

PUTTING PRISON IN ITS PLACE

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“In order that any punishment should not be an act of violence committed by one person or many against a private citizen it is essential that it should be public, prompt, necessary, the minimum possible under the circumstances, proportionate to the crimes and established by law.”

(Cesare Beccaria, *On Crimes and Punishment*, 1764)

My opening quotation captures the essence of Enlightenment thought on the administration of justice. It remains as important a guiding principle today as when it was written 240 years ago. When we narrow the focus to the most severe sanction available to the state, namely imprisonment, the imperatives of necessity, parsimony and proportionality take on even greater urgency. This means that there must be unambiguous and overwhelming arguments in favour of any expansion of a country's prison system.

It is difficult to be precise about the number of additional spaces that are planned. The November 2004 *Implementation and Progress Report* for the Department of Justice, Equality and Law Reform states that up to “800 additional new places” will be provided through the replacement of Mountjoy Prison in Dublin and Fort Mitchel in Cork. This would potentially bring the total number of prisoners to around 4,000. However some media reports have suggested that a future with 4,500 prisoners is envisaged. This would include new cellblocks at other sites.

Despite some inconsistency in the estimates, what is not in dispute is that significant expansion is thought necessary. This is one of the driving forces behind the decision to establish a large new prison at Thornton Hall. I will return briefly towards the end of this talk to the vexed question of the Thornton Hall prison plan.

In the time allocated to me I would hope to achieve the following:

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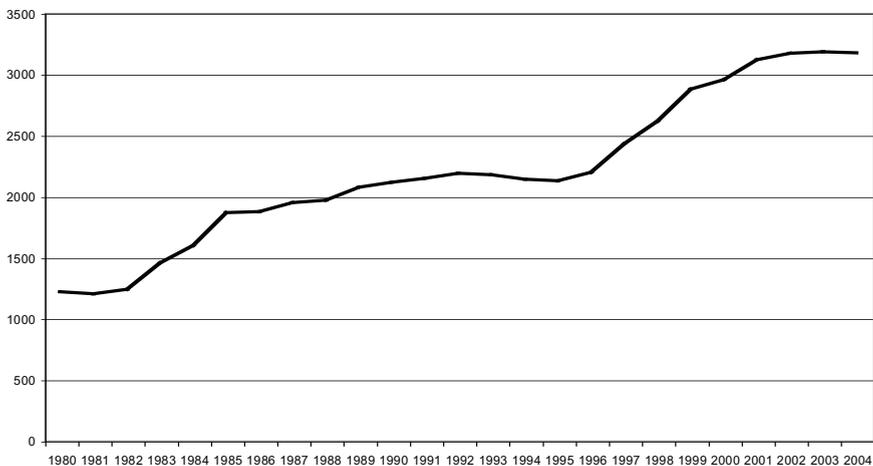
- Examine how the number of people serving prison sentences has changed over the past decade.
- Investigate whether more people are being sent to prison now than previously.
- Suggest a range of alternatives to prison building.
- Identify some implications for the design of Thornton Hall.
- Show how to link the building programme with penal contraction. I have a proposal to make about how we can build new prisons while at the same time slimming down the overall number of prisoners.

ARE MORE PEOPLE SERVING PRISON SENTENCES?

The first question to be addressed is how much do we use prison and has our tolerance for it grown? That the average daily number of prisoners has increased is beyond dispute. The graph shows that in broad terms the numbers in prison increased by 1,000 between 1981 and 1991 and by another 1,000 between 1991 and 2001, since when the line has flattened out.

But what does this trend mean? The most obvious answer is

**Number of Prisoners,
1980 to 2004**



that it reflects an increase in the number of people sentenced to terms of imprisonment. Surprising as it may seem this does not appear to be the case.

A major gap becomes immediately apparent when one begins a more detailed analysis. This is the period 1995 to 2000 where no detailed prison statistics were published. This was an interesting time in Irish criminal justice because it marked an increase in the prison population that coincided with a steep fall in recorded indictable crime.

Accepting that a comprehensive overview will not be possible let us look initially at the number of men, women and children in custody on an average day over the past three years compared with a decade earlier. Even this picture is pieced together from fragments. Some data are from published reports, others from internal Department of Justice documents, others again resulted from specific enquiries. This is far from ideal but it is the best that can be done and is enough to sketch a broad outline with a fair degree of confidence. This confirms the pattern shown in the graph of a seemingly relentless rise. In 2004 there were around 50 per cent more prisoners than in 1994.

Daily average prisoner population

	Total
1992	2185
1993	2171
1994	2133
2002	3165
2003	3176
2004	3169

The expansion plans may be premised on the notion that if this growth rate continues we will require 50 per cent more spaces over the next 10 years, bringing the total population to 4,500. This seems almost self-evident. However, as I will show, a simple linear extrapolation of this kind is fraught with danger.

Not all of those in prison were serving sentences. Some were remanded in custody awaiting trial or sentence. This group has particular requirements and its size is influenced by different factors to those that determine the numbers behind bars serving sentences. Prisoners on remand should be held apart from sentenced prisoners and, at the very least, enumerated independently of them. Indeed many are innocent and their detention is an administrative measure rather than a punishment. So we need to take them away. This narrows the gap between the two time periods.

Take away those on remand

	In prison	On remand	Total
1992	2185	-101	2084
1993	2171	-108	2063
1994	2133	-138	1995
2002	3165	-559	2606
2003	3176	-488	2688
2004	3169	-522	2647

There were a lot more remands in custody between 2002 and 2004 than there had been a decade earlier. Two things permitted this: the law was changed to widen the grounds on which bail could be denied following a referendum to amend the Constitution in 1996; and a large new institution (Cloverhill) was opened in 2000. The ostensible reason for tightening the bail laws was to reduce the harm caused by ‘bail bandits’, offenders who were thought to be taking advantage of a period at liberty before almost certain incarceration to offend frequently. It would be interesting to know if there is any evidence that the desired result has been achieved. Has the crime rate fallen due to accurate selective incapacitation? This is a piece of research that I would commend to the Department of Justice, Equality and Law Reform.

In recent years immigration-related detainees have become a feature of the Irish penal system. These are not convicted criminals

and should not be held in prison so we need to subtract them too. They tell us nothing about sentencing practice and how it might be changing. (Of course there are some non-nationals in custody because they have offended against the criminal law. They are not excluded from the general prison population for the purposes of this analysis.)

Take away those on immigration warrants

	In prison	On remand	Immigration	Total
1992	2185	-101	0	2084
1993	2171	-108	0	2063
1994	2133	-138	0	1995
2002	3165	-559	-40	2566
2003	3176	-488	-18	2670
2004	3169	-522	-18	2629

In the early 1990s many sentenced prisoners were granted temporary release (TR) and as such were excluded from official counts of the prison population. TR meant that prisoners were discharged before their sentence had expired, usually without supervision, to make space for new arrivals. In the 1970s, full TR was rarely resorted to; in the 1980s, it was granted, on average, less than 1,500 times per annum; but by the early 1990s, it was being granted on over 3,500 occasions each year. There was a poor relationship between the penalty imposed by the court and the time actually served, and there was considerable judicial and public frustration with what became known as the 'revolving door' syndrome. This problem has largely dissipated over the time frame that we are examining, in large part due to the first phases of the prison building programme.

Persons on TR need to be factored back in because although at liberty, legally speaking they are still serving prisoners. It can be seen that when they are taken into account the gap between the number of sentenced prisoners today and a decade ago shrinks even more.

The raw figures show a difference of 1,000 between 1994 and 2004. This falls to 300 when the necessary adjustments are made.

Add those on TR

	In prison	On remand	Immigration	TR	Total
1992	2185	-101	0	+470	2554
1993	2171	-108	0	+565	2628
1994	2133	-138	0	+570	2565
2002	3165	-559	-40	+205	2771
2003	3176	-488	-18	+293	2963
2004	3169	-522	-18	+249	2878

There is one further modification. The country's population has grown substantially over the time period we are considering so we need to take account of this. It would probably be more appropriate to express the number of prisoners per 1,000 crimes. Unfortunately the introduction of the new Garda computer system (PULSE) and the innovative way of presenting crime data that it ushered in make such a computation highly problematic. In any case the national population is usually used as a baseline to allow international comparisons so for our purposes it can be considered a valid measure.

Express number of sentenced prisoners per 100,000 population

	In prison	On remand	Immigration	TR	Total	Rate
1992	2185	-101	0	+470	2554	71.9
1993	2171	-108	0	+565	2628	73.5
1994	2133	-138	0	+570	2565	71.5
2002	3165	-559	-40	+205	2771	70.7
2003	3176	-488	-18	+293	2963	74.5
2004	3169	-522	-18	+249	2878	71.2

When this final refinement is made it can be seen that last year's

imprisonment rate of 71.2 is virtually identical to the rate in 1994, which stood at 71.5. This is a startling finding. It demonstrates that the pressure to expand does not appear to be coming from within the criminal justice system. In other words it is not the case that the volume of sentenced prisoners is such that a reconsideration of the adequacy of current levels of accommodation is required.

ARE WE SENDING MORE PEOPLE TO PRISON?

I have described as ‘startling’ the finding that the population of sentenced prisoners has hardly changed. But this is not the end of the matter. The next table shows the total number of committals and the committal rate per 100,000 population. It can be seen at a glance that there has been a sharp fall in the number of individuals committed to prison under sentence.

Committals to prison under sentence

	Number	Rate
1992	5857	164.8
1993	6585	184.2
1994	6866	191.5
2002	5036	128.6
2003	5314	133.6
2004	N/A	N/A

It is not immediately clear why there has been such a dramatic change in the number of committals: down by around one third between 1994 and 2002.

It may be that this is due in part to a reduction in the number of fine defaulters, who have traditionally accounted for a large number of those imprisoned each year. Perhaps the improved economic situation has made it easier for offenders to pay up? Unfortunately the data are not available to examine this as we do not know how many fine defaulters were jailed between 2002 and 2004.

However we do know a little about sentence lengths, and the proportion of prisoners who received less than three months was 38 per cent in 2003 compared with 48 per cent in 1994. This would include virtually all fine defaulters.

The fact that committals have fallen while the average population remains stable indicates that the average time served is rising. This is most likely a combination of the reduction in TR, an increase in sentence lengths and a rise in the number of serious offences coming before the courts.

Another possibility is that the reduction in committals reflects an increased share of minor offenders, who would otherwise receive short prison sentences, being managed in the community by the Probation and Welfare Service; that it is evidence of effective diversion. This idea is impossible to test as the probation statistics are mostly of historical interest. The most up to date annual report that I have been able to obtain relates to 1999. However for the time where figures are available for both prison and probation (1980 to 1999) there was never a year when probation measures (including community service) were used more frequently. It does not seem likely in other words that the decline in prison sentences has come about due to a surge of interest in probation among judges.

A final possibility is that the statistics are compiled differently and that as a result of the introduction of a national computerised prisoner records system in 2001 the committal figures for recent years are not directly comparable with earlier years. This seems unlikely as new technology is normally accompanied by more complete recording and if anything would be expected to show an increase where we have seen a fall.

ARE WE PLANNING FOR A CRISIS THAT HAS PASSED?

I have noted that the pressure for expansion cannot be coming from within. This is confirmed by the fact that the decision over the past two years to close institutions (e.g. Shanganagh Castle) and mothball others (e.g. Curragh, Fort Mitchel), did not have major consequences. A system with capacity problems could not have dared to make such a move. It is a curious situation when the number of

prison places seems to be coming under pressure to expand and contract simultaneously!

There is a further matter to consider. In 1994 recorded crime was heading for a peak and the prisons were crowded. However Department of Justice policy was to strive for an upper limit of between 2,200 and 2,300 on the number of offenders in custody. Today there is talk of designing a system for over 4,000. In the absence of detailed cost-benefit analyses this apparent enthusiasm to incarcerate is difficult to understand.

Part of the explanation must be that restraint in earlier years was motivated by an acute awareness of the financial implications of penal planning. These are substantial: to keep a dozen men in custody costs €1m each year. It is likely that a more buoyant economy has diminished the significance of such considerations.

It is important to stress at this point that no one would deny the need for humane conditions and to provide them will require a programme of modernisation. It is unacceptable that during long periods of lock-up some prisoners have no choice but to urinate and defecate into buckets. However, the emphasis should be on replacing, rather than supplementing, the number of available cells. The key question is what might be considered suitable alternative approaches to dealing with a combination of a modest crime problem and some overcrowded and unsanitary prisons?

WHAT TO DO, IF ANYTHING?

The level of imprisonment in Ireland is low by international standards. Rather than planning for expansion there are grounds for believing that it could be reduced without jeopardising public safety.

We have seen that the number of committals is falling. This trend could be accelerated if the following initiatives were taken seriously:

- View community penalties as the norm with prison as an occasional alternative. This will require a radical shift in perspective and a significant transfer of funding. It is time to return to the final report of the Expert Group on the Probation

and Welfare Service – published in 1999 – and implement its recommendations.

- Require judges to consider and rule out all other options before imposing a prison sentence and to give a written reason justifying prison when it is imposed. Such an approach has been recommended by the Law Reform Commission in the case of minor offences.

Reducing the stock of sentenced prisoners is probably easier than cutting off the flow into prisons. There are lots of ways to stabilise and then reduce the numbers behind bars. In essence this involves keeping prisoners in custody no longer than is necessary to satisfy the need for retribution and deterrence. This could involve measures such as:

- Increasing the standard rate of remission from 25 per cent to 33 per cent for all offenders serving fixed sentences.
- Introducing a structured system of parole with defined eligibility periods. For example: automatic release after serving half of the sentence for first-time offenders who do not pose a demonstrable risk. Giving the parole board the power to order release save for exceptional circumstances.
- Weekend and evening prison so that suitable offenders can remain in employment, compensate their victims and retain responsibility for their families.
- Waiting lists for offenders who do not pose an immediate threat.
- Early release with electronic monitoring.
- Periodic amnesties.
- Separate accommodation for persons on remand /immigration-related cases.

These are pragmatic and reasonable suggestions. Each of them has a precedent in one or more Western countries.

The final ingredient is to make a return to prison less likely. The entire sentence should be seen as an opportunity to prepare the

individual for release. This will necessitate meaningful sentence management and adequate treatment during the period of custody. The 2002 report from the National Economic and Social Forum on prisoner reintegration was a step in the right direction in this regard.

An approach along the lines I have outlined would fit neatly with the Council of Europe's recommendation on what it terms 'prison population inflation'. This spells out clearly the need for restraint in the use of custody. The principles behind this recommendation are that:

1. Deprivation of liberty should be regarded as a sanction of last resort and should therefore be provided for only where the seriousness of the offence would make any other response clearly inadequate.
2. The extension of the prison estate should be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.
3. Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; judges should be prompted to use them as widely as possible.
4. In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of the main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns, and existing sentencing practices.

It is difficult to argue with any of these four propositions. If taken seriously they have major implications for the scale of any

prison building programme. They point towards the conclusion that rather than aiming for a prison population of between 4,000 and 4,500 it would seem reasonable to push the current level downwards.

What has the above to contribute to the current focus of controversy, namely the prison proposed for Thornton Hall? The excitement about the price paid per acre for the farmland where the prison is to be built has deflected attention from some more fundamental issues.

JUSTIFYING THORNTON HALL

If my analysis is correct it raises questions about the need for any new prison on expansionist grounds. As I have already indicated, no one would deny the need for humane conditions. There are a number of additional concerns.

Generally speaking prisons work best if they are small. A site as large as the one proposed – which could hold more than one in four of the state's prisoners – will not satisfy this key requirement. It has not yet been decided how many buildings will be constructed on the site or how many prisoners will be accommodated there, but the minimum estimate is 1,000. In a recent book, *The Future of Imprisonment*, Michael Tonry recommended a maximum prison size of 300; this even applied to the US with its current tally of over two million prisoners.

Large prisons need to be highly regimented and life within them has an assembly line quality. Individual needs can quickly become lost in the drive to meet institutional priorities. These are dehumanising places where security and order are difficult to maintain, vulnerable prisoners become isolated, and the slim chance of reform is further attenuated. To minimise the harms of confinement prisons must be modest in size.

Prisons work best if they are located close to prisoners' homes. While the ten miles to Thornton Hall from Dublin's city centre is no great distance if one owns a car it is another world for prisoners' families used to walking or catching a bus to the North Circular Road where Mountjoy prison is located. There will be few families within easy reach of the new site and it will be awkward to access

using public transport, at least in the short term. This is not good news for the maintenance of family and community ties. It is at odds with the government's stated intention to prevent further depletion of social capital.

The proposed development is too ambitious. Men, women, children serving sentences and on remand, and posing a wide range of risks of violence, self-harm and escape; all will be held on a single site. It has even been suggested that the Central Mental Hospital should be relocated to the same campus. This diversity may militate against effective sentence management. It is important to be clear about the likely composition of the population in the new prison. Different architectural and regime design features will be required for groups such as life sentence prisoners, young offenders, drug users, the mentally ill and those who attract the opprobrium of their peers because of their offence or their inability to cope. Clarity around such matters should precede any building work. When Mountjoy opened in 1850 the buildings were the physical expression of a clear philosophy of punishment. Similarly a clear vision of imprisonment should precede the first block being put in place in any new development.

Furthermore – and to sound a pessimistic, if realistic, note – it is almost certain not to succeed any more than what it replaces; except perhaps with regard to hygiene standards.

In a nutshell, then, the balance of the evidence would suggest that the new prison is at odds with the requirements of necessity, parsimony and proportionality that I outlined in my opening comments. In addition it reinforces the idea of prison as the centre of the penal system rather than challenging this view on the basis of economy, efficiency and effectiveness.

This is a lost opportunity. If as much time, energy, expertise and money went into designing crime prevention strategies and community-based punishments the criminal justice landscape would look completely different. Prison needs to be shifted from centre stage so that the potential of alternative approaches can be established.

Finally, given the long-running controversy about prison costs it is not self-evident that there will be any economies of scale.

CONCLUSION

So where do we go from here? It would be worthwhile considering the following five points as elements of any rational strategy:

1. Estimating the demand for additional prison places will require a careful examination of the operation of different elements of the criminal justice system, in particular trends in crime, prosecutions and sentencing. At present this is not possible.
2. Demographic shifts are important too. Given that offenders tend to be young and that the population is ageing it may be that just as universities expect to see enrolment fall over the coming years so too will prison populations drop. Such a possibility should be incorporated into any attempt to project future trends.
3. If predictive studies show that based on current practice the number of sentenced prisoners is likely to grow there are two options: expand the number of prison places *or* review current practice. The latter would involve cutting off the flow of individuals into custody as well as reducing the duration of their stay. It goes without saying that any such initiatives must not be allowed to compromise public safety.
4. It will be difficult to anticipate the demand for prison accommodation, and in particular the required size of the replacement institution for Mountjoy, until a full array of community sanctions and measures is in place and being utilised by the courts. Such a scenario is some way distant.
5. While necessary in some cases imprisonment is hugely expensive and inherently harmful. This creates a pressing need to demonstrate why expansion should take place and on what scale.

I have one proposal to make that might strike an effective balance between the desire to expand and the need to contract. It can be described simply. Surely it would be worthwhile considering the option that for every three new prison cells constructed four old ones would be 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 as if it proved demonstrably unsuccessful it would be easy to revise. In the meantime the financial savings could be put to good use in our hospitals and schools. Such a strategy would certainly put prison in its place.