

Working Notes Issue 53 Editorial

on Wednesday, 25 October 2006. Posted in [Issue 53 Rehabilitation in Irish Prisons: Are we for Real?, 2006](#)

October 2006

Editorial by Peter McVerry SJ

St Patrick's Institution for Young Offenders should be closed immediately.

This recommendation appeared twenty-one years ago in the Whitaker Report on the penal system. It has been repeated forcefully by many over the years, most recently by the Inspector of Prisons in his fourth annual report made available in August. However St Patrick's remains open. Worse still rehabilitation in St Patrick's has regressed in the years since Whitaker.

Peter McVerry SJ, who was a member of the Whitaker Committee, outlines in this issue of Working Notes the reasons why the building, regime and conditions in St Patrick's continue to be totally inappropriate for the young people detained there. Very few dispute this conclusion. Speaking in the Dáil on October 3rd, the Minister for Justice stated that the Government shares the view that St. Patrick's Institution is no longer suitable. The Government is committed to building a replacement.

This commitment, to invest in bricks and mortar, has taken over twenty years to materialise. But the problem has always been broader than the physical conditions in St Patrick's. More scrutiny of the location, design and size of the replacement prison is required. Critically, one may question the proposal to locate the new young offenders institution amid the new super prison campus at Thornton Hall which will also house prisons for more hardened criminals.

Rehabilitation must be a foundational concern in any prison-building programme. More important than any regeneration of prison buildings is a commitment to regeneration of the young people we send to prison. Prison must be a tool in a broader array of strategies that break the cycle of disadvantage and associated offending.

This requires a radical re-orientation of the place of prison in the Irish penal system. In her article, Mairéad Seymour outlines some alternatives to custody that have proved effective in other jurisdictions. These alternatives offer a different and practical vision for penal reform in Ireland. Implementing such a vision could reduce significantly the need for prison places and the associated cost of €90,000 per prison place, per year.

A realistic commitment to rehabilitation will require political leadership. Discussions on crime and punishment often generate more heat than light. Political leaders and the media in particular need to examine their role in fostering an attitude of intolerance that translates into futile and unjust policies and practices. Yet as submissions to the Crime Forum demonstrate, there may be greater public

support for the practical and ethical arguments for rehabilitation than is estimated.

The Minister for Justice now has a great opportunity to exercise leadership. The new working arrangements for Prison Officers will save up to €25 million per annum. He also has the €20 million generated from the sale of Shanganagh Castle, which was a young offenders openprison until he closed it in 2003.

This money now needs to be ring-fenced and used to develop alternatives to custody in targeted areas, targeted programmes in prisons and a strategy to ensure rehabilitation begun in prison continues after release. In the absence of such a programme, prison will remain little more than an interruption in an offender\'s criminal behaviour. We all deserve more.

An Award Ceremony For Successful Criminals?

on Wednesday, 25 October 2006. Posted in [Issue 53 Rehabilitation in Irish Prisons: Are we for Real?, 2006](#)

October, 2006

Article by Tony O’Riordan SJ

Imagine if we introduced an annual award ceremony for Ireland’s most successful criminals. Who might be present at such a gala event and who would be likely to receive nominations and awards?

It is unlikely that such an event will ever happen but the very suggestion might help us think about some of the problems with our contemporary images and assumptions about crime, anti-social behaviour and fairness in Irish society.

Problem people and problem Places

When we think of crime and punishment we think of certain places, certain individuals or groups, certain behaviours and lifestyles that are a ‘problem’. We have problem places or ‘problem people’, and problem activities that provoke our outrage and indignation. We demand tougher action and we express alarm at the rise in crime and lawlessness. But it is a particular type of crime that evokes such a reaction. As the Report of the National Crime Forum observed, the public perception is that crime is burglary, car theft, violence and other similar activities committed largely by young people from deprived areas and often related to illegal drug use.

Such a common perception fails to take account that the most ‘successful’ criminals in terms of both the relative rewards of their wrongdoing and their ability to escape detection and punishment are not the poor but the rich and relatively rich.

There is a group of diverse activities that the rich and relatively rich engage in, such as fraud, tax evasion, drink driving, breach of laws governing commercial activity and the deliberate neglect of safety standards that receives little attention and is rarely and reluctantly regarded as a serious social problem requiring urgent action.

Harm Done

This cannot be justified on the basis that the offences are not serious or cause insignificant harm. Some of these activities result in major financial loss, death and serious injury and can pose serious risks to the safety and lives of large numbers of the public. In 2005 a total of 38 cases of dangerous driving resulting in death were recorded which is only 16 fewer deaths than those resulting from homicide. We also know that the cost of tax evasion, corporate crimes and insider trading, is estimated at many times greater than the value of property stolen in thefts and burglaries. For example the value of property stolen in burglaries, robberies and thefts in 2004 and 2005 was close to 80 million euros in each year whereas cases involving Ansbacher type arrangements (just one of many special investigations) have to date resulted in recovered payments in excess of 60 million

euros.

TAX EVASION CASES		
<i>Investigation</i>	No of Cases	Payments to Revenue (in million euros)
Dirt	12,212	842
NIB	465	57
Ansbacher	289	62
Mahon Tribunal	27	30
Offshore Assets	13,990	826
BURLARIES, ROBBERIES and THEFTS		
Value of Property Stolen in 2004		78
Value of Property Stolen in 2005		78

Table 1. Size of payments made to date arising from some Special Revenue Investigations into tax evasion and the value of property stolen in burglaries and robberies.

Of course financial cost is but one indicator of harm caused in robbery and burglary and any consideration of the harm done must include the effect on a victim's sense of safety and security. Though difficult to measure, such harm can be immense especially when the victim is elderly or otherwise vulnerable. Yet, without minimizing the reality of such harm, it also needs to be highlighted that tax evasion and other 'white collar crimes' are not victimless crimes. They also have social and personal consequences. These consequences may be equally difficult to quantify but for example it is clear that tax evasion undermines social solidarity and also denies the state resources that could be applied to necessary public services.

Financial wrongdoing on the part of the rich rarely evokes the response of the criminal justice system. Often these incidents of wrongdoing (if detected) are more likely to be dealt with by way of financial penalties enforced by bodies outside of the criminal justice system. As the following newspaper report highlights such sanctions are rarely accompanied by moral censure by peers: "*The fact that the Republic's biggest bank got a public rap on the knuckles from the Irish Financial Services Regulatory Authority (IFSRA) for "deliberately hiding" the fact that it had overcharged thousands of customers more than €30 million for almost eight years has barely registered a ripple within the investment community,*"

{mospagebreak title=Language Tricks}

Language Tricks

Perhaps because the most significant feature of this form of wrongdoing and criminality is that it is often dressed up in a manner to convince us that this activity is not really a crime or wrong. It is

notable that the word ‘crime’ is rarely associated with tax evasion. Rather it is talked about in terms of its polar opposite – compliance with the law. Similarly a young person who takes from a shop without paying is labeled a ‘thief’ but a similar label is rarely applied to the person who collects VAT from customers and does not pass it on to the revenue. Such a person is more likely to be referred to as a ‘hard-pressed entrepreneur’ or such like. Through such language games, illegality on the part of the relatively rich is transformed into a mere failure to comply with regulations. However the same language tricks are not available to dress up the crimes of the poor.

Even if cultural attitudes tend to be resistant to associating crime with the rich and relatively rich, we have become more aware of the scale of their wrongdoing. Considerable media attention in recent years has focused on tax evasion by banks and their customers, payments to politicians and corruption in the planning process. As a result there has been an increase in awareness and concern about such activities but it appears as if an attitude of ambivalence still prevails. This is in stark contrast with the attitude of intolerance that dominates when crimes of the poor and vulnerable are considered.

The Rich Get Richer And The Poor Get Prison

The difference in attitude translates into very different strategies and different outcomes when it comes to dealing with the wrongdoing of rich and the wrong doing of the poor. As G.B. Shaw colourfully put it:

The thief who is in prison is not necessarily more dishonest than his fellows at large, but mostly only one who through ignorance or stupidity steals in a way that is not customary. He snatches a loaf from the baker’s counter and is promptly run into jail. Another man snatches bread from the tables of 100 widows and orphans and simple credulous souls, who do not know the ways of company promoters and likely as not he is run into parliament. (Shaw: The Crime of Imprisonment 1922)

{mospagebreak title=Tax Crime and Welfare Crime}

Tax Crime and Welfare Crime

In the Ireland of today the disparity that Shaw highlights is most evident in the different attitudes and responses to tax evasion and welfare fraud. Significant differences exist in the public perception of various ‘scenarios’ involving tax evasion and welfare fraud. Perhaps few people now boast about tax evasion and attitudes may be evolving, but annual figures show that tax evasion is pervasive. Over 30,000 cases of tax crimes have been uncovered and settled in recent years through the special investigation projects (DIRT, Ansbacher, Offshore Assets etc.) The amount collected in this process exceeds 2.2 billion euros.

Although tax evasion has been a criminal offence since 1945 few prosecutions have been taken and up to 1997 not one person was sent to prison for tax evasion.

Table 2. Numbers Sent to Prison for Tax Crimes by Year

Year	1945-1997	1998	1999	2000	2001	2002	2003	2004	2005
Number	0	2	1	2	4	1	1	1	1

Source: Annual Reports of Comptroller and Auditor General and Seanad Eireann (Vol 181) Deabte, 5 October 2005.

In 2005 a total of 30 cases were considered for prosecution for serious tax evasion. 12 convictions were obtained in court, which resulted in two sentences of 3 months imprisonment being imposed on a director of an oil distribution company. Four other custodial sentences handed down to a farmer, a disc jockey, a contract cleaner and a sales administrator were suspended.

In contrast in 2005 a total of 256 people were prosecuted for Social Welfare fraud. Of these 28 were sentenced to terms of imprisonment with 24 of these sentences suspended but 4 people were actually sent to prison. (the year before 10 people were sent to prison for welfare fraud. 122 were fined or received community service.

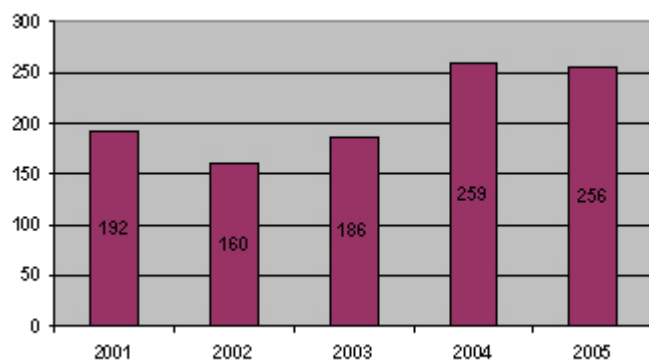


Table 3: The number of prosecutions for social welfare fraud finalized in the courts since 2001.

A test: Is punishment economic to pursue and is it productive?



It would be misleading to suggest that the Revenue Commissioners are indifferent to tax evasion, in fact recent years have seen increased efforts to clamp down on this type of crime. What is significant in the treatment of welfare fraudsters and tax fraudsters is the mentality behind the approach adopted. In dealing with tax collection, priority is given to ‘pursuing’ but not necessarily to prosecuting tax offenders. A central argument used in the non-prosecution of tax evaders is economic logic. As the Minister for Finance recently stated: ‘a practical approach must be adopted to avoid Revenue resources being tied up in what is an extremely labour intensive process and where the outcome may ultimately be un-productive.’

In other words where the cost of recovery of tax owed is not proportionate to the return, arrangements are made to write off the tax. In 2005, €19m euros owed in over 60,000 cases was written off for these reasons.

An extension of this economic logic applies to the type of ‘punishment ‘ handed out for tax crimes. The majority of cases where evasion is discovered are concluded on the basis of a negotiated settlement with the tax offender. This involves the collection of the unpaid tax along with interest and heavy penalties. In addition a list of tax offenders (defaulters) usually running to 200 names is published each quarter. The approach is neatly summarised by Senator Mansergh who stated: ‘It costs 80,000 euros to keep a person in prison for a year. Frankly that is not a good use of the State’s money. It is far preferable to recover the money with interest and penalties and to name and shame.’

Perhaps this is a pragmatic approach but the same economic logic does not seem to apply to the prosecution of welfare fraud or to other forms of theft. Of the 143 million euros of tax written off in 2005, €3.9m was automatically written off in cases with balances less than €500. If thefts (as commonly understood) involving property of a similar value were written off, then close to 90% of reported thefts would go un-prosecuted. Would the public accept it if the Gardaí declared openly a policy not to prosecute shop-lifters or burglars because it was clear that the goods or the value of the goods could not be recovered or that the person was destitute? I think not! Would there be much public support for a policy that proceeded with welfare fraud cases only on the basis that the prosecution costs were less than the average (€5,000) defrauded?

A similar point applies in regard to punishment. We may ask if it good use of the State’s money to send a homeless alcoholic or drug addict to prison where he will receive little or no support to address his addiction and is therefore more likely to re-offend. If such outcome analysis as applied in the punishment of tax offenders were applied equally to the crimes of the poor then we might see a radical and welcome move away from the use imprisonment and the increased use of alternative and more effective sanctions.

{mospagebreak title=Fear of Serious loss, Injury and Death}



Fear of Serious loss, Injury and Death.

Concern about crime is often linked to people’s fear for their personal safety and their property Even greater concern is generated by crime involving violence resulting in serious injury or death.

For many the threat to 'life and limb' and public safety, posed by this sort of crime necessitates imprisonment. There is little evidence of a similar fear or moral panic arising from other forms of law breaking that can equally pose serious risk of personal injury and death. Despite the well-known risks involved in drink driving, last year over 13,000 cases of drink driving were detected. Yet there seems to be little demand for the use of imprisonment against this sort of behaviour.

One writer has put it well when she wrote:

The public tend to be far more afraid of being mugged, or robbed by a stranger on the street than they are of being killed on a commuter train, poisoned at a wedding or seduced by a host of misleading advertisements, cheap bargain offers or bogus investment schemes.

It is amazing to think that each year more people die in their work-place than are murdered. According to the Health and Safety Authority, in 2005 a total of 73 people died in work related incidents, an increase of 25% on the number for 2004. In 2005 there were nineteen so-called gangland murders. It is estimated that there are over 50,000 people seriously injured at work each year and in excess of 40,000 people who get sick due to work related activity. In addition to the human suffering arising from these incidents a recent report commissioned by the Department of Enterprise, Trade and Employment estimated that the financial cost of work-related accidents and ill-health could be as much as €3.6 billion, which is equivalent to just over 2.5% of national income for Ireland!

Of course it is understandable that we might be more tolerant of harm that comes about accidentally than harm that is deliberately inflicted. And while it is unlikely that 100% adherence to all Health and Safety laws by employers would eliminate work-related accidents and deaths, experts do claim that higher levels of compliance with safety laws the harm done. Yet, public concern about the deliberate neglect of these health and safety laws fades into insignificance when compared to the fear and moral panic generated by gangland murders. Review of the 2005 annual report of the Health and Safety Authority shows that of workplaces inspected, aspects of the law was not being adhered to in up to 40% of cases.

It is not that the State is indifferent to the harm caused by work-related incidents nor is it formally colluding with the criminal failures of employers in so far as they do not behave according to the obligations placed upon them, by the law. However enforcement of these laws is undertaken in the first instance by a body that acts outside the criminal justice system. This body adopts a particular approach that seeks to educate and support employers adhere to the law. The approach is characterised by collaboration between the law enforcement body and the potential offenders who are assisted and encouraged to comply with the law. A key aspect of the work of the HSA is to get people to 'buy into' the requirements of health and safety law. It is therefore not surprising that prosecutions under the Health and Safety Act are rare and the most severe punishments imposed are fines. In 2004, 40 prosecutions were taken by the HSA, resulting in fines totalling €463,338. No one was imprisoned for breaking health and safety laws. Yet we know that homeless and vulnerable people are prosecuted for relatively minor offences and routinely punished with imprisonment.

Targeting Vulnerability

Prisoners and those who come before our criminal courts are not drawn randomly from across the country or drawn randomly from across the social classes. A detailed examination of the addresses of all people sent to prison in 2003 concluded that the Irish prisoner population “ is disproportionately drawn from those districts which combine high economic deprivation scores with high population density.” Dublin accounted for nearly half of individuals committed to prison, though only 31% would be expected for its population.

Of the 9,000 people who are sent to Irish prisons each year, most are poor and the vulnerable in society. Most prisoners have poor education, housing problems, little job experience, and most have drink, drugs and mental health problems. Ninety percent of the people sent to prison are male and the most are under forty and over 15% under twenty-one years of age. A study published last year noted that one in four inmates in Irish prisons were homeless when sent to prison and more that 80 per cent of them were using heroin and/or cocaine on committal. Of the 25 per cent who were homeless on committal one in three had been previously diagnosed with a mental illness and two in three had spent time in a psychiatric hospital. Over half were unemployed at the time of committal.

This snap shot confirms the perception that it is the sad, and the mad as much as the bad who end up in prison. In other words disadvantaged and vulnerable offenders make up a significant proportion of the prison population. Contrary to popular stereotypes it would also appear as if many are in prison for non-serious offences. For instance 85% of all committals to prison in 2005 were for non-violent offences.

Experience of the criminal justice system (the Garda Síochána, the Criminal Courts, the Probation Service and the Prison Service) varies considerable for a range of groups- the advantaged and the disadvantaged; the successful and the vulnerable; old and young; men and women, Irish citizens and non-nationals. Beliefs that the criminal justice system is impartial run into trouble particularly when we look at who gets sent to prison.*If we look at the characteristics of those in prison in the context of the population of offenders it hard not to conclude that the rich get richer and the poor get prison!*

National Crime Forum Report, IPA, 1998, p109.

An Garda Siochana Annual Report 2005, p 24

ibid, p 44

Comptroller and Auditor General Annual Report 2005, p 16.

Irish Times 10 Dec 2004.

Source: Annual Reports of Comptroller and Auditor General and Seanad Eireann (Vol 181) Deabte, 5 October 2005.

The figures relating to tax evasion and welfare fraud are taken from Report of Comptroller and Auditor General 2005, p11 and p 134.

Report of Comptroller and Auditor General 2005, p 141

Seanad Eireann (Vol 181) Deabte, 5 October 2005.

ibid, p 11.

Seanad Eireann (Vol 181) Deabte, 5 October 2005

H Croall, White Collar Crime, Buckingham: Open University Press, 1992 p3.

NCAOP (2001), HeSSOP, Report No. 64, p. 186.

Seymour, M. and Costello, L, A Study of the Number, Profile and Progression Routes of Homeless Persons before the Court and in Custody in Dublin. Probation and Welfare Service/Department of Justice, Equality and Law Reform, Dublin 2005

This pattern does not necessarily hold when we look at the most serious of offences such as murder and sexual offences but prisoners convicted for these offences are a minority of the prison population.

Harry Kennedy et al Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners, Dublin: National Forensic Mental Health Service. 2006, p57.

Rural poverty does not carry with it the increased risk of imprisonment that is conveyed by urban poverty. Travellers are also over-represented in the prison population when compared to the proportion of Travellers in the total Irish population. In one study travellers accounted for 5.4% of the prison population whereas they represent less than 1% of the entire population.

Seymour, M. and Costello, L, A Study of the Number, Profile and Progression Routes of Homeless Persons before the Court and in Custody in Dublin. Probation and Welfare Service/Department of Justice, Equality and Law Reform, Dublin 2005

Irish Prison Service Report 2005, p13.

My thanks to CFJ staff who read a draft of this article and made some useful comments.

Alternatives to Custody in Ireland

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Article by Dr. Mairead Seymour

Ireland has seen a sharp increase in its prison population and a corresponding expansion of the prison estate over the last decade despite a reduction in the levels of recorded crime. Indeed, since 1995 the prison population rate has grown from 57 per 100,000 of national population to 78 per 100,000 of national population in 2006¹.

It has been suggested that the politicisation of the crime issue since the mid-nineties fuelled by extensive media coverage of high profile crime cases are key factors in the growth². The prosperous economic conditions arising from the era of the Celtic Tiger are also identified as enabling a prison expansionist policy to become a reality³. Despite numerous calls for a re-orientation of the system towards using custody as a last resort⁴ little change has occurred in almost 100 years (Probation of Offenders Act 1907) with the exception of the Criminal Justice (Community Service) Act 1983 and the Children Act 2001.

Why Reform is Necessary?

In an international context the prison population rate in Ireland is mid-range. It is higher than Finland (75 per 100,000 of national population) but lower than Germany (95 per 100,000 of national population) or Canada (107 per 100,000 of national population). However, what is of most concern in the Irish context is that significant proportions of individuals are sentenced to custody for short periods of time and for relatively minor offences. According to the Irish Prison Service almost 80% of all prisoners were committed under sentence for a period of up to one year⁵. It is well acknowledged that fine defaulters do not generally pose a risk to society⁶; nonetheless, almost one quarter of committals to prison in 2001 related to fine default⁷.

The cost of imprisonment in Ireland is a significant drain on public resources; prison expenditure reached €301.9 million in 2003; in contrast, the total level of resource provision for the Probation & Welfare Service was just €40.7 million. In 2005 the average cost of keeping an individual in custody for one year was €90,000 – this ranged from €100,400 in Mountjoy Prison to €240,700 in Portlaoise Prison⁸. In comparison, it is estimated that it costs approximately €1,500 for a community service order, €4,100 for supervision during deferment of penalty and €6,100 for an offender on a probation order⁹.

Finally, prison has not shown to be effective in the ‘fight against crime’. Indeed, according to the Halliday Report¹⁰ an expansion of the prison population by 15% would be required to achieve a 1% reduction in crime. Furthermore, research in both Canada and the UK suggests that ‘fear of apprehension’ rather than the ‘severity of punishment’ has most impact on an offender’s decision to offend/re-offend. In light of the above evidence, the high numbers of individuals serving short

sentences in Irish prisons raises serious questions about the efficacy and effectiveness of the Irish criminal justice system especially when one considers the relative costs of the sanctions.

Is Reform Possible? The International Experience

Based on the experience in other jurisdictions, it appears that there is wide scope for reducing the dominant position of prison in the Irish criminal justice system through penal reform incorporating the use of alternatives to custody. Finland is almost unique in the western world in the extent to which it has pursued 'a conscious, long term and systematic criminal policy' to decrease the prison population¹¹. In 1975, it had a prison population that was almost twice the size of the other Nordic countries; today the prison population has been reduced to one of the lowest in Europe (75 per 100,000 of the general population). In Canada, penal reform measures introduced in the mid-nineties have resulted in a decline of the prison population from 131 per 100,000 of national population in 1995 to 107 per 100,000 of national population in 2003¹². Similarly, in Germany, while adult convictions have increased dramatically since the late 1960s, the numbers sent to custody remained stable with 42,122 convicted adults in prison in 1968, 43,476 in 1996¹³ and 39,468 in 2003¹⁴.

Suspended and Conditional Sentences

Measures implemented in Germany to achieve the goal of reducing the prison population include the abolition of prison sentences of less than one month in lieu of fines, the decriminalisation of many offences and written justification for not suspending a sentence of less than a year. All three jurisdictions mentioned above have in common a strong emphasis in the law on reducing the number of individuals in prison particularly those serving sentences of up to two years. In this regard, Germany has relied heavily on the 'suspended sentence' and Canada and Finland on the 'conditional sentence' to reduce admissions to custody¹⁵. The requirement that the court suspend a prison sentence of up to two years if the offender is not deemed a threat to public safety has had a significant impact on reducing and/or stabilising the prison population in Germany¹⁶. Lappi-Seppälä describes the conditional sentence as 'a powerful means in restricting the use of liberty' and the most effective alternative to imprisonment in Finland¹⁷. The introduction of the conditional sentence in Canada saw an immediate decline in sentenced custody admissions and a drop of up to 18% in admissions in 2000/01¹⁸ alone with only minor net-widening¹⁹ effects, due to the requirement to fulfil a number of statutory criteria. The court must decide that no alternative sanction will fulfil the purpose and principles of sentencing: absent this condition, judges would be free to impose a conditional sentence on cases which might otherwise have received a term of probation ... this outcome would defeat the parliamentary intention of reducing admissions to custody²⁰.

The experiences from Finland, Germany and Canada strongly suggest that statutory provision to suspend or discharge prison sentences of up to two years in the community under supervision (and/or with other requirements e.g. rehabilitation, reparation etc.) results in a significant decline in the number of prison admissions. It would seem that the adaptation of similar diversionary practice in Ireland would have a very significant impact on committals to custody given that 78% of committals to Irish prisons in 2005 were for one year or less. Indeed, even if legislation only applied to those offenders sentenced to 6 months or less in prison it would mean that 59% of prison

committals would potentially be eligible for a community sanction²¹.

Community Service

Community service provides a promising alternative to custody. Completion rates are high and outcome evaluation results suggest reductions in both seriousness and/or frequency of offending amongst participants²². The increased use of community service orders has corresponded with a reduction in the number of custodial sentences in a number of jurisdictions.

However, the national²³ and international literature²⁴ suggests that community service is sometimes used, not as an alternative to custody, but as an alternative to lower tariff community sanctions. Finland is one of the few countries that have largely avoided the net-widening effect possibly due to adopting strict legislative procedures for its use. A sentence of community service is only considered after the decision to impose a custodial sentence has been made. The procedures are therefore designed to ensure community service is used only in the case where an offender would have received a custodial sentence. In Ireland, a legal requirement of the Criminal Justice (Community Service) Act 1983 is that judges decide that imprisonment is the appropriate sentence before imposing a community service order. That said, the evidence of net-widening in the use of community service orders²⁵ highlights the necessity for measures to be taken by the Chief Justice and Presidents of the High Court, Circuit Court and District Court to ensure adherence to this legal requirement.

To ensure consistency and proportionality in its use, community service orders are calculated in Finland by guidelines that equate one day in prison to one hour of community service. In contrast, the absence of guidelines in the Irish context has produced variances in practice ranging from a ratio of 63 hours of community service to one month of imprisonment in Donegal compared to 11 hours of community service to one month of imprisonment in Portlaoise²⁶. In conclusion, the evidence from Scotland suggests that community service produces lower reconviction rates amongst offenders than those given short prison sentences²⁷. Reporting on findings from the Scottish Executive²⁸, McIvor concludes that 'at the very least, community-based disposals are no less effective than imprisonment²⁹'. Based on the Finnish experience it would seem that if sufficient safeguards are put in place, the community service order has the potential to be an effective alternative to custody. In light of such findings it is of concern to note a decline in the use of community service orders in Ireland from one in three orders made to just over one in five³⁰.

Probation Order

The nature of probation supervision and the manner in which the intensity of supervision may be targeted towards the needs of an individual offender makes it an appropriate intervention for a range of offenders. Reconviction studies suggest positive results in reducing the seriousness and frequency of offending³¹. Furthermore, research evidence³² shows that while an average of a 10% reduction in re-offending can be expected, this can increase to between 20-40% when programmes incorporate certain factors in their programme design and delivery. These factors include targeting high-risk offenders, matching programmes to offenders' needs, a directive style, clear structure and using methods to develop offender cognitive skills and behavioural patterns³³.

The issue of enforcing probation and other community based penalties is an on-going problem for criminal justice personnel. Vass argues if one enforces too readily and too strictly one risks broadening the net of social control³⁴ – in contrast if the offender does not perceive that there are consequences for non-compliance it is likely to undermine the legitimacy of the order and reduce public and judicial confidence in alternatives to custody³⁵. High-risk offenders are likely to relapse³⁶ and therefore relapse prevention and management is an important part of successful community supervision³⁷. Hedderman and Hough suggest that individuals are supported in completing interventions by not breaching them too easily, rewarding compliance and using a variety of techniques to promote compliance³⁸. Finally, the effective management of enforcement in community orders is highlighted by the evidence that appropriate enforcement action creates lower than predicted re-offending rates for offenders³⁹.

Fines

Non-payment of fines results in a significant number of individuals being committed to prison each year in Ireland. Drawing on international literature, the Report of the Sub-Committee on Crime and Punishment on Alternatives to Fines and the Uses of Prison recommends that a package of measures are introduced to increase the use of fines and reduce the numbers going to prison for fine default including payment by instalments, an attachment of earnings (for those employed), a deduction from state benefits (for those unemployed) and supervised payments⁴⁰.

Research on the experience of managing fine default in England and Wales highlights the importance of considering all enforcement options before imposing a penalty for non-payment⁴¹. Committal to prison for fine default dropped from 24,000 to 8,500 individuals in England and Wales between 1994-1996. The significant decrease was attributed to a High Court ruling which reinforced the statutory requirement for courts to state, before sending a defaulter to jail, why each enforcement measure had failed or not been used.

While recommending that all of the enforcement options are considered before a sanction is given, the Report suggests that courts should not be limited to imposing a term of imprisonment for fine default and suggest alternatives including community service be considered. Other jurisdictions have adopted such approaches including Germany where individuals who are unable or unwilling to pay a fine can attend community service and Scotland where the Supervised Attendance Orders (SAOs) was introduced to provide an alternative to custody for fine default⁴².

The Role of Politicians, the Media and the Judiciary

In addition to the provision of alternative sanctions to custody, the international experience suggests that the issue of penal reform must be examined within a holistic framework incorporating the role and significance of the political context, the media and the judiciary⁴³.

(i) The Politicisation of Crime and Imprisonment

Coyle argues that ‘the inexorable rise of the prison population ... will only stop if society as a whole and politicians in particular choose not to go down that road’⁴⁴. Without such commitment the effort is likely to be doomed – a clear example of this is the Criminal Justice Act 1991 in England and Wales which was designed ‘to reduce the prison population by decentring the prison from penal

discourse'⁴⁵. In the immediate aftermath of the legislation the prison population declined, however, by 1993 the political tide had quickly turned towards increased punitiveness. This was echoed most clearly by the then Home Secretary's claim that 'Prison Works' and supported by the media calls to 'get tough on crime' in the aftermath of the murder of a young toddler James Bulger by two young boys⁴⁶.

In contrast to the English experience, Lappi-Seppälä argues that the most decisive factor in the process of reform in Finland was probably 'the political will and consensus to bring down the prison rate'⁴⁷. Finnish reforms were designed by a small group of professional experts supported and reinforced by a range of contacts with senior politicians and academic researchers. This raises important questions about the Irish context and the extent to which political commitment will be forthcoming towards reforming the system away from a strong emphasis on custody and other punitive measures especially in the context of a pending general election?

(ii) The Influence of the Media

Concern about crime and public attitude to crime is based not on actual crime rates, but on the extent to which politicians and the media highlight issues of crime⁴⁸. In Canada as in many jurisdictions the media can fuel the 'soft and lenient' debate on a regular basis. In contrast, the media in Finland has maintained a reasonable attitude to crime and criminal justice policy issues and this has been linked to the maintenance of a rational attitude to crime and punishment amongst the general public. The contrasting experiences indicate that the influence of the media particularly in countries where crime and punishment features prominently as an electoral issue cannot be under-estimated.

(iii) The Role of the Judiciary

Lappi-Seppälä describes the willingness of the judiciary to collaborate and assist in the process of penal reform in Finland as a key factor in its success⁴⁹. He also outlines how ongoing training courses and seminars organised for judges and prosecutors by the judicial authorities have been attributed as having an impact on sentencing and prosecutorial practice. Penal reform is likely to incorporate changes that have direct significance to members of the judiciary. In an Irish context any statutory requirements are likely to meet with fierce resistance from the judiciary given their unique position in constitutional terms. The involvement of the judiciary would therefore be at the core of any proposals for change to the system. Without statutory requirements, sentencing practice is likely to vary widely and yet without judicial commitment statutory requirement will be less meaningful.

Sentencing Guidelines for Community Sanctions

There has been much discussion in the literature regarding the necessity of introducing very specific numerical type sentencing guidelines versus more general guidance for sentencers. Tonry and Frase argue that the nature of the environment should determine the approach⁵⁰. For example, they suggest numerical type guidelines may be 'the best among several undesirable choices' in the United States given the punitive nature of the society. In contrast, in the context of northern Europe where the severity of punishment is already restrained, they argue that such standards are likely to do 'more harm than good'.

Reitz describes how guidelines are useful in identifying who should be detained and who should not but argues that ‘a far more subtle undertaking, however, [is] to prescribe the type and intensity of nonprison sanctions’⁵¹. This is a particularly important question given concerns about proportionality, legitimacy and effectiveness and the concern that inappropriately targeted community penalties place offenders at greater risk of custody. A system of structured sentencing designed by the North Carolina Sentencing Commission in 1994 ranks intermediate sanctions⁵² according to their level of intrusiveness⁵³. Since its inception, the confinement rate following felony conviction has decreased from almost one half (48%) in 1993 to just over one-third (37%) in 1997⁵⁴. The prison population of North Carolina actually grew by 15% between 1994-1997 (due largely to increased penalties for violent offences) however the system succeeded in diverting low to moderate risk offenders to intermediate punishment than was previously the case and reallocating prison space to more serious long term offenders⁵⁵.

Approaches to Avoid

Ireland continues to stumble in the dark with regard to developing alternatives to custody, largely because there is a dearth of research on sentencing, community sanctions and crime and justice related issues. It is critical that policy direction does not unquestioningly follow practices in other jurisdictions without fully assessing the documented success or otherwise of such measures and exploring their suitability in an Irish context. In particular, the evidence suggests that community sanctions with no rehabilitative element are unlikely to be effective. The trend in England and Wales is towards ‘strengthening’ community service by making it more demanding for the offender and thereby inducing public confidence⁵⁶. However, despite a continuing ‘toughening up’ of community punishments in England and Wales the prison population remains at an all time high. Indeed, the adult prison population of England and Wales has grown from 36,000 in 1991 to 62,000 in 2003 – an increase of 71%⁵⁷. Ashworth argues that in addition to an increasing tendency towards punitive measures an on-going feature of policy in England and Wales over the last 30 years is ‘the continued pursuit of the policy of proliferation’. He warns against such a policy arguing that: English courts have probably the widest choice of alternative sentences in any European nation, but it is not easy to suggest what benefits this has. It certainly does not lead courts to use custody less frequently. The courts themselves continue to ask for more alternatives and for wider discretion⁵⁸.

There is also extremely limited data to suggest that punitive measures including electronic monitoring are effective in reducing recidivism. It is therefore concerning that proposals for its use are included in the Irish Criminal Justice Bill 2004.

Conclusion

As mentioned above, the legislative basis for alternatives to custody has remained unchanged for almost 100 years with few exceptions. At a national level it is acknowledged that community sanctions are unlikely to meet the objectives of reducing recidivism and the prison population ‘if such sanctions are not introduced in an integrated manner and accompanied by a coherent sentencing strategy on a national and local level’⁵⁹. Furthermore, unless community based penalties are properly resourced and seen to operate effectively both public and judicial confidence is lost and ultimately replaced, particularly in populist societies, with harsher penalties.

A range of factors make up the equation associated with the development of community sanctions

to reduce recidivism and the prison population. Any of the countries where positive outcomes arose from penal reform have identified more than one factor or sanction as attributing to the success. To this end, legislative change, sentencing guidelines and the development of a range of effective community sanctions coupled with the commitment of policymakers and the judiciary are all essential components for the creation of an effective system.

The potential for reducing prison numbers and prison expenditure is promising in light of the experience from other jurisdictions; whether that potential is realised remains to be seen. As a society we must ask at what point is the conveyor belt of the prison factory that repeatedly turns out the most vulnerable and marginalized individuals halted and replaced with an effective and efficient system of alternatives to custody for those individuals who pose no risk to public safety?

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Rehabilitation - Are We for Real?

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Fr Peter Mcverry, SJ
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Introduction

If money were scarce, and one had to prioritise where to invest in rehabilitative facilities within prison, where would you invest it? I suggest that the greatest return is likely to be found amongst the younger prison population who are still at a very decisive developmental period in their lives, namely the 16 -21 age group. Hence for evidence of any sort of political commitment to rehabilitation within prison, one might expect to look at the detention centres and services for young offenders.

Fort Mitchell had a capacity of 102, almost all under 25, the majority of them between 16 and 21. The regime was very much educational focused. Despite offering young people a far more rehabilitative programme than any other prison in the State, it was closed in the dispute about overtime between the Minister and the Prison Officers Association .

Shanganagh Castle, despite being the only open centre for young offenders, and despite the fact that it is widely recognised that imprisoning people in conditions that are unnecessarily secure is harmful to their rehabilitation, was closed, as it occupied a financially valuable site.

That leaves St. Patrick's Institution as the only dedicated prison for young offenders. Surely, the closure of Fort Mitchell and Shanganagh Castle were unfortunate, but, for reasons unknown to us lesser mortals, necessary decisions made by a Department of Justice whose commitment to rehabilitation can be found in that only institution for young offenders which remains, namely St. Patrick's Institution?

St. Patrick's Institution

St. Patrick's Institution caters for about 200 young men, aged 16 to 21, of whom about 60 to 70 are under the age of 18, who are at a most impressionable age, still in adolescent development and full of vitality and energy.

'St. Patrick's Institution is a disaster, an obscenity and it reveals the moral bankruptcy of the policies of the Minister for Justice'.

It accommodates the most difficult (and therefore the most damaged) children in our society. Many of them suffered abuse, violence or serious neglect in their earlier childhood, sometimes in other institutions of the State. That abuse was never adequately addressed, sometimes not even acknowledged. The failure to address that abuse is partly – largely – responsible for the subsequent behaviour which has led them to St. Patrick's Institution. Almost all of them have left school early, without any qualifications. 50% are illiterate. In short, it contains young people who by and large have been victims of family and community dysfunctionality and have already been failed by all the

important State services with which they have interacted during childhood and adolescent. What happens or does not happens to them during these years in St. Patrick's Institution can have a very significant impact on the rest of their lives.

{mospagebreak title=St. Patrick's Institution}

St. Patrick's Institution is a disaster, an obscenity and reveals the moral bankruptcy of the policies of the Minister for Justice. In the 1970s and 80s, when this country did not have two pennies to rub together, there were 18 workshops in St. Patrick's Institution providing a range of skills to those detained there. Until September 2006, there were none, all closed since 2003 because of funding cutbacks. (In September, following widespread criticism, a small number of workshops were rapidly opened).

The one-to-one literacy scheme was closed, because of funding cutbacks. In 2004, out of 1300 committals to St. Patrick's, 24 sat for one or more subjects in their Junior Certificate. Most young men in St. Patrick's spend 19 hours each day alone in their cells and the other five hours mindlessly walking up and down a dreary, depressing yard with nothing to do except to scheme (with enormous ingenuity, it must be said) how to get drugs into the place to kill the boredom. Young people who explode in frustration, are punished by being placed in solitary confinement in the basement, where they are locked in their cells for 24 hours a day, with no contact with other prisoners, no cigarettes, and nothing to do except sleep for three days. Other lesser punishments for infringement of rules include deprivation of visits, letters and phone calls, the very things which help to make time in prison bearable.

Despite the fact that about one-third of the population of St. Patrick's are legally children, under the age of 18, there are no staff with child care qualifications, the various agreed standards for children in the care of the State do not apply, there is no inspection by Special Services Inspectorate, there are no care plans for the young people there as required for all children in the care of the State, the young people there do not necessarily have a social worker as required for all children in the care of the State, the required documentation detailing all interventions by staff with the young people in care is not kept and the Children's Ombudsman is prohibited from investigating complaints or allegations by the young people accommodated there. Notwithstanding the fact that there are many fine prison officers who wish to do their best for the young people in St. Patrick's, the system dictates that any aggression shown to staff will frequently invite a totally inappropriate violent response towards the young person, which would, in any other residential institution, result in instant dismissal of the staff involved and possible prosecution for assault.

St. Patrick's Institution is nothing but a "warehouse" for young people, many of whom were broken by their childhood experiences. In this harsh and punitive system, they are further broken down. It is a demoralising, destructive and dehumanising experience, with no redeeming features, characterised by idleness and boredom, for young people, who are full of energy, at a critical time in their development. One young person there summed it up very succinctly when he told me: "This place brings out the worst in you."

{mospagebreak title=Education and Literacy}

Education and Literacy



Priority of Education within rehabilitation:

The young people in St. Patrick's Institution are, almost universally, characterised by educational failure. The educational system has failed them and they consequently have failed to achieve within the educational system. Given the critical importance of education for the future life prospects of a young person, rehabilitation must give priority to making up for the prior failure of the educational system, in order to give these young people some possibility, in future life, of competing on a level playing field. Low educational achievement reduces a young person's options in life to such a level that they are likely to no longer share agreed values.

Priority of Literacy within education:

Within the educational system, literacy is of course the most basic issue. In the Literacy Survey of 2003, 80% of the population of St. Patrick's scored at or below the second lowest literacy level, with one-third of the prisoners at such a low level that they have to be described as "illiterate". Illiteracy, or low levels of literacy, not only contributes enormously to low self-esteem but also excludes a person from almost all further education. Rehabilitation then must first enable young people to achieve a competency in literacy and numeracy, without which further educational achievement becomes impossible.

One would therefore expect that in St. Patrick's, a commitment of resources would be provided to enable every prisoner to achieve basic literacy levels. There would also be a commitment of resources to enable each prisoner, within the time-frame available to them, to make up for the failures of the educational system in their childhood. While acknowledging the commitment of the teachers in St. Patrick's which enables 50% of the prisoners to participate in at least one educational activity per week, and 25% to avail of at least 10 hours education per week, a serious attempt at rehabilitation would seek to achieve a lot more.

The biggest obstacle to achieving a lot more is the daily regime of St. Patrick's. Despite "serving" a client group whose needs are quite different from any other group within the prison system, St. Patrick's Institution has not only a physical structure which is identical to that of the adult Mountjoy Prison but much more seriously, has a daily regime that is also identical to that of adult prisoners in Mountjoy. By the time prisoners are actually unlocked and a prison officer collects them for the school, there is less than one and a half hours available for education in the morning and the same in the afternoon.

Apart from a further hour and a half in the evening, when the school is closed, this is the only recreational time available to them. The desire to freely associate with their friends during these periods, the negative experience of school that they bring with them into prison, the embarrassment

of being illiterate and the total boredom and mindless meaninglessness of most of their day makes the effort needed to engage in educational activities distinctly unattractive for many.

Locking juveniles up on their own for 19 and a half hours a day, with educational activities having to compete with recreational activities for the other four and a half hours, does not encourage young people to engage in education. A serious attempt at rehabilitation would have made sure that the one-to-one literacy scheme was expanded to include all those who require it – instead it was abolished, because of funding cutbacks.

Training for post-release employment

Most of those committed to St. Patrick's Institution were unemployed at the time of committal, many had been unemployed for all or most of their lives. Helping such young people to obtain the personal and interpersonal skills which would help them to secure employment, which they could access on release, would surely be very worthwhile and might even make a significant difference to some offenders. The Connect programme, which sought to do just that and was already operating in some prisons, was due to be introduced into St. Patrick's in 2003.

'The biggest obstacle to achieving a lot more is the daily regime of St. Patrick's'.

It never happened - instead it was withdrawn from even those prisons in which it was operating and most of the €46 million allocated to expanding the programme to all prisons appears to have been used to compensate for prison officer overtime.

{mospagebreak title=Drug Rehabilitation in prison}

Drug Rehabilitation in prison

A majority of those being committed to prison these days have a drug problem. While, again, successful drug treatment within the confined and isolating environment of prison is difficult to achieve, some prisoners are more than willing to accept help even within prison.

The only dedicated drug treatment service within the prison system is the 12-bed detox facility in the Medical Unit in Mountjoy prison. There is a waiting list to get into it. On completion of the detox, prisoners are transferred to the Training Centre where the possibility exists of continuing their rehabilitation by engaging in training programmes, sometimes linked to outside agencies. Apart from the Medical Unit, any drug treatment that takes place in prison happens despite the system. In Mountjoy, there is absolutely no drug-free space to support a person who wishes to tackle their drug problem; in Wheatfield, out of 320 cells, there are 16 cells available to those who become drug free. For prisoners in Dublin who want to become and remain drug free, their best option is to go to the Midlands prison, but the isolation from family and reduced possibility of visits is a serious obstacle. There are no counsellors to support them, no incentives to encourage them, no nothing!

The Minister is planning to create drug-free prisons by a policy that has already been tried in Scotland for ten years and is now being abandoned as a failure, namely random drug tests with

punitive sanctions for testing positive. Presumably (but that may be a presumption we cannot make!) the Minister has consulted with the management personnel of the Irish Prison Service. However, 15 minutes consultation with anyone who knows the prison system or anyone seriously connected with the lives of prisoners could tell the Minister to get real. The Minister's proposal appears based on the premise that prisoners' drug use is simply irresponsible and selfish pursuit of pleasure. Many prisoners take drugs to forget their past, it is their only way of coping with childhood traumas or other overwhelming experiences that they find too difficult to bear. As one drug user said so eloquently: "Wouldn't it be wonderful to be able to ride away so fast that our memories could not catch up."

Being alone in your cell for 19 hours a day ensures that your memories are your constant companion. Indeed, when imprisonment was first introduced as a penal sanction, the whole rationale for imprisoning people was precisely to keep them alone with their memories so that they could learn the error of their ways! People can overcome their addiction, they can learn other ways of coping, but they need intensive support to enable them to do so successfully. One-to-one counselling, group therapy and the realistic expectation that the future can be different from the past is necessary. Many prisoners are afraid to become drug-free in prison, because on release they may be returning to homelessness, boredom, or family problems and they know that if they relapse they may have to wait many months to regain their place on a methadone programme. To try to force people to abandon their learnt mechanism for coping with their problems without giving them alternative ways of coping is a recipe for increased tension within prisons, mental health problems, violence and self-harm.



The Minister's proposals, recently publicised, never mention harm reduction policies, although such policies are now part of mainstream drug programmes. A drugs policy that focuses exclusively on the elimination of drug misuse has long since been abandoned almost everywhere, as evidence-based research shows it to be much less effective. But the Minister's proposals to end the supply of drugs in prison is quite detailed with very specific policies – although many of them are already in operation in most Dublin prisons - with a few new policies such as random testing of 5-10% of prisoners each month. However, the proposals on helping prisoners to deal with drug misuse is remarkably short on specifics, such as is the Minister planning to introduce full-time, trained drug counsellors into prison and in what numbers relative to the number of prisoners who need them.

{mospagebreak title=Models}

Models

A serious attempt at rehabilitation within prison would necessitate a serious programme of evidence-based research which would try to identify what works. However, there is little serious research taking place on prisons or indeed on the whole criminal justice system. The absence of hard information or evaluation of programmes ensures that political expediency and the imminence of the next general election inform decision-making. It is not that there are no models available

which could provide a much more rehabilitative experience while in prison. Three examples, within our own system, come immediately to my mind.

a) Wheatfield Prison might become a juvenile centre.

When Wheatfield Prison was being considered, the Department of Justice scoured Europe to examine different prison structures. The design of Wheatfield Prison was based on the best model then available. It is divided into separate units containing 16 single rooms per unit. Each unit has access to its own small, open-air, grass space. In that model, prisoners have free association from 7.30 in the morning until 10 in the evening. They have the key to their own room so that they can lock it when they are out. They have unrestricted access to the open-air space. They cook their own meals, taking it in turns to cook for the whole group – thus each prisoner has to learn basic cookery skills.

They have to learn the social skills of group living, how to reach decisions by compromise, how to deal with conflict in a positive way, skills which they may not have possessed before coming into prison. Prison therefore becomes much more demanding, both for prisoners and for staff. Each day prisoners have to make decisions (something that is almost forbidden in the current prison regime) and prison officers need a whole new range of skills. In such a regime, education becomes a more attractive option, the prisoner knowing that they have many more hours in the day to associate with their friends and engage in other recreational activities such as hobbies or football.

b) Training Unit.

It has been shown time and again that rehabilitation programmes are more successful when offered outside of prison. Prison isolates young people who have already been isolated from main-stream society and this makes rehabilitation all the more difficult. Rehabilitation, when it must take place in prison, will be much more successful when linked to outside agencies and programmes.

The Training Unit provides a model which could be expanded and improved. There, prisoners can undertake a range of educational programmes within the prison and graduate to programmes or to work opportunities outside the prison, as they prove their commitment and reliability. Prisoners leave each day to go to the PACE workshops or other training courses or to employment. A serious commitment to rehabilitation would ensure that each young person committed to prison would be helped to draw up a personal plan with a graduated programme of working or training in the community. This only requires resources, a bit of effort, a little creativity and a willingness to take risks. Not of these appear to be available in the Department of Justice.

c) Temporary Release and Sentence Review.

Every young person in St. Patrick's that I know describes the place as a "kip". They do not want to spend their day in idle boredom, but they have little choice. They are well aware of their illiteracy, their lack of education and absence of skills. They are often so proud of the certificates that they gain in prison and give them to me with strict instructions that I am to keep them in a safe place for them for when they get out. Many of them have never received a certificate in their life before. Sometimes the certificate merely states that they have participated in such and such a programme – it doesn't say that they have achieved anything, or even successfully completed the programme, but they are still so proud of it!

I have no doubt that a little encouragement, a daily regime that is supportive and a choice of meaningful educational or training opportunities would attract an almost 100% participation. As evidence of this, when judges handed down a sentence, with a review to be held after a given period of time in prison, many prisoners spent their time doing programmes which offered them certificates. They tried to accumulate as many certificates as possible to show the judge at the time of review. They wanted to show that they had spent their time in prison constructively and therefore deserved a chance. Despite the Supreme Court decision which effectively abolished sentence reviews, some legislation to re-instate them should be considered. They provided a wonderful, and necessary, motivation to use their time in prison constructively.

Similarly, temporary release, as part of a planned, personal educational or training programme, with links to outside agencies and services, could be an integral part of the management of offenders, providing a goal for the prisoner to achieve by means of an agreed set of achievements, with the knowledge that they will be recalled to prison if they fail to maintain their agreed programme.

{mospagebreak title=The Context}

The Context

I would suggest three reasons why rehabilitation for prisoners is not on the agenda. There is an ideology, consisting of three concentric circles, as it were, which militates against rehabilitation.

1. First, money spent on rehabilitation is considered wasted money. The primary criterion by which rehabilitation is judged is whether prisoners, on release, will re-offend. With a current 70% recidivist rate, to pour money into programmes for prisoners is seen as ineffective and therefore inefficient. However, with a paucity of resources, an absence of programmes and no support on release, such a recidivist rate is only to be expected. Would a serious attempt at rehabilitation reduce recidivism? We don't know because it has never been tried. However, common sense suggests that it might. Research, if seriously undertaken alongside rehabilitative programmes, would inform the rehabilitative process, making it more successful and cost effective. However, in my view, programmes of rehabilitation are first and foremost an issue of justice, an attempt to compensate for the failure of the educational and other systems which have been part of their lives before imprisonment. They ought not to be an optional add-on, to be provided, or withdrawn, at the political whim of a Minister, still less to be a pawn in a dispute between the Minister and the Prison Officers Association.

2. Secondly, over the past twenty years, there has been a growing movement away from rehabilitation of offenders to control of offenders, a movement that has been accelerated in the past ten years. Our criminal justice system has traditionally been characterized by a fine balance between the needs of the offender and the seriousness of the offence. Whether an offender receives a prison sentence or not, and for how long, depends not only on the seriousness of the offence, but also on the circumstances of that person – their childhood experiences, the level of deprivation they may have endured, issues such as addictions, mental health or low intelligence and whether they have shown any remorse or motivation to deal with these issues and so on.

Current policies have been shifting the balance away from the offender and on to the offence. It is a

shift of focus from rehabilitation and re-integration of offenders to the control and exclusion of offenders. It is a shift from rightful intolerance of the behaviour of the offender to intolerance of the offender him/herself. Control measures such as more powers for the gardai, tougher legislation, restrictions on the right to bail, mandatory sentences, legislation to reduce the rights of the offender, and yet more new powers for the gardai have been introduced. Most recently, the proposed introduction of Anti-Social Behaviour Orders, which can see people being imprisoned for behaviour which was not, in itself, criminal behaviour, continues this trend. This shift towards excluding offenders from society has widespread public support. This support arises because we live in an increasingly fearful society with little sign of it getting better. As long as an excessive desire to control offenders who disturbs us, by excluding them and keeping them apart from us, is dominant, then the desire to change their behaviour and thus to re-integrate them will be pushed into irrelevance.

3. Thirdly, the focus on the economy that has driven Governments for the past ten or fifteen years appears to see money spent on anything other than the economy as a waste of resources. Those, like prisoners, who are of little value to the economy or who are likely to be of little value in the future, are seen as a drain on valuable resources. This is not entirely a cynical or hard-hearted perspective. The ideological justification for such a perspective is that the route out of poverty is through employment and so investing as much as possible into the economy is the most efficient way of lifting all boats. Diverting money into rehabilitative programmes for people who will be, at best, marginal to the economy is to slow down the process of eliminating poverty. However, in my view, this ideological position is deficient – while the Celtic Tiger has certainly lifted many people out of poverty, people who had never or rarely worked before in their lives, there remain those, including prisoners, who find it extremely difficult to secure employment, despite their best intentions and efforts to do so. Furthermore, some of those who do find employment can only find low-paid, insecure employment which does not lift them out of poverty. The need for direct investment into the lives of those on the margins to enable them to find a greater sense of fulfillment and self-esteem will always be necessary, particularly for those who will be marginal to the needs of the economy.

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The carnage on our roads

A rehabilitative programme which offers offenders early release, which gives offenders the opportunity to engage with outside agencies and programmes and which makes their time in prison more meaningful and constructive requires a willingness by the Minister of Justice to take risks. Many will fail and the public are unforgiving when they do. The Department of Justice is one in which enlightened leadership can easily lead to political extinction. A major public awareness campaign would be required to demolish the myth that is so prevalent in the community that “longer sentences make communities safer.” A public awareness campaign would focus on the very obvious question: “What do communities want prisoners to be like when they leave prison?”

Most people have absolutely no idea of what life in prison is like and most people don't care. How do we change that? Some high profile persons, like Jeffrey Archer, who have unexpectedly found themselves in prison have subsequently talked about how the experience of prison has been a real eye-opener for them. They discovered, to their amazement and shock, a prison system that was

destructive and dehumanising. They discovered that prisoners were much like themselves, a mixture of good and bad. And most telling of all, they discovered how their former apathy and lack of interest in what happens in prison had enabled them to preserve myths which they had grown up with and to insulate themselves, by their ignorance, from the uncomfortable questions which their time in prison opened up for them.

The carnage on our roads is an issue that generates much discussion and much criticism of the lack of effective political action to reduce it. Perhaps it is time to consider much more drastic action. My suggestion is somewhat ironic in that I spend much of my time trying to keep people out of prison. But perhaps we should consider introducing mandatory 30-day imprisonment for drunk driving. Drunk drivers injure and kill far more people each year than joyriders – yet a conviction for joyriding will almost guarantee a prison sentence while a conviction for drunk driving will rarely do so. This minister seems to love mandatory sentences, so here is another opportunity for him. He is also building a brand new prison to expand the prison capacity so here is a way of making use of it. A mandatory 30-day prison sentence would send a strong message that drinking and driving is not acceptable in this society. As the deterrent effect of imprisonment is largely a middle-class concept imported into a criminal justice system which focuses predominantly on the poor, it might even work in reducing the number of people killed or injured on our roads, as many of the 9,500 people who were arrested for drink driving each year over the past four years are middle-class people who would never consider that prison was a possibility for them. If so many middle-class people were to experience the destructive, dehumanising effect of imprisonment, perhaps it might create a move for reform. If so many middle-class people were to live alongside, and get to know, prisoners from a very different social background, they too, like Jeffrey, might begin to question the myths that they have grown up with.

Is it only a coincidence that the most humane prison regimes in Europe are to be found in Scandinavian countries which have mandatory prison sentences for drunk driving?

Conclusion

I appreciate that a commitment to rehabilitation is a difficult issue for any Minister for Justice. The public doesn't care what happens to prisoners, most don't want their tax money spent on improving the lives of prisoners, money spent on rehabilitation shows few visible results (as you cannot see someone not committing a crime!) and the investment needed to really make a difference is very substantial. Nevertheless, rehabilitation is an issue of justice towards people who are amongst the most excluded and marginalized in our society and as such should be, as a matter of principle, a fundamental cornerstone of prison policy.