

# Penal Reform and Gaol Construction: A Case Study of Tralee

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*Crime, punishment and the reform of prisons in the late eighteenth and early nineteenth centuries are discussed in the context of the building of two new gaols in the town of Tralee during that period.*

For most of the eighteenth century the county gaol of Kerry was located on the west side of the Square in Tralee. This was the 'shire gaol' shown on Charles Smith's map of 1756, on the same block [on the north side of the Square] as the market house and courthouse. *The Kerry Magazine* of 1856 states that 'there was a bridge on that part of the river leading to the gaol and the square' and that 'the gaol was built over part of the river and came out about half way on the present street'.<sup>1</sup> This is confirmed in an account of an escape from the gaol where the prisoners are described as crawling through a breach which they had dug 'in the arch of said gaol, over the river on which the gaol was built'.<sup>2</sup> The use of the name 'Old Gaol Bridge', which appears in some old property deeds of Tralee, confirms the proximity of gaol to one of those 'small stone bridges', described by Smith. There is no record of the old gaol's construction but it seems to date from the end of the seventeenth century. It was abandoned and demolished towards the end of the 1780s.

The gaol served the needs of both the county and corporation of Tralee jurisdictions.<sup>3</sup> The earliest evidence of conditions in the gaol is an account in the aftermath of the famine of 1741, which was reproduced in *The Kerry Evening Post* over a century later. A major epidemic, not apparently an infrequent occurrence, broke out in 1742 between the Spring and Summer assizes and the prisoners begged for help from passers-by extending their hats out of the gaol windows to the main street.<sup>4</sup> Another indication of the poor conditions there comes from a case taken against the father and uncle of Daniel O'Connell in the winter and spring of 1782-3. A warrant was issued for their arrest on the charge that they had threatened the commander of a revenue cruiser and that they had instigated a mob to attack him. Their barrister Dominic Trant appealed to the chief justice for bail, writing that, 'if taken (his clients would) lie in the worst gaol in Europe, that of Tralee, among felons and other malefactors'.<sup>5</sup> John Howard, the famous English philanthropist, was in Tralee in the late 1780s and noted that the gaol 'consists of four rooms, one for debtors, two for criminals, and one (to which the ascent is by a ladder) called the infirmary'. There was no courtyard

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<sup>1</sup> *The Kerry Magazine*, vol. 3, January 1, 1856.

<sup>2</sup> *Dublin Evening Post* 26 August 1786, report from Tralee dated 21 August stating that Patrick Hands was murdered on the night of 17 August by inmates attempting to foil the plan for their transportation: for the government proclamation to apprehend the gaol escapees, *idem*, 5, 7, 16 September 1786; the capital conviction of Cody is reported in the edition of 12 October.

<sup>3</sup> British Parliamentary Papers, *Local government in Southern Ireland*, vol. 27, Borough of Tralee.

<sup>4</sup> *The Kerry Evening Post*, 7, January 1865.

<sup>5</sup> The case against the O'Connells for the alleged treatment of Whitwell Butler was thrown out at the spring assizes of 1783, see Mrs. Morgan John O'Connell, *The Last Colonel of the Irish Brigade* (2 vols, London 1892) vol. 1 pp 309-12.



for fresh air or exercise. At the entrance stood a dunghill, and the rooms were dirty throughout.<sup>6</sup> In 1868 a very old resident of the town remembered the prisoners 'letting their boots down by a string from the windows into the street, and collecting halfpence'.<sup>7</sup>

The poor condition of the building was exploited in the 1780s by the Rightboys who staged a number of breakouts.<sup>8</sup> In May 1784 all the prisoners in the gaol 'to the number of twenty-eight' escaped.<sup>9</sup> In one of these we learn that 'they had been provided with files and aquafortis (nitric acid)' as well as 'a firelock and ammunition, with other offensive weapons, and that a strong party were in town to assist their escape'.<sup>10</sup> The keeper of the gaol, Patrick Hands, was murdered during the escape in late August 1786. The prisoners involved in his murder, took the gaoler's money and silver shoe buckles, which were of ten shillings value, before crawling to freedom.<sup>11</sup> The government offered twenty pounds sterling reward each for the capture of the prisoners, who included one woman, Ann, 'Nance', Cody. She was caught and executed, having attempted to avoid her fate by pretending that she was pregnant.<sup>12</sup>

The Hands murder reminds us of yet another factor causing the breakouts: those involved were awaiting transportation. The curtailment of transportation to America during and after the end of the American war of independence meant that prisoners continued to be held in regional prisons instead of being taken to Dublin where the prisons were bursting at the seams. Transportation to Botany Bay or Van Diemen's Land only commenced in 1791, which meant that there was a log jam of prisoners in Irish gaols during the late 1770s and through the 1780s. One legacy of this phase was the introduction of measures to place prisoners at hard labour. The Hard Labour act authorised 'raising sand, soil and gravel from and cleansing the river Liffey in the harbour of Dublin' for three to ten years as an alternative to transportation.<sup>13</sup> Another consequence was a programme of gaol construction throughout Ireland. Gaol legislation of 1786 noted 'whereas several of the principal gaols within this kingdom are now repairing or rebuilding, or may hereafter be repaired or rebuilt'.<sup>14</sup> Tralee's new goal would appear to be one of these.

It is worth bearing in mind that Kerry relied on more than simply incarceration to impose the rule of law. A very successful county constabulary experiment in Kerry and some of the southern counties was spearheaded by some of Kerry's Dublin exiles. The *Act for the better execution of the Law, and Preservation of the Peace within Counties at large*, known simply as the Magistracy act, tackled the reform of the existing baronial constabulary and the magistracy by removing considerable control from the localities to Dublin Castle.<sup>15</sup> It nominated assistant barristers to attend all the sessions of the county and increased these from four (the 'quarter-sessions') to eight. Kerry's assistant barrister was Tom Rice, while his cousin Dominic Trant got the same job in

<sup>6</sup> John Howard, *An Account of the Principal Lazarettos in Europe* (Warrington, 1789) p. 91.

<sup>7</sup> *The Kerry Evening Post*, 8 April 1868.

<sup>8</sup> *Hibernian Journal*, 10 May, 8 December 1784.

<sup>9</sup> *Hibernian Journal*, 10 May 1784, report from Tralee dated 1 May.

<sup>10</sup> *Hibernian Journal*, 8 December 1784, incident at Tralee Nov. 27.

<sup>11</sup> *The Kerry Magazine*, vol. 3, January 1, 1856: 'Murder of the Gaoler of the Tralee Gaol' p. 13: Patrick Hands' successor was Francis Tuite.

<sup>12</sup> Ann (Nance) Cody was from Dingle; she was hanged at Gallows-Green in Limerick in October 1786 (*Limerick Chronicle*, 19 October 1786).

<sup>13</sup> *Irish Statutes*, 17, 18 Geo. 2, c.9.

<sup>14</sup> The statute concerned is 26 Geo. 3, c.27 (discussed below) section 30: statute 28 Geo. 3 (1788), c. 39 authorised a new gaol for county Cork and the *Limerick Chronicle*, 23 November 1789 carried a report of plans to build a new gaol in Limerick.

<sup>15</sup> *Irish Statutes*, 27 Geo. 3, c. 40.



Tipperary.<sup>16</sup> Rice and Trant were members of Kerry convert families who had suffered confiscation of their estates in the seventeenth century and had connections with European Jacobitism. Another of those who promoted the Magistracy act was the Tralee barrister Robert Day, whom Trant succeeded in the post of advocate in the admiralty court in 1789. Part of the reason why the Magistracy act was a success in the county may be that, through these Dublin-based barristers, justice was mild as well as efficient.

Bearing in mind, therefore, that crime was tackled on a number of fronts, the level of occupancy, or even the capacity, of the gaol can only be a general indicator of the level of crime. Few convicts were sentenced to gaol terms in the eighteenth century: sentencing in Kerry as elsewhere stressed keeping the gaol as empty as possible by means of alternatives such as execution or transportation, whipping (through the towns and villages where outrages had taken place), branding on the hand or the cheek, or placing in the stocks. Many prisoners were held in bridewells throughout the county before being sent to the county gaol for the assizes. Prison construction therefore was based on the premise of limited and temporary occupancy. This explains why the replacement for the gaol near the Square and the Old Gaol Bridge was not designed to take huge numbers of prisoners. It appears to have been built for only twenty-five inmates and each cell continued to hold a number of prisoners. The new edifice was constructed in Bigriver (later Nelson and now Ashe) St.

It appears to have been in construction even before the murder of Patrick Hands if we can credit a short report in the *Dublin Evening Post* of some weeks prior to the story of the Hands murder when readers were told that a flood had brought down the arches of the new gaol then in course of construction.<sup>17</sup> In his tour of Kerry in 1788 Daniel Beaufort noted that 'a large new gaol is building' though he considered it 'very ill-contrived': the staircase was of timber, 'the lower rooms dungeons with little light or air, too large for one, too small for many', in addition there was 'no communication between the gaoler's house and the gaol, and the windows of the cells open to the street'.<sup>18</sup> The Inspector of Prisons, Rev. Forster Archer, commented on the building in 1801. It contained just one yard 'in which felons and debtors, men and women, intermingle'. He wrote that 'the prisoners loiter all day at the gate of the yard where a centinel is placed, with whom they constantly converse, a great abuse of military discipline. I speak knowing the fact that a multitude of Militia soldiers have been corrupted in the gaols of Ireland'. It was also dirty: its only water pump was useless, with the result that water was fetched by a boy descending nearly twenty feet into the well 'at imminent hazard of his life'.<sup>19</sup> A later account noted that there were stocks outside the gaol 'on a built-up platform on which were sentry boxes, and sentries parading eternally'.<sup>20</sup>

Inadequate capacity, though Archer does not mention this, and poor conditions in the gaol, perhaps the result of hasty construction in response to the Rightboy campaign of the mid-1780s, appear to have been the main factors which shortened the life of the new Bigriver St. replacement and rendered a second new gaol necessary within twenty-five years.<sup>21</sup> The appointment of gaol inspectors and an Inspector General in 1786 meant that the inadequate conditions there were reported on.<sup>22</sup>

<sup>16</sup> See 'The Trant Family', *Kerry Archaeological Magazine* 2 no. 12 (1914) pp 237-62.

<sup>17</sup> On the site of the present courthouse, see *The Kerry Evening Post*, 1 April 1868 'the old jail gave way to the new courthouse'.

<sup>18</sup> Gerald J. Lyne, 'Rev. Daniel A. B. Beaufort's Tour of Kerry in 1788', *Journal of the Kerry Archaeological and Historical Society* (1985) pp 183-214: 201, 203.

<sup>19</sup> Padraig de Brun, 'Rev. Foster Archer's Account of Kerry in 1801', *JKAHS*, (1981) pp 26-30: 29.

<sup>20</sup> *The Kerry Evening Post*, 1 April 1868.

<sup>21</sup> 'The gaol that stood in Bigriver was not occupied more than about 30 years' testimony of Tralee's 'oldest inhabitant' quoted in *The Kerry Evening Post*, 8 April 1868.

<sup>22</sup> *Irish Statutes*, 26 Geo. 3, c.27



When the segregation of sexes was required, under section two of the legislation of 1810,<sup>23</sup> the place was, in any case, obsolete for that reason alone. The outbreak of violence in the northern baronies of the county in 1808 and the logistics of handling the prisoners awaiting trial at the special commission at Tralee in January 1809 also provided arguments for a replacement gaol.

The gaol reform legislation of 1810 represented considerable progress for the time. Section 47 of the Act even provided for the appointment of Catholic or Dissenter chaplains where the weight of religious allegiance warranted. Judge Day, for one, promoted this in Kerry and also commended individual priests for their cooperation with the forces of law and order. Prison reform in Ireland is one of the most notable achievements of 'Grattan's parliament', the era of legislative independence from 1782 to the Union. Its leading representatives were Peter Holmes, the MP for Banagher, known as 'the Irish Howard', and Jeremiah Fitzpatrick, the first Inspector-General of Prisons who presented annual reports to the Irish parliament during the years he held office, 1786-93. Indeed the Irish parliament's record on gaol reform since the 1760s is considered by some to have surpassed efforts at Westminster. It should be remembered that problems such as sanitation and infection were only poorly understood, while abuses in other domains, only then coming under the scrutiny of government due to pressure from philanthropists, continued for many years to come. The excessive use of flogging in the army and navy, corporal punishment under the civilian courts and unrestricted working hours of children all continued into Victorian times. Irish legislators, state officials and the courts of the second half of the eighteenth century considered themselves enlightened instruments of change, involved in more than the purely negative exercise of property protection. Legislative measures to improve health in prisons enacted in 1763 tried to deal with 'unjust exactions of gaolers' and ensure the regular distribution of bread by the clergyman with funds from the grand jury.<sup>24</sup> Gaol inspectors in the counties had to implement a range of health reforms: the scraping and sweeping of cells, white-washing twice a year, separation of the sick from the healthy and debtors from felons, access to a bath, and the display of a table of fees for all to see.<sup>25</sup>

Judge Robert Day, a circuit justice from 1798, had repeatedly criticised conditions in the old Tralee gaol. He described it at the Spring Assizes of 1811 as 'a wretched filthy pound, too confined for any classification of prisoners or even a separation of sexes, and labouring under many other irremediable disadvantages' adding that he was 'sorry to say that while other counties were running the glorious race of benevolence, this county, so amiable and virtuous in all its private relations and intercourse, had yet but few monuments of public liberality or charity to boast of'.<sup>26</sup> He instructed the grand jurors that their first duty was to nominate commissioners - a sub-committee - to implement the legislation in all its aspects and to look for a new site. A year later he reported progress. First he referred again to the gaol at Bigriver where 'not less than a hundred prisoners are crowded within the narrow limit of a prison (if it deserves that name) incapable of accommodating one fourth of that number'<sup>27</sup> and where 'sexes, criminals and debtors are all promiscuously huddled together'.<sup>28</sup> A site had been chosen and a plan agreed and it remained only for the grand jury to:

<sup>23</sup> *British Statutes* 50 Geo. 3, c.103.

<sup>24</sup> *Irish Statutes*, 3 Geo. 3, c. 28.

<sup>25</sup> *Irish Statutes*, 26 Geo. 3, c.27.

<sup>26</sup> *Limerick General Advertiser*, 23 April, 1811, charge of Judge Day to co. Kerry grand jury.

<sup>27</sup> Royal Irish Academy MS 12w12, Day papers, charge of Judge Robert Day to the Kerry grand jury, March 1812.

<sup>28</sup> *Ibid.*



examine and weigh well that plan, and if approved of to forward it to government and to present the estimated sum, whereupon after the Lord Lieutenant shall sanction the Plan with his approbation the county will then have a call upon the Treasury to advance that presented sum out of the Consolidated Fund, as it shall be wanted, to be repaid by easy instalments and interest free. Then I trust that this work of mercy so long and loudly called for by the most unfortunate of our fellow creatures will speedily be place upon a footing of expeditious progress'.<sup>29</sup>

At the planning stage the *Limerick Evening Post* sheds light on some of the planning difficulties. Apparently the Board of Works rejected the plan drawn up by the architect and also felt that the chosen site was unsuitable being 'on too stunted a site to answer the necessities of the county'. The acquisition of a new site and the alteration of the plans necessitated a greater contribution to the costs from the grand jury 'than had been before thought necessary'.<sup>30</sup>

Two contributors to a parliamentary committee of 1819 established to review the implementation of the Gaol Act provide somewhat conflicting testimony about the completed new gaol. Rev. Forster Archer testified that it was one of the five or six gaols which were 'conformable to' the gaol act of 1810 and he replied in the affirmative to the question of whether these gaols were 'capable of containing the number of persons committed to each of them conveniently'. Separate cells were provided and the number of inmates exceeded two hundred.<sup>31</sup> The committee also heard from Thomas Spring-Rice of Mount Trenchard, future Lord Monteagle. Spring-Rice was grandson of Tom Rice who had acted as Kerry's assistant-barrister from 1787 to 1799. His testimony was less sanguine:

the gaol is built in the form of a cross, and the arms of the cross being attached to the gaolers house, it exposes the gaoler too much to the effect of mutiny or insubordination on the part of the prisoners; as there is also but one principal staircase for the whole of the prison it seems difficult if not impossible to provide the complete separation of the classes. The hospital there is in a distant building.<sup>32</sup>

Both the new gaol at Ballymullen and the old one at Bigriver were used for a time simultaneously. In 1817 the assizes in Tralee were postponed 'because of a pestilential fever raging here' as reported in a letter from the high sheriff of Kerry which also mentioned that there were 'no less than twenty-six miserable bad cases in the new and old gaol', and that of these 'eleven were left in the old gaol when the remainder, being healthy, were removed to the new, of which several had since sickened'; the letter went on to state that 'the infection was so extended in the town that hardly a house was not infected'.<sup>33</sup> Eventually all prisoners were transferred to the new gaol, the facade of which survives to this day at Ballymullen.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Limerick Evening Post*, 28 March 1812.

<sup>31</sup> British Parliamentary Papers, *Report from the Select Committee on Gaols and othe Places of Confinement*, chaired by Charles Bathurst, 1819, testimony of Rev. Forster Archer 5 & 10 May 1819.

<sup>32</sup> *Ibid.* Thomas Spring-Rice testimony given 6 May 1819.

<sup>33</sup> *Faulkner's Dublin Journal*, 30 August 1817, quoting from the sheriff's letter to Chief Baron Sir William Smith, one of the assize judges.

