld the South African amnesty as allowing for a truth and forgiveness more important to victim, perpetrator, and nation, than could be provided by a purely punitive model of justice. Engle, "Anti-Impunity and the Turn to Criminal Law," 1088; *Azanian Peoples Org (AZAPO) v. President of the Republic of S. Afr.*, 1996 (4) SA 671 (CC) (S. Afr.).

¹⁵¹ Engle, "Anti-Impunity and the Turn to Criminal Law," 1074–77.

¹⁵² See generally, Isobel Renzulli, "Prison Abolition: International Human Rights Law Perspectives" *International Journal of Human Rights* 26, no. 1 (2021), <https://doi.org/10.1080/13642987.2021.1895766>. See also, Mgbako, "Anti-Carceral Human Rights Advocacy," 186–90; Karen Engle, "Abolitionist Human Rights: Queering LGBT Human Rights Advocacy and Law" in *Queer Encounters with International Law: Lives, Communities, Subjectivities*, ed. Claerwen O'Hara and Tamsin Paige (Routledge, 2024).

¹⁵³ See "Publications," OHCHR, accessed January 16, 2025, [https://www.ohchr.org/en/publications?field_subject_target_id\[751\]=751&field_subject_target_id\[736\]=736&created\[min\]=&created\[max\]=&sort_bef_combine=field_published_date_value_DESC](https://www.ohchr.org/en/publications?field_subject_target_id[751]=751&field_subject_target_id[736]=736&created[min]=&created[max]=&sort_bef_combine=field_published_date_value_DESC).

¹⁵⁴ *European Prison Rules*, COUNCIL OF EUR. (2006), <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

¹⁵⁵ Pinto, "Coercive Human Rights," 1109.

¹⁵⁶ Council of Europe, European Committee on Crime Problems (ECCP), *Report on Decriminalisation* (1980): cited in Pinto, "Coercive Human Rights," 1121–22

¹⁵⁷ *McCann and Others v. UK*, 324 Eur. Ct. H.R. (ser. A) 161 (1995), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57943%22%5D%7D>; *McKerr v. UK* 2001-III Eur. Ct. H.R. 112–113, 115, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-59451%22%5D%7D>; *Finucane v. UK* 2003-VIII Eur. Ct. H.R. 67–69, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-61185%22%5D%7D>; *Jordan v. UK*, App. No. 24746/94, ¶ 107 (May 4, 2001),

police are responsible for violating the right to life, the state must put 'in place effective criminal-law provisions' to be backed up by the very 'law-enforcement machinery' that gave rise to the violation in the first place, *i.e.* the police.¹⁵⁸ While this obligation falls short of requiring prosecution, it still establishes criminal processes as the benchmark of success in fulfilling rights, even when violated by the police themselves.¹⁵⁹ In fact, the ECtHR has repeatedly found the UK in violation of ECHR Article 2 where investigations did not rise to these procedural standards.¹⁶⁰

Negotiated and drafted within this milieu, the Agreement situates human rights-compliant carceral systems as central pillars of ongoing peace in Northern Ireland. The Agreement established the ECHR as a pivotal safeguard against the threat of a return to violence.¹⁶¹ The ECHR was subsequently implemented in the UK and Northern Ireland through the Human Rights Act 1998, which brought with it a reliance on criminal processes as the primary means of promoting human rights.¹⁶² This can be seen in the decision of *Dillon and Others v. Secretary of State of Northern Ireland*.¹⁶³ In *Dillon*, the High Court held that the sweeping amnesty of the Northern Ireland Troubles

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-59450%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59450%22]}); Brecknell v. UK, App. No. 32547/04 ¶¶ 65-72 (Feb. 27, 2008), [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-83470%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-83470%22]}). See also Gordon Anthony et al., *Investigations, Prosecutions, and Amnesties Under Articles 2 & 3 of the European Convention on Human Rights* (Arts and Humanities Research Council 2015) 3, 10, <http://dx.doi.org/10.2139/ssrn.2668106>; Karen Engle, "A Genealogy of the Criminal Turn in Human Rights," in Engle, Miller and Davis, *Anti-Impunity and the Human Rights Agenda*, 36. For an in-depth outline on the development of Article 2 jurisprudence, see Alyson Kilpatrick, *Independent Review of Article 2 ECHR Compliance: Kenova and Related Matters* (Operation Kenova, Aug. 2, 2021).

¹⁵⁸ *Guide on Article 2 of the European Convention on Human Rights: Right to Life*, EUR. CT. HUM. RTS. 144 (Aug. 31, 2023), https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng#:~:text=Article%20of%20the%20Convention,-%E2%80%9C1.&text=Everyone's%20right%20to%20life%20shall,penalty%20is%20provided%20by%20law. Carceral responses to human rights violations were also encouraged by the Human Rights Committee in its 2015 Concluding Observations on the U.K. and Northern Ireland, where it repeatedly emphasised that investigations be capable of leading to prosecution and punishment in the contexts of conflict-related violations in Northern Ireland, hate crime legislation, and violence against women. Hum. Rts. Comm., Concluding observations on the seventh period report of the United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CCPR/C/GBR/CO/7 (Aug. 17, 2015), <https://digitallibrary.un.org/record/804708?v=pdf>.

¹⁵⁹ Johnson, "The Advocacy Gap."

¹⁶⁰ *McCann*, at 214; *McKerr*, at 161; *Finucane*, at 84; *Jordan*, at 145; *Brecknell*, at 82. See also Kilpatrick, *Independent Review*.

¹⁶¹ Agreement, Strand One, "Safeguards" s.5b. The ECHR is mentioned 6 times throughout all strands of the Agreement. Agreement, *passim*.

¹⁶² Human Rights Act 1998 (U.K.).

¹⁶³ *Dillon and Others v. Secretary of State of Northern Ireland* (2024) NIKB 11.

(Legacy and Reconciliation) Act 2023 breached the prosecutorial duties of Articles 2 and 3 as established by the ECtHR.¹⁶⁴ As exemplified by the *Dillon* case, the Agreement incorporated the ECtHR's emphasis on criminal accountability mechanisms for certain rights violations. This entanglement has allowed for the ongoing acceptance of prisons and police in Northern Ireland.¹⁶⁵

¹⁶⁴ *Dillon*, at 144-215, 710(i)-(ii).

¹⁶⁵ See Part II.A.

B. Good Friday and the Myth of Good Prisons

While the Agreement significantly reduced an increasingly politicised and growing prison population,¹⁶⁶ it also bolstered the role of the prison in post-conflict society. The Agreement provided for the early release of individuals imprisoned for qualifying offences,¹⁶⁷ so long as they did not pose a risk to the public upon release.¹⁶⁸ As a result, between 1999 and 2007, 449 political prisoners were released under the Northern Ireland (Sentences) Act 1998.¹⁶⁹

Rather than question the role of penal institutions altogether, however, the Agreement strengthened the position of the prison in Northern Ireland in two ways. First, the Agreement established distinctions between groups deemed to be deserving or undeserving of punishment.¹⁷⁰ Based on determinations made by the Sentence Review Committee, ‘ordinary decent criminals’ remained imprisoned, while political prisoners did not.¹⁷¹ Even within the undeserving population of political prisoners, individual assessments of dangerousness were made based on the likelihood of continued affiliation and activity within paramilitary organisations.¹⁷² Second, the frequent use of human rights language alongside this continuation of prison for the ‘ordinary decent criminal’ supported the belief that a prison could be human rights-compliant.¹⁷³ This, in turn, fixed the myth of prison as the best way to respond to harm

¹⁶⁶ At one point, Northern Ireland had one of the highest prison populations per capita in Western Europe, likely due to the political situation. Clare D. Dwyer, “Risk, Politics and the ‘Scientification’ of Political Judgment: Prisoner Release and Conflict Transformation in Northern Ireland,” *British Journal of Criminology* 47, no. 5 (2007): 783, <https://doi.org/10.1093/bjc/azm025>.

¹⁶⁷ Qualifying offenses fell under ‘scheduled offenses’ defined in various acts outlined in Schedule 1 of the Northern Ireland Arms Decommissioning Act 1997, including the Northern Ireland (Emergency Provisions) Act 1996 and Northern Ireland (Sentences) Act 1998 s.3.

¹⁶⁸ Agreement, Annex A, “Prisoners” (1)-(2).

¹⁶⁹ Dwyer, “Risk, Politics, and ‘Scientification,’” 787. See also, Kieran McEvoy, “Prisoner Release and Conflict Resolution: international Lessons for Northern Ireland” *International Criminal Justice Review* 8, no. 1 (1998): 45-46, <https://doi.org/10.1177/105756779800800103>: discussing risk factors as a determinant of release.

¹⁷⁰ Phil Scraton, “Penal abolition in the north of Ireland,” in *The Routledge International Handbook of Penal Abolition*, ed. Michael J. Coyle and David Scott (Routledge, 2021) 369; Dwyer, “Risk, Politics and ‘Scientification,’” 783.

¹⁷¹ Dwyer, “Risk, Politics and ‘Scientification,’” 787-89.

¹⁷² Deborah H. Drake and David Scott, “Overcoming obstacles to abolition and challenging myths of imprisonment” in Coyle and Scott, *Routledge Handbook of Penal Abolition*, 412-13.

¹⁷³ Agreement, “Declaration of Support” s.2; Agreement, Strand 3, “Prisoners”. See also, Drake and Scott, “Overcoming obstacles,” 412-13.

or risk of harm posed by the punishment-deserving 'ordinary decent criminal.'¹⁷⁴

The emphasis on human rights-compliant imprisonment of deserving individuals has perpetuated acceptance of prison in Northern Ireland in the face of numerous opportunities for change. In 2007, after increases in both women's imprisonment and women's deaths while imprisoned,¹⁷⁵ Baroness Jean Corston was commissioned by the UK Government to investigate the treatment of vulnerable women in the criminal justice system.¹⁷⁶ Recognising the failure of prisons to meet the needs of vulnerable women, Corston argued for women's community centres as alternatives to jail¹⁷⁷ and rejected the use of remand for women unlikely to receive a custodial sentence.¹⁷⁸ At the same time, however, Corston explicitly rejected prison abolition and held firm on imprisoning women who posed serious risks to the public, *i.e.*, those deserving of punishment.¹⁷⁹ Thus, as in the Agreement, Corston placed women on a 'carceral continuum' in which certain women deserved punishment while others did not.¹⁸⁰ Corston justified imprisonment of deserving women on the grounds of a 'human rights approach to prison management.'¹⁸¹ According to Corston, such an approach would provide meaningful activity, structure, mutual aid, feelings of safety and control, normalisation, social inclusion, health or recovery services, and empowerment to both

¹⁷⁴ Drake and Scott, "Overcoming obstacles," 412-13.

¹⁷⁵ Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System, *The Corston Report: The Need for a Distinct, Radically Different, Visibly-Led, Strategic, Proportionate, Holistic, Woman-Centred, Integrated Approach*, (March 2007) [Corston Report] 1. This was a global trend: between 2000 and 2019, women's imprisonment increased by 53% as compared to a 19.6% increase of men's imprisonment. Gillian McNaul, "The Space In-Between: The Gendered Marginalisation of Women's Custodial Remand," policy briefing paper for Queens University Belfast, February, 2019, 1, <https://www.qub.ac.uk/home/queens-on-gender/research-activity/TheSpaceIn-between.html#:~:text=Research%20Activity-Paper%3A%20The%20Space%20In%2Dbetween%3A%20The%20Gendered%20Marginalisation%20of,global%20arena%20of%20remand%20imprisonment>.

¹⁷⁶ See Corston Report. See also, Linda Moore, Phil Scraton and Azrini Wahidin, "Introduction" in *Women's Imprisonment and the Case for Abolition*, ed. Linda Moore, Phil Scraton and Azrini Wahidin (Routledge, 2017) 1.

¹⁷⁷ Corston Report 59-68.

¹⁷⁸ Corston Report 58. 10 years after issuing her report, only two out of 43 recommendations were realised, and one only partially. Phil Scraton and Bree Carlton, "Beyond Corston: The politics of decarceration and abolition in a punitive climate" in Moore, Scraton and Wahidin, *Women's Imprisonment*, 173.

¹⁷⁹ Corston Report i, 58.

¹⁸⁰ Gillian McNaul, "Post-Corston Reflections on Remanded Women's Experiences in Northern Ireland" in Moore, Scraton and Wahidin, *Women's Imprisonment*, 104.

¹⁸¹ Corston Report 18.

the women and, significantly, the prison workforce.¹⁸²

Another opportunity for radical change that instead further conflated human rights and prison occurred upon devolution of policing and justice powers to the Northern Ireland Assembly. As part of the 2011 Hillsborough Agreement,¹⁸³ a Prison Review Team led by Dame Anne Owers was charged with reviewing the conditions and oversight of prisons.¹⁸⁴ The Owers Report explicitly placed human rights at the centre of its goal of ‘fundamental change and transformation.’¹⁸⁵ That change did not include rethinking the role of prisons in society. Instead, it relied on IHR and European standards on prison conditions and prisoner treatment as an ‘ethical basis for running prisons.’¹⁸⁶ Using these standards, Owers argued for rehabilitative service provision to address the frequent ill-health, substance misuse, and self-harm that occur within prison walls¹⁸⁷ as well as a reduction in the prison population.¹⁸⁸ In other words, Owers recognised the harms of containment and the social marginalisation that leads to it.¹⁸⁹ Yet, she failed to question the value of individual punishment or emphasise preventative community-based alternatives to such punishment.¹⁹⁰ Instead, Owers accepted the deserving-undeserving dichotomy and applied a human rights panacea, again legitimising the prison in Northern Ireland with the language of human rights.¹⁹¹

On the surface, early release mechanisms and reports calling for alternatives to remand or custodial sentences gestured towards limiting reliance on prison. Upon closer inspection, however, the acceptance of deserving and undeserving populations and the entanglement of human rights with punishment strengthened the role of prisons within Northern Ireland. These same dynamics are at play in the Agreement’s response to and subsequent reforms of policing.

¹⁸² Corston Report 18.

¹⁸³ Agreement at Hillsborough Castle (Feb. 5, 2010).

¹⁸⁴ Dame Anne Owers et al., *Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons* (Prison Review Team, October 2011) [Owers Report] 2.

¹⁸⁵ Owers Report 9.

¹⁸⁶ Owers Report 11-12.

¹⁸⁷ Owers Report, 12-13.

¹⁸⁸ Owers Report, 28.

¹⁸⁹ Owers Report, 12.

¹⁹⁰ Scraton, “Penal abolition in the north of Ireland,” 371-73.

¹⁹¹ Owers Report 12.

C. Good Friday and the Promise of Policing

The Agreement provided for a remarkable overhaul of the policing structure in Northern Ireland. It expressly recognised the particularly incendiary past of Northern Ireland's police force, given historic abuses by the Royal Ulster Constabulary ('RUC').¹⁹² Therefore, the Agreement sought to establish a 'new beginning to policing in Northern Ireland' expressly based upon 'principles of protection of human rights.'¹⁹³ Unfortunately, 1998 represented just that – a new beginning, rather than an end, to policing.

Charting the path forward was the 1999 Patten Report.¹⁹⁴ Similar to the prison reform efforts, the Patten Report started from the assumption that police are both legitimate and necessary to uphold the rule of law in a liberal democracy.¹⁹⁵ Recognizing the distinctly tenuous position of police in Northern Ireland,¹⁹⁶ the Patten Report endeavoured to reimagine the RUC as a new entity reflective of the community it policed¹⁹⁷ and with its fundamental purpose being 'the protection and vindication of the human rights of all.'¹⁹⁸ The Patten Report went so far as to state that protection of human rights is the very purpose of policing.¹⁹⁹ To achieve that purpose, the Patten Report recommended that the ECHR be integrated into the Police Service Northern Ireland ('PSNI') code of ethics and training modules.²⁰⁰ Thus, the Patten Report situated the continuation of both police and human rights protection as reliant upon each other, bolstering the former's perception, acceptance, and legitimacy within

¹⁹² Agreement, Annex A, "Policing and Justice" s.1.

¹⁹³ Agreement, Annex A, "Policing and Justice" ss.1-2.

¹⁹⁴ Lord Christopher Patten, *A New Beginning: Policing in Northern Ireland* (Report of the Independent Commission on Policing for Northern Ireland, 1999) [Patten Report].

¹⁹⁵ Patten Report, para. 1.12.

¹⁹⁶ Patten Report, para. 1.3.

¹⁹⁷ Patten Report, para. 15.4-15.7.

¹⁹⁸ Patten Report, para. 4.1. The effort to distinguish the Police Service Northern Ireland ('PSNI') from its predecessor organisation has proven more difficult than potentially thought. For example, one need only attend a student protest at Queens University Belfast to hear protestors refer to the PSNI crowd control officers as 'RUC.'

¹⁹⁹ Patten Report, para. 4.6.

²⁰⁰ Patten Report, para 4.8. The Patten Report also recommended the creation of a new Policing Board and Police Ombudsman, incorporation of a human rights lawyer within the PSNI, neighbourhood policing teams, and more. Patten Report, paras. 4.11, 6.2, 6.41, 7.10.

society.²⁰¹

The notion of human rights protection as policing's *raison d'être* has underpinned calls for reform across the island of Ireland. In 2018, for instance, the Commission on the Future of Policing in Ireland (the 'Commission') issued a report stating that '[p]olicing is one of the ways in which the state meets its obligations to protect fundamental human rights,' despite the concurrent ability of police to curtail such rights.²⁰² As seen in the Patten Report, the Commission recommended establishing a human rights unit and conducting human rights training, particularly regarding treatment of minoritised populations.²⁰³

Additionally, in March 2022, one of the leading human rights organisations in Northern Ireland, the Committee on the Administration of Justice ('CAJ'), held a conference on the PSNI's 200-plus human rights reforms since the Patten Report.²⁰⁴ During the conference, three IHR and policing experts lauded the human rights-based approach to policing.²⁰⁵ Perhaps most clearly embodying the continuing mutually assured existence of police and human rights in Northern Ireland, one human rights practitioner stated that '[h]uman rights are not protected without the police,' despite their monopoly on violence, intrusive powers, and deprivation of liberty.²⁰⁶

The positive perception of Northern Ireland's allegedly human rights-compliant police and prison system has been adopted by Northern Irish civil society organisations, human rights scholars, the public, and beyond. For example, CAJ considers itself a critical friend to the criminal legal system and generally calls for reforms aimed at rendering policing human rights-compliant.²⁰⁷ Transitional justice scholars from

²⁰¹ Patten Report, paras. 4.11, 6.2, 6.41, 7.10.

²⁰² *The Future of Policing in Ireland* (Commission on the Future of Policing in Ireland, September 2018) 10, [https://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](https://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf).

²⁰³ *Future of Policing*, 11-12.

²⁰⁴ *PSNI@20: Human rights Reflections on Policing Reform Northern and South, Conference Report* (Committee on the Administration of Justice (CAJ), March 2022) 15, <https://caj.org.uk/wp-content/uploads/2022/03/PSNI@20-HIGH-RES.pdf>.

²⁰⁵ CAJ, *PSNI@20*, 9-25.

²⁰⁶ CAJ, *PSNI@20*, 20.

²⁰⁷ "Our Work: Policing and Justice," CAJ, accessed January 16, 2025, <https://caj.org.uk/our-work/policing-and-justice/>.

Northern Ireland with histories of working in restorative justice programs outside the criminal legal system have also accepted that the ‘need for better policing... is indisputable.’²⁰⁸ The Northern Irish general public has expressed broad support for police and prisons, particularly as responses to human rights violations stemming from the conflict there.²⁰⁹ Finally, this acceptance has even extended beyond the borders of Northern Ireland, as PSNI human rights expertise is now sought by police forces around the world, including in France, Canada, Oman, and elsewhere.²¹⁰

Despite this widespread acceptance, the reliance on carceral systems is not without issue. In fact, it has had a tangible effect on the protection of ESCRs in Northern Ireland throughout the twenty-first century. The next Part will outline the extent to which an emphasis on carceral systems has perpetuated the marginalisation of ESCRs in Northern Ireland.

III. The ESCRs Effect

While the Agreement’s reliance on IHR standards fixed carceral systems in Northern Ireland, it also pushed ESCRs to the margins. Much effort was and continues to be expended to render prisons and police human rights-compliant, whereas less attention has been paid to socioeconomic concerns. Those suffering from rights deprivations in the contexts of employment, housing, and healthcare subsequently risk the most friction with carceral systems.²¹¹ Thus, investment in police and prison reform at the expense of proper ESCRs protection feeds the cycle of carceral reliance, making both mutually reinforcing.

²⁰⁸ Kieran McEvoy, “Letting Go of Legalism: Developing a ‘Thicker’ Version of Transitional Justice,” in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Hart Publishing 2008) 41 (emphasis in original).

²⁰⁹ “Northern Ireland: Majority of the UK public are against the Troubles Bill – new poll,” *Amnesty International*, June 23, 2023, accessed January 4, 2025, <https://www.amnesty.org.uk/press-releases/northern-ireland-majority-uk-public-are-against-troubles-bill-new-poll>. See also Anthony et al., *Investigations, Prosecutions, and Amnesties*, 10.

²¹⁰ Butterly, “PSNI apologises.”

²¹¹ McElhone, Kemp and Lambie, “Defund – not defend – the police” 279; McNaul, “The Space In-Between” 265-66; McNaul, “Post-Corston Reflections,” 93. See also, Moore, Scraton and Wahidin, “Introduction,” 4.

A. Starting at the Margins

In recent years, IHR scholars have worked diligently to re-establish the importance of ESCRs and their indivisibility from civil and political rights ('CPRs') within the human rights field.²¹² Unfortunately, the historic marginalisation of the former in favour of the latter continues today.²¹³ This history has infiltrated both the UK government's

²¹² Aoife Nolan, "The Justiciability of Social and Economic Rights: An Updated Appraisal," Working Paper No. 15 (Centre for Human Rights and Global Justice, New York University, August, 2007) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944: countering arguments distinguishing between CPRs and ESCRs based on their character, court capacity to adjudicate ESCRs, and democratic legitimacy. See also, Allison Corkery and Ignacio Saiz, "Progressive Realization using Maximum Available Resources: the Accountability Challenge," in *Research Handbook on Economic, Social, and Cultural Rights as Human Rights*, ed. Jackie Dugard, Bruce Porter and Daniela Ikawa, (Edward Elgar Publishing 2020): arguing for budget work to ensure that the notions of 'progressive realization' and 'maximum available resources' are given full, enforceable effect within the human rights system; Ben Warwick, "Unwinding Retrogression: Examining the Practice of the Committee on Economic, Social and Cultural Rights?" *Human Rights Law Review* 19, no. 3 (2019): 467, <https://doi.org/10.1093/hrlr/ngz023>: arguing for greater understanding of the principle of non-retrogression to ensure fulfilment of ESCRs obligations; Sandra Liebenberg, "Between Sovereignty and Accountability: The Emerging Jurisprudence of the United Nations Committee on Economic, Social and Cultural Rights Under the Optional Protocol," *Human Rights Quarterly* 42, no. 1 (2020): 48 https://muse.jhu.edu/article/747391#info_wrap: assessing emerging jurisprudence of CESCR to establish reasonableness criteria allowing for greater efficacy and legitimacy of CESCR processes; Ellie Palmer, "Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights," *Erasmus Law Rev* 2, no. 4 (2009): 397, <https://ssrn.com/abstract=1542674>: arguing for strategic litigation of Articles 3 and 8 of the European Convention of Human Rights to protect ESCRs. There also exists a movement within transitional justice to be more cognizant of the socioeconomic causes of conflict. See Zinaida Miller, "Effects of Invisibility: In Search of the Economic in Transitional Justice," *International Journal of Transitional Justice* 2, no. 3 (2008): 276-76, <https://doi.org/10.1093/ijtj/ijn022>; Lisa Laplante, "Transitional Justice and Peace Building: Diagnosing and Addressing Socioeconomic Roots of Violence through a Human Rights Framework," *International Journal of Transitional Justice* 2, no. 3 (2008): 334, <https://doi.org/10.1093/ijtj/ijn031>.

²¹³ For a debate regarding the foundational marginalisation of ESCRs in western countries, see Daniel J. Whelan and Jack Donnelly, "The West, Economic and Social Rights, and the Human Rights Regime: Setting the Record Straight," *Human Rights Quarterly* 29, No. 4 (2007), <https://doi.org/10.1353/hrq.2007.0050>, and Susan Kang, "The Unsettled Relationship of Economic and Social Rights and the West: A Response to Whelan and Donnelly," (2009) 31 *Human Rights Quarterly* 31, no. 4 (2009): 1023, <https://doi.org/10.1353/hrq.0.0106>. For a debate as to the effectiveness of human rights advocacy of CPRs as opposed to ESCRs, see Kenneth Roth, "Defending Economic Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization," *Human Rights Quarterly* 26, no. 1, (2004): 63, <https://doi.org/10.1353/hrq.2004.0010>, and Leonard Rubenstein, "How International Human Rights Organizations Can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth," *Human Rights Quarterly* 26, no. 4 (2004): 845, <https://doi.org/10.1353/hrq.2004.0056>.

approach to ESCRs²¹⁴ and the text of the Agreement in two ways.

First, as with many peace agreements,²¹⁵ the Agreement established a hierarchy of rights.²¹⁶ While ESCRs are referenced in the Agreement,²¹⁷ their significance is undermined by the Agreement's particular emphasis on CPRs and security reform. The Agreement incorporated the ECHR, which is almost exclusively concerned with CPRs.²¹⁸ Additionally, 6 out of 8 human rights given particular attention in the Agreement are CPRs.²¹⁹ And, while only five paragraphs of the Agreement are committed to ESCRs, 22 are devoted to security apparatus reform, showing greater willingness to address past CPR violations by the police than future socioeconomic deprivations.²²⁰ The emphasis on addressing past CPR violations is also reflected in the Agreement's establishment of a power-sharing arrangement designed to meet the governance goals of the communities involved in prior conflict.²²¹

Second, where ESCRs are referenced in the Agreement, no specific rights are enumerated.²²² Rather, ESCRs are abstracted through vague language of equality of opportunity and are not written explicitly into the Agreement as ends in themselves.²²³

²¹⁴ See Joint Committee on Human Rights, The International Covenant on Economic, Social and Cultural Rights: Twenty-First Report of Session 2003-04, 2003-2004, HL 183/HC 1188, 9-14.

²¹⁵ Rory O'Connell, Lina Malagón and Fionnuala Ni Aoláin, "Are Economic, Social and Cultural Rights Sidelined in Peace Agreements? Insights from Peace Agreement Databases," *Gonzaga Journal of International Law* 26, no. 1 (2022): 28, <https://ssrn.com/abstract=4468905>.

²¹⁶ Rory O'Connell, Lina Malagón and Fionnuala Ni Aoláin, "The Belfast/Good Friday Agreement and Transformative Change: Promise, Power, and Solidarity," *Israel Law Review* 57, no. 1 (2023): 18, <https://doi.org/10.1017/S0021223723000031>.

²¹⁷ Agreement, Strand 3, "Rights, Safeguards and Equality of Opportunity," "Human Rights and Economic, Social and Cultural Issues."

²¹⁸ European Convention on Human Rights, November 4, 1950 [ECHR].

²¹⁹ Agreement Strand 3, Rights, Safeguards and Equality of Opportunity, "Human Rights."

²²⁰ Agreement Strand 3, Rights, Safeguards and Equality of Opportunity, "Economic, Social and Cultural Issues," "Decommissioning," and "Policing and Justice."

²²¹ Agreement, Strand 1, Democratic Institutions in Northern Ireland, "Safeguards," s.5. See also O'Connell, Malagón and Ni Aoláin, "The Belfast/Good Friday Agreement," 25.

²²² Agreement Strand 3, Rights, Safeguards and Equality of Opportunity, "Economic, Social and Cultural Issues."

²²³ O'Connell, Malagón and Ni Aoláin, "The Belfast/Good Friday Agreement," 18. See also, Agreement Strand 3, Rights, Safeguards and Equality of Opportunity, "Human Rights": emphasizing equal opportunity in all social and economic activity; Agreement Strand 3, Rights, Safeguards and Equality of Opportunity, "Economic, Social and Cultural Issues": only requiring the British Government to pursue 'broad policies for sustained economic growth' and for 'promoting social inclusion, including in particular community development and the advancement of women in public life.' The most specifically addressed ESCR is right to promotion of the Irish language. Ibid.

There is also no dispute resolution forum within the Agreement, and the subsequently enacted statutory equality duty continues to be significantly diluted.²²⁴ Finally, for years, the Northern Ireland Executive failed to adopt an anti-poverty strategy, despite its mandate to do so in 1998.²²⁵ These failings have made it all the more difficult to protect ESCRs in the face of Northern Ireland government collapses,²²⁶ UK austerity policies,²²⁷ and Brexit.²²⁸

B. ESCRs and Offending Pathways

The lack of ESCRs protection for particular populations and the growing criminal legal apparatus in Northern Ireland are mutually reinforcing. This is because, rather than promote ESCRs either in the Agreement or afterwards, governments have preferred to criminalise conduct that may be seen as the result of a lack of ESCRs protections.²²⁹ For example, rough sleeping is still criminalized by the Vagrancy Act 1824 and Vagrancy (Ireland Act) 1847;²³⁰ police officers increasingly respond to mental health crises²³¹ and overwhelmingly target individuals from socioeconomically deprived

²²⁴ O'Connell, Malagón and Ni Aoláin, "The Belfast/Good Friday Agreement," 20. This is only further hindered by the dualist approach to international law of both the UK and Ireland, which requires that the domestic governments of each state explicitly incorporate international treaties into domestic law for them to have effect.

²²⁵ Northern Ireland Act 1998 s. 28E. See also, Committee on the Administration of Justice (CAJ) and Brian Gormally's Application [2015] NIQB 59; New Decade, New Approach, January 2020, p. 9.

²²⁶ O'Connell, Malagón and Ni Aoláin, "The Belfast/Good Friday Agreement," 29; Special Rapporteur on Extreme Poverty Philip Alston, *Statement on Visit to the United Kingdom* (November 16, 2018), <https://www.ohchr.org/en/statements/2018/11/statement-visit-united-kingdom-professor-philip-alston-united-nations-special?LangID=E&NewsID=23881>.

²²⁷ Mark Simpson, "Assessing the Compliance of the United Kingdom's Social Security System with its Obligations under the European Social Charter," *Human Rights Law Review* 18, no. 4 (2018): 745, <https://doi.org/10.1093/hrlr/ngy030>: arguing that the UK's austerity measures violated various articles of the European Social Charter; Paul O'Connell, "Let Them Eat Cake: Socio-Economic Rights in an Age of Austerity," in *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights*, ed. Aoife Nolan, Colin Harvey and Rory O'Connell (Hart, 2013) 60-61.

²²⁸ Sarah Craig, Claire Lougarre and Rory O'Connell, *EU Developments in Equality and Human Rights: Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland: Update Paper on Developments post January 2022* (Equality Commission Northern Ireland, November 2024) 21-22, <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/DMU/EU-EqualityHumanRights-BrexitImpactUpdate-Nov2024.pdf>: discussing renewed speculation about the UK's withdrawal from the ECHR.

²²⁹ McNaul, "Post-Corston Reflections" 93. See also, Moore, Scraton and Wahidin, "Introduction" 4.

²³⁰ Vagrancy Act (1824) s. 4; Vagrancy (Ireland) Act 1847 s. 3.

²³¹ Judith Bailie, *From custody to community: mental health and criminal justice in Northern Ireland* (Northern Ireland Assembly Research and Information Service) updated October 10, 2023, accessed

neighbourhoods for stop and search;²³² Belfast-based immigrants, including minors, are more frequently threatened with criminal detention amidst crackdowns on illegal employment and immigration;²³³ and, imprisonment can lead to unemployment.²³⁴ At best, then, these realities increase interaction between individuals suffering ESCRs deprivations and the criminal legal system; at worst, they actively contribute to the criminalisation of those suffering from such deprivations.

This has resulted in particularly harsh consequences regarding the rights to employment, adequate standards of living, and the highest attainable physical and mental health for Northern Ireland's most vulnerable populations. Instead of appropriate investment in the protection of these ESCRs, governments have relied on carceral responses to the social ills of poverty, homelessness, mental ill-health, or substance abuse.²³⁵ Those suffering from these rights deprivations subsequently risk the most friction with carceral systems.²³⁶

Northern Irish carceral abolitionists, such as McNaul, Moore, Scraton, and Wahidin, argue that the state has conflated 'social need' with 'lifestyle risk.'²³⁷ In other words, social concerns of poverty, homelessness, mental ill-health, and substance abuse are not recognised as failures of the state to promote social well-being or protect certain

June 3, 2025, <https://www.assemblyresearchmatters.org/2024/10/10/from-custody-to-community-mental-health-and-criminal-justice-in-northern-ireland/>.

²³² Topping and Bradford, "Now you see it, now you don't," 98.

²³³ Claire Williamson, "More than 30 men – including 16-year-old – arrested as officers swoop on illegal workers in Belfast," *Belfast Telegraph*, Mar 23, 2025, <https://www.belfasttelegraph.co.uk/news/northern-ireland/more-than-30-men-including-16-year-old-arrested-as-officers-swoop-on-illegal-workers-in-belfast/a1941850669.html>.

²³⁴ Northern Ireland Audit Office, *Reducing Adult Reoffending in Northern Ireland* (June 13, 2023) accessed June 3, 2025, https://www.niauditoffice.gov.uk/files/niauditoffice/documents/2023-06/NI%20Audit%20Office%20Report%20-%20Reducing%20Adult%20Reoffending%20in%20NI_0.pdf.

²³⁵ Megan McElhone, Tom Kemp and Sarah Lamb, "Defund – not defend – the police: A response to Fleetwood and Lea," *Howard Journal of Crime and Justice* 62 (2023): 279, <http://doi.org/10.1111/hojo.12508>; Gillian McNaul, "The Space In-Between: An examination of the marginalization experienced by women remand prisoners in Northern Ireland" (PhD diss., Queens University Belfast, 2018), 265-66, <https://pure.qub.ac.uk/en/studentTheses/the-space-in-between-2>; McNaul, "Post-Corston Reflections," 93. See also, Moore, Scraton and Wahidin, "Introduction," 4.

²³⁶ McElhone, Kemp and Lamb, "Defund – not defend – the police" 279; McNaul, "The Space In-Between" 265-66; McNaul, "Post-Corston Reflections," 93. See also, Moore, Scraton and Wahidin, "Introduction," 4.

²³⁷ McNaul, "Post-Corston Reflections" 93. See also, Moore, Scraton and Wahidin, "Introduction" 4.

rights, but rather as pathways to individual criminal conduct.²³⁸ McNaul argues that this is particularly problematic in Northern Ireland, given its history of conflict, which contributed to systematic disinvestment, heightened unemployment, physical and mental ill-health, and substance abuse, all of which are further compounded on gender grounds due to patriarchal religious systems.²³⁹ As a result, the communities most affected by the failure to promote ESCRs are also the communities that tend to be disproportionately targeted by police and represented in prisons.²⁴⁰ This is true both for the ‘illegal workers’ detained in Belfast, who already suffer ‘extremely poor living conditions, inhumane working hours and below minimum wage,’ and for the vulnerable women addressed in the Corston Report.²⁴¹

The increase in carceral responses to these concerns fails to recognise that policing, imprisonment, and efforts to render them human rights-compliant actually detract resources from investment in community programs that might mitigate these so-called offending pathways.²⁴² Indeed, activists and academics argue police and prisons, with their own histories of promoting the interests of specific populations over others,²⁴³ cannot adequately protect the communities that tend to bear the ‘brunt of suspicion, intervention and violence’ based on their minority, gender, or socioeconomic status.²⁴⁴ Rather than resolve the state-created pathways to incarceration, such as a lack of employment, social housing, or adequate physical and mental healthcare, the UK and Northern Ireland governments have responded by individualising these social harms and displacing them to allegedly human rights-compliant carceral settings.²⁴⁵

²³⁸ McNaul, “Post-Corston Reflections” 93. See also, Moore, Scraton and Wahidin, “Introduction” 4.

²³⁹ McNaul, “Post-Corston Reflections,” 91-92.

²⁴⁰ McElhone, Kemp and Lamb, “Defund – not defend,” 279; McNaul, “The Space In-Between,” 265-66; McNaul, “Post-Corston Reflections,” 93. See also, Moore, Scraton and Wahidin, “Introduction,” 4.

²⁴¹ Williamson, “More than 30 men.” See also, McNaul, “Post-Corston Reflections” 93; Moore, Scraton and Wahidin, “Introduction” 4.

²⁴² McNaul, “Post-Corston Reflections,” 91-92. See also Maureen Mansfield, “Irish Penal Abolition Network: A New Voice With An Old Ideal,” *Abolitionist Futures*, <https://abolitionistfutures.com/latest-news/irish-penal-abolition-network-a-new-voice-with-an-old-ideal>.

²⁴³ See Butterly, “PSNI apologises”; Adam Elliott-Cooper, *Black Resistance to British Policing* (Manchester University Press, 2021) 40-41; Drake and Scott, “Overcoming obstacles,” 413.

²⁴⁴ McElhone, Kemp and Lamb, “Defund – not defend – the police,” 279; McNaul, “The Space In-Between,” 53-58.

²⁴⁵ McNaul, “Post-Corston Reflections,” 89; McElhone, Kemp and Lamb, “Defund – not defend,” 279; McNaul, “The Space In-Between,” 265-66.

Thus, the acceptance of human rights-compliant carceral systems and the failure to adequately protect ESCRs are mutually reinforcing. The fixation on human rights-based police and prison reform from the Agreement through today has failed to adequately account for and safeguard ESCRs, including the employment rights, an adequate standard of living, and the highest attainable standards of physical and mental health. Given that poverty, homelessness, mental ill-health, and substance abuse are viewed as offending pathways leading to criminalisation and are replicated within carceral settings, the failure to adequately protect the ESCRs that might mitigate such social harms further feeds the carceral systems already receiving greater attention. The next Part will explore criticisms of the mutually reinforcing role of carceral acceptance and ESCRs denial from a Northern Ireland and international perspective.

IV. The False Promise of Human Rights-Compliant Prisons and Police

This Part will place the arguments of the carceral abolitionists discussed above in conversation with those of Northern Irish agencies, government representatives, and IHR scholars, practitioners, and bodies to highlight these mutually reinforcing roles. This Part will then explore the positive progress made on criminal law policy in Northern Ireland and further anti-carceral human rights alternatives that de-emphasise reliance on carceral systems in favour of protection of ESCRs.

A. Anti-Carceral Critics at Home

It is not just Northern Irish carceral abolitionists who have criticised Northern Ireland's police and prisons. Indeed, the reformers themselves, Corston, Owers, and Patten, all criticised police and prisons and were commissioned by either the UK or Northern Ireland governments. Still other government entities have conducted extensive reviews of prisons and found much to criticise, particularly pertaining to self-harm, substance misuse, mental ill-health, bullying, intimidation, and the failure to provide therapeutic counselling, occupational therapy, or constructive employment and educational opportunities.²⁴⁶ There is also a steady stream of reputable exposés on

²⁴⁶ HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland (HMCIP/CIJINI), Report on an unannounced inspection of Hydebank Wood Prison and Young Offender Centre (14-17 Mar 2005), 2005, <https://cjini.org/getattachment/223afdb3-2d54-4157-9bb1->

rampant police abuse and discrimination from Northern Irish publications,²⁴⁷ including at the 2022 CAJ conference on human rights policing reform.²⁴⁸ At that same conference, Dr. John Topping highlighted that, despite having undergone 200 human rights reforms, the PSNI is ‘arguably the poorest performing police service in the UK for stop and search.’²⁴⁹ Additionally, Lilliana Senoi-Barr, then the Director of Programmes for the North West Migrants Forum and now the Mayor of Derry, stated that the ‘history of differential treatment in policing minority ethnic communities and how they have been targeted for particular forms of policing is well documented.’²⁵⁰

The arguments that marginalised populations are over-policed and under-protected, police have contributed to abuse of vulnerable populations, and prisons fail to meet standards that promote human dignity, mirror criticisms of police and prisons made by IHR bodies more generally.²⁵¹ For one, local and international bodies argue that the

1991ff0c2453/Hydebank-Wood-Prison-March-2005.aspx; HMCIP/CIJINI, Report on an unannounced inspection of Hydebank Wood Young Offender Centre 5-9 Nov 2007, 2008, <https://cjin.org/getattachment/743c0eb6-5bc1-4a27-b08f-e0d17ad490e3/Hydebank-Wood-Young-Offender-Centre-November-2007.aspx>; HMCIP/CIJINI, Report on an unannounced full follow-up inspection of Maghaberry Prison 19-23 Jan 2009, 2009, <https://cjin.org/getattachment/a258078a-5376-4c89-88c8-13d4e0e4f3ee/Report-on-an-unannounced-full-follow-up-inspection-of-Maghaberry-Prison-19-23-January-2009.aspx>; HMCIP/CIJINI, Report on an unannounced short follow-up inspection of Hydebank Wood Young Offenders Centre 21-25 Mar 2011, 2011, <https://cjin.org/getattachment/bed0d54a-b267-4925-9555-4394af77c3b3/Hydebank-Wood-Young-Offenders-Centre.aspx>; HMCIP/CIJINI, Report on an unannounced inspection of Maghaberry Prison 11-22 May 2015, 2015, <https://cjin.org/getattachment/a98fca95-ae81-4443-88cc-1870be44250f/report.aspx>; HMCIP/CIJINI, Overview of initial findings of a report on an unannounced inspection of Maghaberry Prison 4-15 January 2016, 2016, <https://cjin.org/getattachment/4a4b596d-24bb-418f-a50c-9da353df0d88/report.aspx>; HMCIP/CIJINI, Report on an announced visit to Maghaberry Prison 5-7 September 2016, 2016, <https://cjin.org/getattachment/1d77c1e6-8311-413e-ad9d-b9f9aa384506/report.aspx>.

²⁴⁷ Campbell, “£1.6m spent on suspended PSNI”; Butterly, “PSNI apologises”; Topping and Bradford, “Now you see it, now you don’t,” 98.

²⁴⁸ CAJ, *PSNI@20*, 38.

²⁴⁹ CAJ, *PSNI@20*, 38.

²⁵⁰ CAJ, *PSNI@20*, 41.

²⁵¹ Johnson, “The Advocacy Gap.” See also, Mgbako et al., “Anti-Carceral Human Rights Advocacy,” 187-89, and accompanying footnotes. IHR bodies have not only explicitly criticised police forces and prison conditions, but also recognised concerns over the relationship between criminal law and ESCRs. These include the Inter-American Commission on Human Rights, the U.N. Human Rights Council, and treaty monitoring bodies. For an extensive list of publications by international human rights institutions that provide these criticisms, see Mgbako et al., “Anti-Carceral Human Rights Advocacy,” 188-89, nn. 114-115. Yet, in the same breath that these bodies criticise the conduct of police or the conditions of prisons, more often than not, they also call for reformist reforms that strengthen these institutions. Mgbako et al., “Anti-Carceral Human Rights Advocacy,” 187-88.

continued recognition of populations deserving and undeserving of punishment and government co-optation of restorative justice accepts the validity of criminal punishment, creates dynamics of offender-victim, and detracts resources from alternative mechanisms of justice.²⁵² Second, local and international bodies argue that reliance on individual criminal responses to harm distracts from the structural causes of a given offence, which are often rooted in ESCRs deprivations, social exclusion, or economic violence.²⁵³ Finally, international and local bodies argue that individual criminal accountability ignores the role of the state or its agents in creating the structural dynamics leading to harm in the first place, such as governmental collapses resulting from the power-sharing arrangement, policies of austerity, and, of course, Brexit.²⁵⁴

Related arguments have even entered the jurisprudence of the ECtHR, which applies to Northern Ireland through the Human Rights Act 1998.²⁵⁵ Despite historically being at least permissive and at most supportive of domestic criminal legal sanctions, the ECtHR explicitly recognised the role of poverty, illiteracy, and unemployment in exposure to criminal penalties in the 2021 case of *Lăcătuș v. Switzerland*.²⁵⁶ The ECtHR considered whether issuing a custodial sentence against a 19-year-old Roma woman living in extreme poverty without employment or formal education after she failed to pay a fine for begging violated her right to private life under Article 8 of the ECHR.²⁵⁷ The ECtHR conducted an extensive comparative law analysis of European states that banned begging through criminal legal sanctions, including Ireland and the UK,²⁵⁸ and assessed United Nations, European, Inter-American, and African

²⁵² Mamdani, "Beyond Nuremberg," 352–53. See also, Department of Justice, "Restorative Justice Protocol and Annual Report published," July 21, 2023, <https://www.justice-ni.gov.uk/news/restorative-justice-protocol-and-annual-report-published>.

²⁵³ Karen Engle, "Introduction" in Engle, Miller and Davis, *Anti-Impunity and the Human Rights Agenda*, 9. See also, McNaul, "Post-Corston Reflections," 91-92.

²⁵⁴ Engle, "Anti-Impunity and the Turn to Criminal Law," 1120–21. See also, O'Connell, Malagón and Ni Aoláin, "The Belfast/Good Friday Agreement," 29; Simpson, "Assessing the Compliance of the United Kingdom's Social Security System," 745; Craig, Lougarre and O'Connell, *EU Developments in Equality and Human Rights*, 21-22.

²⁵⁵ Human Rights Act 1998 (U.K.); *Dillon*, at 144-215, 710(i)-(ii).

²⁵⁶ *Lăcătuș v. Switzerland*, App. No. 14065/15, 58 (Jan. 19, 2021), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-207695%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207695%22]}).

²⁵⁷ *Lăcătuș*, at 50.

²⁵⁸ *Lăcătuș*, at 19-31.

international legal instruments that highlighted the particularly acute harms to vulnerable people resulting from criminalisation of begging and homelessness.²⁵⁹ Upon this assessment, the ECtHR held that punishing an extremely vulnerable person for pursuing one of her only means of subsistence and survival diminished her human dignity, impaired the essence of her rights under Article 8, and was not necessary in a democratic society.²⁶⁰

This case is particularly relevant to Northern Ireland. The underlying structural causes of the claimant's alleged criminal conduct included that she lived in poverty, had no employment, was not educated, and had to beg as a means of subsistence.²⁶¹ In other words, a lack of access to ESCRs, including rights to adequate conditions of work and remuneration, education, and housing, contributed to the claimant's vulnerability. Instead of taking steps necessary to protect, respect, and fulfil those ESCRs, Swiss law criminalised the very actions necessary for her subsistence.²⁶² In *Lăcătuș*, the effect of this criminalisation was to avoid state responsibility for the failure to protect a particularly vulnerable person's ESCRs and to respond with further rights deprivations through incarceration, contributing to the over-criminalisation of the Swiss Roma population.²⁶³

The facts of *Lăcătuș* exemplify the mutually reinforcing roles played by a belief in carceral legitimacy, a scepticism of ESCRs protection, and the adverse effects of both on marginalised groups. Northern Ireland similarly still criminalises rough sleeping²⁶⁴ and suffers from many of the same ESCRs deprivations with particularly harsh

²⁵⁹ *Lăcătuș*, at 32-49.

²⁶⁰ *Lăcătuș*, at 115.

²⁶¹ *Lăcătuș*, at 50.

²⁶² *Lăcătuș*, at 19-49.

²⁶³ Daniel Rietiker and Mary Levine, "Begging the Question: *Lăcătuș v. Switzerland* and the European Court of Human Rights' Recognition of Begging as a Human Rights Issue" *Harvard International Law Journal Online* April 6, 2022, <https://journals.law.harvard.edu/ilj/2022/04/begging-the-question-la%cc%86ca%cc%86tus%cc%a7-v-switzerland-and-the-european-court-of-human-rights-recognition-of-begging-as-a-human-rights-issue/>.

²⁶⁴ Vagrancy Act (1824) s. 4; Vagrancy (Ireland) Act 1847 s. 3.

consequences for vulnerable populations, including Travellers,²⁶⁵ asylum seekers,²⁶⁶ women,²⁶⁷ people with disabilities,²⁶⁸ and LGBTQIA+ individuals.²⁶⁹ This raises the spectre of similar rights violations to those in *Lăcătuș*. Luckily, however, the ECtHR recognised these violations. Perhaps it is this recognition that has contributed to contemporary changes to the carceral landscape in Northern Ireland.

B. A Changing Landscape?

These criticisms and the continued failure to protect ESCRs suggest that it is time to reconsider the Agreement's promise of human rights-compliant criminal legal systems. Instead, Northern Ireland civil society should be encouraged and emboldened to render carceral systems obsolete through a 'constellation of alternative strategies and institutions' to revitalise 'education at all levels, a health system that provides free

²⁶⁵ *Response to the Consultation by the Department of Health on the draft Mental Health Strategy 2021-2031*, Equality and Human Rights Commission (EHRC), (2021), para. 2.17, <https://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2021/DoH-draftMentalHealthStrategy.pdf>.

²⁶⁶ ²⁶⁶ "Asylum Support: What You'll Get," UK Visas and Immigration (UKVI), accessed December 30, 2024, <https://www.gov.uk/asylum-support/what-youll-get>. UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, ¶¶ 24, 34, U.N. Doc. E/C.12/GBR/CO/6 (July 14, 2016).

²⁶⁷ *Joint Northern Ireland Civil Society Submission to the United Nations Committee on Economic, Social and Cultural Rights*, (Human Rights Consortium, January 2023), paras. 76-77, <https://www.humanrightsconsortium.org/wp-content/uploads/2023/02/Joint-NI-Civil-Society-submission-to-UN-Committee-on-Economic-Social-and-Cultural-Rights-CESCR-Jan-2023.pdf>. See also, NISRA, "Employee Earnings." Promises of regulations requiring gender pay gap reporting have not come to fruition since 2016. Robert Sheen, "Pay Gap Reporting on Deck in Northern Ireland," *Trusaic*, December 19, 2024, <https://trusaic.com/blog/pay-gap-reporting-on-deck-in-northern-ireland/>.

²⁶⁸ "Little progress tackling issues affecting people with disabilities," Equality Commission Northern Ireland (ECNI), Aug. 17, 2023, <https://www.equalityni.org/Footer-Links/News/Delivering-Equality/Tackling-issues-affecting-persons-with-disabilities>. See also "Disability pay and employment gaps," TUC, accessed December 30, 2024, <https://www.tuc.org.uk/sites/default/files/2020-11/Disabled%20workers%20note.pdf>; Jonathan Portes and Howard Reed, "The cumulative impact of tax and welfare reforms," Equality and Human Rights Commission, (March 2018), <https://www.equalityhumanrights.com/sites/default/files/cumulative-impact-assessment-report.pdf>; cited in Human Rights Consortium, *Joint Northern Ireland Civil Society Submission*, para. 79;

²⁶⁹ See Detention and Escorting Services, "FOI 72097," October 19, 2022, <https://www.humanrightsconsortium.org/wp-content/uploads/2022/12/EDB-FOI-72097-Response.pdf>; Detention and Escorting Services, "FOI 72494," December 8, 2022, <https://www.humanrightsconsortium.org/wp-content/uploads/2022/12/EDB-FOI-72494-Response.pdf>; Rainbow Migration, *Ending the immigration detention of LGBTQI+ people* (September 2023), <https://www.rainbowmigration.org.uk/wp-content/uploads/2023/10/LGBTQI-Detention-Parliamentary-Briefing-September-2023-v4-Web.pdf>. See also, Human Rights Consortium, *Joint Submission*, para. 61.

physical and mental health care for all, and a justice system based on reparation and reconciliation rather than retribution and vengeance.²⁷⁰ A complete assessment of how to operationalise this abolitionist vision is beyond the scope of this paper.

Heeding such abolitionist calls, however, human rights advocates could both criticise carceral systems and promote substantive fulfilment of ESCRs for those most at risk of contact with those systems.²⁷¹ Suppose one is to follow the example of abolitionist organisations in Northern Ireland. This may take the form of arguing against reformist reforms, such as hate crime legislation or stop and search best practices, in favour of abolitionist ones, such as repealing prison-building projects or decriminalising sex work, drug use, or immigration.²⁷² Human rights organisations in Northern Ireland, including NIACRO, Sex Workers Alliance, and Participation and Practice of Rights, are already doing some of this work by exploring restorative justice alternatives to prosecution, criticising the minimum age of criminal responsibility, arguing for decriminalisation of sex work, and pursuing advancement of socioeconomic rights.²⁷³

While not self-identifying as abolitionists, the organisations above are leaders in the field of ‘anti-carceral human rights advocacy’²⁷⁴ and are models for its effective practice. In fact, their efforts are working. Northern Irish leaders are listening to the human rights concerns raised by these organisations and IHR bodies, as Justice Minister Long recently launched a consultation on the decriminalisation of ‘rough

²⁷⁰ Angela Y. Davis, *Are Prisons Obsolete* (Seven Stories Press, 2003) 107.

²⁷¹ Mgbako et al, “Anti-Carceral Human Rights Advocacy,” 205-07.

²⁷² “Defund the police: Reformist Reforms vs Abolitionist Steps for UK policing,” Abolitionist Futures, (2020), accessed November 10, 2024, [https://enddeportationsbelfast.wordpress.com/about-edb/](https://abolitionistfutures.com/defund-the-police#:~:text=The%20purpose%20of%20this%20chart,communities%20for%20health%20and%20flourishing; Mansfield, “Irish Penal Abolition Network;” “About EDB,” End Deportations Belfast, accessed 10 November 2024, <a href=).

²⁷³ Johnson, “The Advocacy Gap.” See also, *Policy Priorities 2017-2018*, NIACRO, <https://www.niacro.co.uk/sites/default/files/NIACRO%20Policy%20Priorities%202017-2018.pdf>; “Garda and Court Stats Are Proof that Sex Work Laws Are a Complete Failure,” Sex Workers Alliance Ireland, updated October 18, 2024, accessed 10 November, 2024, <https://sexworkersallianceireland.org/2024/10/garda-and-court-stats-are-proof-that-sex-work-laws-are-a-complete-failure/>; Seán Mac Bradaigh, “Racism in Belfast: What do we know? And how are we using it to combat racist violence?” *PPR*, (August 5, 2024), <https://www.nlb.ie/blog/2024-08-racism-in-belfast-what-do-we-know-and-how-are-we-using-it-to-combat-racist-violence>.

²⁷⁴ Mgbako et al., “Anti-Carceral Human Rights Advocacy,” 175.

sleeping' and begging.²⁷⁵ Such 'anti-carceral human rights advocacy' thus provides the starting point for a new experiment that aligns more closely and explicitly with the goals of abolition and extends beyond the borders of Northern Ireland.

This is not a radical notion. As early as 1980, the Council of Europe analysed the costs of criminal justice and considered arguments for decriminalisation within a broader abolitionist perspective.²⁷⁶ The European Council's Subcommittee on Decriminalisation proposed reducing the criminal legal apparatus by expanding access to housing, education, healthcare, social services, and community interventions that attacked root causes of undesirable conduct.²⁷⁷ Other UN bodies have also recognised the social harms of incarceration and the root causes of interpersonal harm while actively promoting non-custodial measures.²⁷⁸

Despite these criticisms and their successes, for the most part, Northern Ireland,²⁷⁹ Europe,²⁸⁰ and the world²⁸¹ remain beholden to the repeatedly proven failure of carceral logic, especially in response to human rights abuses. Northern Ireland alone has seen recent increases in remand and custody populations,²⁸² police use of force,²⁸³ and imprisonment of individuals with mental health concerns.²⁸⁴ As outlined in this section, however, there is growing evidence that a human rights-compliant carceral system is a contradiction in terms.²⁸⁵ As a result, it may be time to seriously

²⁷⁵ "Justice Minister launches consultation on decriminalization of rough sleeping and begging," Department of Justice, updated November 20, 2024, accessed February 1, 2025, <https://www.justice-ni.gov.uk/news/justice-minister-launches-consultation-decriminalisation-rough-sleeping-and-begging>.

²⁷⁶ European Committee on Crime Problems (ECCP), *Report on Decriminalisation*, (1980): cited in Pinto, "Coercive Human Rights" *passim*.

²⁷⁷ Pinto, "Coercive Human Rights," 1121-23.

²⁷⁸ See generally, GA Res 45/110, (Dec. 14, 1990); UNDOC, UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary (Bangkok Rules), U.N. Doc. A/RES/65/229 (Mar. 16, 2011); ECOSOC, Commission on Crime Prevention and Criminal Justice, Report on the twenty-seventh session (8 December 2017 and 14-18 May 2018) U.N. Doc. E/2018/30 (2018).

²⁷⁹ *Amnesty International*, "Majority of the UK public"; Anthony et al., *Investigations, Prosecutions, and Amnesties*.

²⁸⁰ Anja Seibert-Fohr, *Prosecuting Serious Human Rights Violations* (Oxford University Press, 2009), 111.

²⁸¹ See generally Engle, "Anti-Impunity and the Turn to Criminal Law"; Sikkink, *Justice Cascade*.

²⁸² Department of Justice, "Northern Ireland Prison Population 2023/24"

²⁸³ Police Service of Northern Ireland, "Use of Force by the Police."

²⁸⁴ Black, "Prison population increases."

²⁸⁵ Drake and Scott, "Overcoming obstacles," 412-16; Scruton and Carlton, "Beyond Corston," 186.

consider abolitionist alternatives to the human rights-based, reformist reforms that strengthen these systems.²⁸⁶

V. Conclusion

Ever since the Agreement, decisionmakers have been shackled to the false promises of reformist reform.²⁸⁷ The Agreement accepted IHR's entanglement with criminal law and the corresponding failure to promote ESCRs, with tangible consequences for the most vulnerable in Northern Ireland. The ongoing lapse of ESCRs protection has produced greater reliance on criminal legal systems rather than driving protection of these rights through the criminalisation of social harms such as homelessness, mental ill-health, or substance misuse. This has created a cycle of deprivation and criminalisation.

This should ring the alarm bells for any human rights advocate who recognises the historic harms caused by carceral systems, as it has for carceral abolitionists in Northern Ireland, Northern Irish government entities and representatives, and IHR scholars, practitioners, and bodies. Humanity's efforts to prove the law-and-order hypothesis with liberal reforms to its method has been ineffectual at eliminating harm or human rights abuses.²⁸⁸

Rather, increased reliance on policing and imprisonment has proven to cause greater harm to and disinvestment from marginalised communities, exposing those very communities to greater criminalisation. Thus, perhaps it is time to heed the calls of abolitionist activists and follow the examples of those organisations which seek alternatives to criminalisation grounded in human dignity, non-discrimination, and the promotion of rights to housing, healthcare, employment, education, and more. Perhaps it is high time to assume an abolitionist human rights agenda in Northern Ireland and

²⁸⁶ "Reformist reforms vs. abolitionist steps to end imprisonment," Critical Resistance, updated May 14, 2020, accessed November 10, 2024, <https://criticalresistance.org/resources/reformist-reforms-vs-abolitionist-steps-in-policing/>.

²⁸⁷ For an in-depth exploration of the modern prison as the result of reforms to pervasive coercive control and power dynamics, see Foucault, *Discipline and Punish* 82: defining the primary objectives of reform as 'not to punish less, but to punish better; to punish with an attenuated severity perhaps, but in order to punish with more universality and necessity; to insert the power to punish more deeply into the social body.'

²⁸⁸ Wade Mansell, *A Critical Introduction to Law* (Taylor & Francis Group, 2015) 10.

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