



Presentation by Professor Andrew Coyle at 'Reimagining the Role of Prison in Irish Society – an Open Forum', which took place on Thursday June 18th, 2009, hosted by Irish Penal Reform Trust.

It is a pleasure to be here at what your Chairperson has indicated is a watershed of a moment for Ireland, a moment at which you actually have an opportunity to make a choice – not only an opportunity to make a choice but in fact an obligation to make a choice. Because there are two doors lying ahead of you and this is the moment when you are going to choose which of them you are going to walk through. And once you've walked through that door, whichever one you choose, life will not be the same again with respect to the issues which we are discussing this evening.

You have asked me to come and tell you something about the *Commission on English Prisons Today*, of which I am a member. This Commission was set up by the Howard League for Penal Reform in England and Wales, so it is not a governmental Commission like the *Scottish Prisons Commission*, which Professor McNeill will talk about in a few moments, a Commission which was set up by the Scottish government. The English Commission was established by a non-governmental organisation, the Howard League for Penal Reform. That in itself says something because in England and Wales over recent years we have had a series of inquiries and reports into prisons. However, they have all been into the process of prisons: how prisons work, how they might work better, how they might work differently. They have not looked at what we may call the “content” of what prison is about and where it is that we want to place prison in our society. The Howard League decided that there had been enough looking at processes and that it was time to look at content, so it brought together an interesting group of people – some leading academics, a serving prisoner and a former prisoner, a former Chief Executive of Victim Support, business people, media commentators, a former chair of the Parole Board, a former chair of the Sentencing Advisory Panel and one or two people who had in the past been involved in the prison system.

Having said that we were not set up by government, it should be acknowledged that government co-operated with us fully. The Ministry of Justice and the Prison Service submitted written evidence; they also came and submitted oral evidence to us, as did many others. We had a series of seminars on issues that we had identified as being specific to our task; and we had an interactive website which allowed people to submit comments to us in a dynamic way as our thinking progressed.

Terms of reference

Our remit was to investigate the purpose and proper context of the use of prison in the 21st century. In doing that we were charged with three other things:

- Firstly, to look at what were the driving forces which were influencing practice and change; and we were to include among them: legislation, politics, and the media. What were the main drivers of change?

- The second issue we were to take account of was the purpose and limits of a penal system and how such a system should sit alongside other social policy strategies.
- Finally we were charged with creating a vision for a different future.

On the basis of those terms of reference, we decided from the outset that we would not focus our efforts on how to improve the current system. As a result, we did not look in any detail about what happens inside prisons. Neither did we look at the contrast between custodial sentences and non-custodial sentences. And we put notice on ourselves not to use technical and sometimes meaningless jargon such as “reducing reoffending.” Our task was to consider a different paradigm within which to operate. That is not to say that all these other things - looking to improve the system, looking to make it more efficient and looking at how to make it more decent - are not worthwhile. They are very much worthwhile. But we concluded that our remit was to look at more fundamental issues. We actually stood back and said, “The prison system which we have today is not a given.” We do not have to have this system. To some extent we have chosen to have this system. To another extent the system has just grown and grown incrementally, so that we have ended up somewhere that none of us want to be, if we were given the choice.

So how did we set about this fundamental review? We began first of all with an attempt to describe imprisonment and its purpose in the 21st century. We noted that in societies in Western Europe it is the most severe sanction which a court can impose as punishment on those who have committed crime. The cliché that is frequently used is that it is “a place of last resort”. We wanted to examine whether in fact it was used as a place of last resort. Prison has a symbolic importance in our society as a means used by society to identify those acts which it considers to be unacceptable. That is why it attracts clichés such as the “clanging of the prison door” and the description that someone is ‘sent down’. It is the most severe disposal which a court can impose.

But we went on from that to recognise that prison is not an end in itself. Rather, it is a means to an end. And if prison is a means to an end, then we have to ask, “What is the end?” We came to the conclusion that the end is the creation of a safer society, and more than that, it is the creation of a society in which people feel safe. Not only where people are safe, but where they feel safe.

We approached our work under five main headings:

- The first question we asked was, “Is there a need for change?”; “Why have we been set up?”
- Secondly, we looked at lessons from elsewhere. How have other jurisdictions and countries tackled this issue? Because in the prison world there is a great deal of re-inventing the wheel which goes on; there is a lack of learning from others.
- Thirdly, we looked for an intellectual foundation for our work, because in much of the discussion we have had up until now there really is no sound intellectual basis.
- Fourthly, we moved on to discuss the framework on which change could be built.
- Finally, we looked for mechanisms which might deliver change.

I would now like to say a word or two about each of these five themes.

A penal crisis and the need for change

First of all: is there a crisis? Do we need change? Can we not continue as we are? In the context of England and Wales we looked first of all at the number of people in prison. In 1992, there were 45,000 people in prison, in England and Wales. Five years later, in 1997, that figure had risen to 65,000 prisoners. Five years ago, in 2004, the number had risen to 75,000. Today it stands at over 83,000 people in prison, and the government is planning places for 96,000 prisoners. I mentioned that the government had set up inquiries into how to deal with processes, rather than to identify what the underlying problem was. Twice it brought in a business man called Patrick Carter to look at the processes: first, at the structure of the prison system and the way the prison service was organised; and, the second time, to look at how to deal with the issue of numbers. The title of Carter's most recent report says a lot about his thinking. It was "Securing the Future: Plans for an Efficient and Sustainable use of Custody in England and Wales." So he wanted the use of custody to be efficient and he wanted it to be sustained. I would ask you to bear that title in mind as you listen to what Professor McNeill will say later about the way the Scottish Prisons Commission went about its work.

The increase in the prison population over the last two decades has taken place against a background in which, by any measure, there has been no increase in crime; indeed overall crime has been going down. Neither has there been a general increase in detection rates, nor in prosecution rates. In addition, the reality is that people are safer in society in the United Kingdom today than they have been for decades, although this has to be balanced against the fact that many people do not feel safer.

Having noted the increase in numbers, we moved on to ask the question: "Who are these extra people who are being sent to prison?" "Why is the prison population going up, given these other factors?" We discovered that people are being sent to prison now who would not previously have been sent to prison. We also discovered that those who are going to prison are being sent for longer periods. We discovered that there was reduced use of early release on parole licence and also periods of parole. And many of the additional numbers were - and this will be familiar to you in Ireland - the mentally ill and the drug and alcohol addicted. We noted that in the twelve years since 1997 Parliament has created 3,000 new criminal offences. And of those 3,000 criminal offences, 1,300 are "imprisonable" - that is, they attract a potential prison sentence. These were the factors that were contributing greatly to the increase in prison population.

Lessons from other countries

Secondly, we considered lessons from abroad. We looked in three main geographical areas. First of all, we went to Scandinavia. We looked at Finland and Norway - two countries, interestingly enough, with which Ireland might wish to compare itself, having a broadly similar population, and with many of the same values which you have in this country. In these two countries we discovered very low rates of imprisonment in relative terms. We also found very few alternatives to imprisonment. That is a very important lesson which I do not want to expand on at the moment, but we might wish to come back to in discussion, because it is wrong to suggest that by creating a plethora of alternatives to imprisonment

one is likely to influence the use of imprisonment by the courts. In these countries there are very few alternatives. We also found, very importantly, much greater public understanding about the use of prison, of what prison could offer and what it could not offer. We also found much more local ownership, much less centralisation in the administration of prison and of criminal justice in general.

Inevitably, some of my fellow Commissioners wanted to go to the United States, because that is what people from the United Kingdom do. This is partly because they speak the same language (well, we think they speak the same language), but those of us who knew a little bit about the United States were careful to make specific suggestions about where the Commissioners should go. The United States, being such a massive country with so many jurisdictions within it, does have some very good models of practice, and we encouraged the Commissioners to go, specifically, to New York City to see what has been done there in a wide variety of areas, but specifically in respect of significant reduction in the use of imprisonment. There are now empty prisons in the City of New York. There has been a reduction in crime and New York City has become a much safer place than it was a decade ago. We wanted to discover how all of this had come about. There is more detailed reference to this in the report itself.

And thirdly, we went north of the English border because we had registered that Scotland was grappling with similar problems; broadly the same level of imprisonment, almost twice as much as there is here in Ireland. But it was tackling the issues in quite a different way. Professor McNeill will say a little bit more about that in a moment.

What we discovered from all of these visits, in very brief terms, was that the number of people in prison in any country is a matter of social and political choice. It is not a matter of crime; it is not a matter of crime rates; it is actually a matter of the public and government making a choice. "How many of your citizens do you wish to send to prison?" It really is as blunt as that. In all countries you will find that those who have committed the most serious offences, murderers, rapists, those who commit serious physical violence, go to prison, sometimes for very lengthy periods. That is not where the difference in imprisonment rates comes from. The difference in imprisonment rates comes from the way society chooses to deal with those who are at its margins. So that was the second theme: lessons from abroad.

An intellectual foundation for change: Penal moderation

We then tried to establish an intellectual foundation for our work. What was the basis on which we were going to make our arguments? We settled on the phrase "Penal Moderation".

Penal Moderation is encapsulated in a public philosophy which is based upon a series of first principles. Firstly, of restraint - avoiding exaggerated or excessive use of imprisonment. Secondly, of proportionality - to make the punishment fit the crime, the proportionality which the court must continually keep at the front of its mind. Thirdly, recognising the humanity both of victims and of offenders. We resisted the temptation to see that there was a dichotomy between victims and offenders; that either you help the victims or you help the offenders. We were very much assisted in our thinking on that by those on our Commission who had been victims, who were very clear in representing the thoughts of victims; in explaining to us what it was that victims needed, what it was that they wanted, and what it was that

they did not need. Certainly they did not make greater punishment their first priority. So that was the intellectual foundation for our report, the theme of 'Penal Moderation.'

A framework for change: Making justice local

We then moved on to say, "Well, if we are looking for 'Penal Moderation' in the way that we have described it (and we describe it at length in the report, which you can read in due course), if that is the foundation, how do we move on to build a framework on that foundation?" We looked at the structure which exists in England and Wales today. I talked a few moments ago about the fact that prison is a means to an end, the end being public safety and a greater feeling of safety for all of us. It was pointed out that most of the crime which comes before the court is local. It occurs in a local, geographic area and the effects of that crime are felt in a particular area, in specific communities. Perhaps, we concluded, it may be that the solutions will also be found locally, in the communities where the crime has occurred. Perhaps there is a need for local ownership of resources, of facilities and of accountability. If one accepts that premise, then of course there are significant implications for the way prisons are run, for the way they are managed and also for the way community sentences are managed.

That is particularly the case in England and Wales, because over the last ten years in England and Wales there has been an increasing emphasis on centralisation. By that I mean running things from the centre. The Prison Service is run from Whitehall. The Probation Service is run from Whitehall. As a result of one of the earlier government inquiries into process a new organisation was set up which some of you may have heard of. It is called the National Offender Management Service. The National Offender Management Service was an attempt to bring together a national Prison Service for the whole country alongside a national probation service. Previously there had been 45 local probation services but in 2001 they were brought together in a national service. At that time the administration of the prison and probation services were based in a street in London called Marsham Street. The acronym NOMS was thought to mean "Nightmare On Marsham Street." Then as time went on, and not much had seemed to be happening the acronym changed and it became "Nothing Of Much Significance." But of course that was not true; it was something of great significance, because what it did in effect was to reinforce the strength of the Prison Service, which was used to working nationally, while undermining greatly the influence and power of the former local probation services. The local accountability which had existed in the local probation service all but disappeared. If you look now at the structure of NOMS, you will find that the former Director General of the Prison Service is its chief executive and that the former Deputy Director General of the Prison Service is its Chief Operating Officer. Somewhere about the third or fourth level down is the person who used to be the Director General of the Probation Service. That is not what was intended to happen, but it was almost inevitable that it would.

At the time some of us with international experience pointed out that this was likely to happen. The only other country where there had been a similar initiative was New Zealand. In the early 1990s, New Zealand brought together prison and probation. Shortly thereafter the numbers of people in prison shot up and the numbers of people in probation also went up. Despite this, there are calls today in New Zealand for even greater use of imprisonment.

So the whole issue of making justice local was a major theme of our framework, and we give in the report practical examples of how we think there can be increased local accountability. The report recommends, for example, that the national Prison Service should be disaggregated. We suggest that there will always be a need for a national Prison Service for very high risk prisoners but otherwise the majority of prisons should come within a local framework.

Delivering change through justice reinvestment and restorative justice

So, we've got the foundation, we've got the framework. How do we then deliver it? We identified two possible triggers for delivery. One was what has come to be called Justice Reinvestment. Justice Reinvestment involves looking at the amount of resources, financial and other, the amount of tax payers' money that we spend, on the criminal justice system in general and on prisons in particular.

Under the new paradigm of Justice Reinvestment economists, urban geographers and other experts from outside the criminal justice system have been asked to examine whether we are getting a good return on our investment. Is the current system value for money in financial and social terms? If not, is there a better way to spend these resources? We are building here on a lot of work which has been done in the United States, where they are moving from looking at individual prisoners, looking at what we call offenders, to looking at localities. They identified some boroughs, for example, in New York where a million dollars a year was being spent on sending people to prison. And they asked local communities, "If you could choose, would you send these 300 people from your block to prison?" Some might say, "No, we actually only feel the need to send 100 of them to prison and we would prefer to use the other two thirds of the money in different ways." We expanded this into an analysis of how the money might be better spent within the local accountability mechanism that we had already identified. There is further explanation in the report that looks at this possibility in greater details.

The second trigger for delivery was Restorative Justice: the concept of conflict resolution, of justice which is inclusive, which is what Restorative Justice is - rather than justice which is exclusive, which is what Criminal Justice is. We took on board the need to focus not only on the rehabilitation of offenders, which is currently referred to as "reducing re-offending", but also on a greater sense of justice for victims and for communities.

Conclusion: choosing the future

So what was our conclusion after all of that? Put simply, it was that we should be doing better with less, and that is the title of our report: "Do Better Do Less." We are not short of resources; we have enough. Arguably, we are expending too great a proportion of increasingly scarce public resources on criminal justice. What we need is to spend these resources in a much smarter way. The lesson for us all is that criminal justice has a very important but a very narrow part to play in a healthy society. Criminal justice can help to support the values of a society, but it cannot replace those values. That, arguably, is what we have been trying to do in England and in Wales in recent years.

The lessons for Ireland

Now my last word: what are the lessons of all of this for Ireland? Well, your numbers in prisons have been going up gradually in recent years; you do not need me to tell you that. They have been going up, certainly less markedly than in England and Wales, but they have been going up considerably.

I began by referring to the two doors and the matter of choice. In England and in Wales there are now over 83,000 people in prison. If we continue down our current path in England and Wales we may well end up within our lifetime with the levels of imprisonment that they already have in the United States. If that were to happen, we would not have 83,000 people in prison; we would have 320,000 people in prison. That is impossible isn't it? Well, twenty years ago the Americans would have said it was impossible to have 2.3 million people in prison. So that is England and Wales vis-à-vis America. I do not want to take you there because that would give you nightmares. But let me give you a comparison between Ireland and England and Wales. In Ireland, at the moment, your rate of imprisonment is about 81 per 100,000; in England and Wales it is about 153 per 100,000. If you were to go to English levels of imprisonment in Ireland, you would not have 3,500 people in prison; you would have about 7,000 people in prison. That is something which is well within the bounds of possibility, because that is the rate just across the water today. That is what you will be looking at, depending on which door you choose to pass through.

You need to make a choice and, of course, it may be that the current economic situation will provide you with the necessary incentive to make the right choice.

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