



*A response by Professor Ian O'Donnell to presentations 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.*

There are two things in the addresses we have just been listening to that I want to develop and contextualise in the ten minutes or so that is allocated to me. These are: the importance of a sound evidence-base for decisions; and the challenge of ensuring that when the way forward is clear, it is taken. In a number of important areas, what needs to be done has been known for years, but progress is grindingly slow.

### **Sound Evidence Base for Decisions**

My first point is about the importance of drawing on the best available evidence when making decisions that have a dramatic effect on citizens' lives. We should never lose sight of the fact that imprisonment is about the deprivation of liberty and this hurts. For this reason, to say nothing of the wider social and financial costs, it must be used sparingly and with precision. There are several pieces of research that have been published over the last year or so that have important policy implications regarding incarceration and community safety, and I'm going to highlight what we can learn from two of them.

First, there are lessons to be drawn from what we know about the jailing of fine defaulters. This practice is as pointless as it is relentless. Fine defaulters account for around one quarter of committals to prison each year: about 1,300 in 2007. It is a scandal that people whose offending is not serious enough to attract a custodial sentence in the first place end up in prison because they cannot or will not pay their fines. Also, they are almost certain to make a return visit. In a study of 20,000 prisoner releases, it was found that 85% of fine defaulters were back behind bars within four years, a recidivism rate twice as high as for other prisoners. Thus, keeping them out would have the added virtue of significantly reducing the overall level of recidivism. Because they serve short periods of custody, generally measured in terms of days, fine defaulters only account for around 1% of the prison population on any given day. This observation is sometimes made to downplay the harms associated with their imprisonment, but the reality is that short bursts of incarceration are hugely disruptive to the individuals concerned and their families, and put an avoidable burden on busy committal prisons like Mountjoy.

Second, there is the challenge of connecting ex-prisoners with relevant services, supports and treatment options. This is of critical importance from a penal planning perspective, and what has become known as the 'process of re-entry' has attracted a great deal of attention in other jurisdictions. So, what do we know about where prisoners come from and return to in Ireland? The address details for more than 5,000 released prisoners were collected by the UCD Institute of Criminology and allocated to the relevant electoral division, or "ED". (EDs are the smallest administrative units that are used for census purposes.) Information about the degree of social deprivation that characterised each ED was then put into the model. This allowed us to look at the geography of re-integration and to map that onto the distribution of poverty around the

country. Of the 3,500 EDs in the country, more than two thirds were home to no released prisoners. This is not surprising given the well-documented tendency for crime to be concentrated in a few areas, typically cities and large towns. What was striking was the difference between affluent and impoverished areas. When the relationship between deprivation levels and prisoner addresses was examined, the findings that emerged were stark. In the most deprived areas in the country, there were 146 prisoners per 10,000 residents. This was in comparison to 6 in the least deprived areas. I repeat: 146 compared to 6, a ratio of 25-1. The magnitude of this difference is startling, and it demonstrates unequivocally that it's the areas already marked by serious disadvantage that must bear the brunt of the social problems that accompany release of prisoners. This creates a potentially destabilising situation, given the propensity for ex-prisoners to re-offend, and the demands that they place on services for drug and alcohol treatment. Even the best motivated individual will find it more difficult to go straight when they find themselves surrounded by friends who are still involved in crime or who have also served time in prison.

For a government that proclaims an interest in strengthening social capital, this should sound a warning bell, especially if the prison population rises. This geographical analysis paints, with very bright colours, a map of where social policy aimed at promoting re-integration ought to be concentrated. To summarise this point, the research evidence is that the poor are trebly misfortunate. All other things being equal, they are more likely to be imprisoned in the first place; if fined, they can end up in custody in default; upon release, they return to a small number of areas where disadvantage is concentrated, and which by their presence is exacerbated. It goes without saying that the economic downturn will make this situation even more problematic.

### **Translating Recommendations into Actions**

I think in many ways the challenge is not identifying what needs to be done, it is ensuring that action is taken and followed through. I believe that this should be the focus of the planned White Paper on Crime, which gives us an opportunity not to re-list recommendations with which we are familiar and generally in agreement, but instead to chart how to identify and then overcome the obstacles that stand in the way of implementation. There are quite a few statements of where reform is needed and how it should be focused. These include the Whittaker Committee's *Inquiry into the Penal System*, published in 1985; the *Management of Offenders* document produced by the Department of Justice in 1994; the Oireachtas Sub-Committee on Crime and Punishment's report on *Alternatives to Fines and the Use of Prison* in 2000; the National Economic and Social Forum's report on the *Re-integration of Prisoners* in 2002; and the reports of the National Crime Forum and the Expert Group on the Probation and Welfare Service. Reading these publications over the years, one is struck by how often the same recommendations are made and then re-made. In essence what is being called for is a re-balancing of the penal system, away from prison and towards community sanctions and measures. There is also a clear recognition of the fallacy that the answer to prison overcrowding lies in the provision of more spaces.

I'd like to set out four simple steps that could be taken to reduce prisoner numbers, and then to make one broad policy recommendation. First, the steps:

1. Increase the standard rate of remission from 25% to 33% for all offenders serving fixed sentences.

2. Introduce a structured system of parole with defined eligibility periods. For example, automatic release after serving half the sentence for first time offenders who don't pose a demonstrable risk; and giving the parole board the power to order release except in exceptional circumstances. (At present all early release decisions are at the discretion of the Minister; the parole board simply advises.)
3. Allow weekend and evening prison, so that suitable offenders can remain in employment, compensate their victims, and retain responsibility for their families.
4. Draw up waiting lists for offenders who do not pose an immediate threat; they start their sentence when a space becomes available for them.

These are pragmatic suggestions. Each of them has a precedent in one or more countries and we can return to them in the discussion.

### **Broad Policy Recommendation**

As we have heard from Professors McNeill and Coyle, Scotland wants to reduce its prison population and so does England. This desire exists against a background of swelling prison numbers and a laudable determination to provide accommodation of a decent standard. While the rate of imprisonment is far lower in Ireland than in Britain, the principle of the minimal use of custody applies with equal force. In this regard, I'll reiterate a suggestion I have made on a number of previous occasions about how to strike a balance between the desire to expand and the need to contract. It can be put extremely simply: for every three new prison cells constructed, four old ones are taken entirely out of commission. This would serve the important purpose of establishing a firm link between new buildings and an overall policy of minimising the use of custody. The emphasis would be on fewer but better cells. This is a low-risk approach because if it proved unsuccessful it would be easy to reverse, and in the meantime the financial savings could be put to good use in those communities that are struggling to cope with disproportionate numbers of released prisoners. It is along the lines of the 'Justice Reinvestment' idea in the United States. Such a strategy would put prison in its place.

While necessary in some cases, prison is hugely expensive and inherently harmful. This creates a pressing need to demonstrate why expansion should take place and on what scale. At a time when savings in expenditure are imperative, my suggestion about how to improve the quality of accommodation while simultaneously reducing the scale of imprisonment must carry at least a modicum of appeal. What is most disturbing about the Irish prison system is not its size (by any measure it is small), or its lack of resources (prisons have received unprecedented levels of support from the taxpayer in recent years). What is disturbing is the absence of any concerted effort to follow where the evidence leads and to do what we know must be done.

On this theme, and to bring my comments to a close, let me quote from the Norwegian thinker Thomas Mathiesen, who has made the case for declaring a permanent international moratorium on prison building. Although particularly concerned with the situation in Scandinavian countries, Mathiesen's general arguments against penal expansionism also apply to Ireland. His view is that:

*Building is often seen as a technical question of architecture construction and short-term trends in inmate population, but the question is essentially political. Politics is a question of deciding priorities of values. Therefore the issue of prison-building is a question of deciding priorities of values. Is this the way we want to treat fellow human beings? Is this how we*

*want to meet the crime problem? The arguments favour a policy of shrinking the prison system by shortening sentences and increasing turnover in the system. Such a policy should be commenced immediately.*

This evening's conference with its theme of 'Re-Imagining the Prison' will hopefully contribute to the debate about what Mathiesen calls "the priority of values" that would best govern Ireland's response to crime at the beginning of the 21<sup>st</sup> century. A final comment, just to reiterate what Andrew and Fergus have shown: We can do this. It lies within our control. It's a question of making different choices.

Thank you very much.

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