

The New Republic



with
Derek Mooney

Nora and the last of the Summer whines

As the summer draws to a close we have seen this Government at both ends of the season try to take the initiative in the fight against crime. Their philosophy seems to be that you stop crime by creating more offences. The problem with this philosophy is two-fold. Not only is it wrong, it also does not work. I might be prepared to accept certain limits on existing civil liberties if I thought they would be effective, but in the case of the proposed Bail referendum I am convinced it will not.

A basic analysis of the increase in the number of crimes committed while on bail yields a simple conclusion. Like all crimes, the increase is due to our ever exploding drug problem. When you have a heroin or crack addiction that is costing £100-£200 per day you are hardly going to earn that money honestly. The fact that you are on bail awaiting trial for one offence is hardly likely to deter you from further crime when this habit has to be fed.

If this analysis is correct, then amending the Constitution will be an exam-

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ple of treating the symptoms, not the disease. If the Government want a simple way of dealing with the symptoms all they have to do is to delete the notion of concurrent sentencing. The imposition of consecutive sentences for separate offences will dispense with the "Might as well be hung for a sheep as a goat" syndrome. The only real defence for concurrent sentencing is that it encourages convicted offenders to confess to their other crimes and thereby improves the detection rate and reduces the number of unsolved crimes. The other area where this form of logic seems to hold sway is the Department of Social Welfare.

Detention

However, treating the disease is not as simple. Minister Owens would be better advised to seek greater resources for drug treatment centres and additional prison facilities. Given that her track record is poor in this area she should look at the possibility of inviting private companies to finance the building of places of detention which the State could lease and operate. Given her zeal for introducing new laws she should introduce legislation that will create the defence of *diminished capacity due to addiction*, where the offender would be sentenced to serve in a secure drug rehabilitation detention centre, until the court is satisfied that they are drug-clean.

So what does the Minister intend to do? She intends to introduce a form of preventive detention. Therefore, we put them in jail, because we do not yet have a remand centre. Of course the prisons are already overcrowded, so to admit these new remandees we must release, under the revolving door policy, other prisoners who if they did not go in with a drug problem, will certainly come out with one. In effect we will swap one problem case for another.

Ineffectual

At this point, dear reader, I must invite you to breathe slowly, put on your favourite CD and lie down in a darkened room. What I am about to say will not please you, and may cause considerable distress to those of a sensitive nature. Now I know many of you are not given to reading the speeches of Minister of State, Gay Mitchell, and in the rare cases where you do, you prefer them in their original German. However, in the course of his contribution

to the Dáil debate on crime, Gay Mitchell said a very intelligent thing on Law and Order. What Gay said was that we do not have a problem with Law in this country, what we have a problem with is Order. In many ways I agree with him. The problem lies in our ineffectual application of existing laws, not in the inadequacy of those laws.

Largely this is due to inadequate resourcing of the Prison and Probation Services and Gardaí. But it is also due to the absence of fear and respect. We cannot expect others to respect institutions of State that evidently the State is disrespectful of. The dilapidated and dishevelled condition of many our courts is testimony of this. The Court is the place where society collectively expresses its disapproval of certain actions and where the accused can face the consequences of those actions. However, as a visit to certain District Courts will show you, the actuality is different. We administer the Law in an array of disused school outhouses and converted sheds that cockroaches would refuse to live in.

Referendum

Similarly, fear is absent from the manner in which we deal with crime. I do not advocate public floggings or prison officer exchange programmes with Iraq. But I do believe that the fear of being caught and punished is no longer an effective element of criminal justice system. While being imprisoned is a punishment, it is not a deterrent because it is not a likely consequence of committing a crime. The benefits of criminal activity far outweigh the possible risks of getting caught. This applies not just to working class crimes like car theft, house breaking and drug dealing, but also to white collar crimes like fraud and embezzlement.

The debate on the Bail referendum may prove to be an interesting academic exercise, but I do not believe it will contribute to any meaningful fall in the crime statistics. It may buy the Minister some time and will certainly give the impression of a great deal of work being done. But in reality it is nothing more than an exercise of the politics of the poor mouth, or An Béal Bocht.

Nora: not batty, apparently.

