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Submission to the Sub Committee on Penal Reform

Personal details

I have been a lecturer in Sociology for the past 30 something years in University College Cork and have lectured and researched on the issue of crime over this period. I am the author of many articles and the first sociology text on crime in Ireland published by Cork University Press in 1996 and currently being revised. A full research profile can be found at http://publish.ucc.ie/researchprofiles/A024/cmccullagh

In the 1980s I produced a report along with Prof. Powell for the Youth Foundation on alternative ways of dealing with young offenders. I was also on the board of the Cork Auto Crime Diversion project for ten years.

Submission

1. For me a key consideration is what this committee expects to find that no other one has? For a start it is probably asking the wrong question. What is there we don't know about penal reform in Ireland. The issue has been in the public domain since at least the 1970s. It began with a report from a group chaired by Sean MacBride and – if memory serves me Joe Costello was a member and the Department of Justice branded it the work of subversives. Continue on through the 1980s with the report of the Bishops Committee on Social Welfare and the first official investigation of the prison system, the Whitaker Committee. Follow on through the 1990s and into this century and there has been no shortage of reports and proposals for reform, a number of them produced by Committees of the Dail.

   Where do we end up? With the letter from the Chaplains of Mountjoy Prison system on the appalling state of the prison and yet another set of well worked out proposals, this time from Peter Mc Verry.

   These share two things in common. One is that they all advocate a reduction in the prison population and see alternatives to custody as the means through which this can be achieved. The second thing is that they have all largely been ignored and have failed to have significant impact on how the penal system operates. Despite all of the reports and suggestions the prison population has risen fairly consistently and it would appear inexorably since the 1970s.

   So why has there been such a level of failure and what can this committee do that the others have failed to achieve? The issue is not a shortage of ideas and information, any basic text on prison reform will tell you how to do it. The issue is the lack of political will to change the system and the fear of tabloid coverage and talk show fascism if radical proposals are made.

2. This is not to say that there haven't been a plethora of projects set up with some, generally vaguely stated, aim of diverting from prison, reducing offending or tackling drug use. Indeed the claim to achieve these has become a necessary part of any proposal to provide recreational resources in deprived and not so deprived communities. Few of these proposals have been systematically evaluated in terms of their effect on offending but they have added important facilities to many areas. The overall impact of such alternatives is what criminologists characterize – with a certain lack of verbal felicity – as bifurcation. This is where the prison population increases at the same time as the number of people involved in alternatives to custody also increases. It is one of the classic ironies of social control. The attempt to reduce the prison population has had little impact on the numbers in prison but it has increased the number involved in alternatives to prison. It is also known as "widening the net".

   We now know a fair amount about how this happens.

   Traditional models of diversion have looked at the role of the courts and their sentencing strategies and said that if we changed these we could reduce the prison population. What they ignored is the fact that when such alternatives are offered the police may be more willing to prosecute minor offenders (so called soft end offenders)– that previously they would have released. The Gardaí, for example, charge less than half of the number they arrest so they have flexibility. They may put people into the system because of a belief that access to such projects would do them some "good".

   There is also the entirely human thing that many projects find it easier to work with "soft end" offenders. They tend to be more pliable and hold out more likelihood of success. So-called "hard end" offenders are more challenging and difficult and success can be harder and less immediate. Some studies suggest that the impact of non-custodial intervention on their criminal careers is not immediate; they may continue to be involved in crime. But the crime can be of the more minor variety and such criminal careers peter out rather than end with a satisfying and readily documented finality.

   So the key criterion for evaluating the utility of any alternative to custody has to be its success in targeting "hard end" offenders. Setting up projects to deal with public order offences is a waste of time and money as many such offenders are not repeat ones and those that are will come to police attention for more serious offences. Setting up projects to deal with those involved in serious property crime is more useful. The situation in relation to drugs is more complex.

   We also need to assess the value of such projects not just on an individual basis but also in terms of the impact that they have on the overall size of the prison population. Local and contextual factors are important in the

success or failure of individual projects but the overall success of a policy of alternatives to custody has to be a reduction in prison numbers.

3. A factor that must also be considered here is that part of the appeal of alternatives to custody is that they are supposed to be cheaper than prison. This is probably not true. The average cost of a prisoner is high but the marginal cost of putting another person in prison isn't quite that significant. The manner in which the apparent cheapness of such projects has been guaranteed is through the use of an "arms length" strategy by the Department of Justice. This involves funding local projects but running them through voluntary committees. These may be useful in involving communities but they raise the usual questions of who in communities gets involved and they seldom have young people on them. They also mean that staff have no career structure or career progression or indeed the kind of career security that is necessary to do the kind of work that they do. That fact that workers in such projects invest the level of energy and commitment that they do is a tribute to their idealism but the level of staff burnout and turnover is high. If we want such people to work with "hard end" offenders we have to reward them appropriately.

4. A final consideration in this short submission is the wider question of how prison systems change. Three factors are important. One is when prisoners themselves revolt against prison conditions and then something has to be done. The second is when the courts start imprisoning middle class offenders, a factor of some significance in the development of open prisons and other alternatives in United States. This is however unlikely here as the call for the use of imprisonment with corporate criminals is as old as the call for the reform of the prison system. There may be a few tokenistic prosecutions but don't expect a significant increase in prisoners in Mountjoy with Dublin 4 as their address in the near future.

   The third factor is probably the key one. Some prison reform in other jurisdictions has occurred when the judiciary has closed prisons as a result of human rights abuse, overcrowding and ineffectiveness. In many cases this has had little impact on crime levels but it has produced imaginative solutions, often community based. The area of juvenile justice is a case in point.

   It is also one of the least observed but most significant facts about the decline in crime in New York that contrary to public and media perceptions it has been accompanied by a decline in incarceration, a decline made possible by the development of imaginative alternatives.

   So I would suggest that the most concrete thing that the committee can do is to call for the immediate closure of Mountjoy Prison. Though I suppose you could be liberal about it ands give them a year to do it. Remember if Mountjoy was a hospital and had the same record of failure

to “cure” people and where patients left with more illnesses than they went in with, it would have been closed long ago.

But then Mountjoy is not unique. The first prison in the modern sense of the term was set up in the United States in 1776 and was judged a failure within a decade of this. The record of the curative impact of prison hasn’t increased very much since then.