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Extract from speech by **Kit Chivers**,
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There is a worldwide problem – it is not just a problem for Northern Ireland – of a rising prison population. Why do we have a rising prison population? Is it because crime levels are rising? On the contrary, overall crime levels are

falling, but we are still taking more people into prison and keeping many of them there for longer. This is extremely expensive (£86,000 per prisoner per year in Northern Ireland) and, on the whole, not terribly productive.

As Anne Owers has pointed out, for many of those whom we are taking into custody criminality is only one aspect of their problematic behaviour. These are people – mainly but not only young men – that the rest of society regards as ‘too difficult’ for one reason or another. The reasons typically include: anger based on early trauma; attention deficit; low educational attainment (in many cases, absence of *any* educational attainment); and an inability to empathise or form social relationships; all of the above compounded by the misuse of alcohol and other substances. These are the people who become our persistent offenders.

The problem is that the number of people who fall into the ‘too difficult’ category is rising, and too often we do not know what to do with them until they eventually commit a sufficiently serious offence and we can put them in prison. If we carry on down the track of relying on the justice system and imprisonment to deal with this trend there is no limit to the expansion of the prison estate we are going to need.

Anyone who thinks about it can see that the justice system cannot do it all, and that we need to put additional resources into mental health management and preventive or diversionary measures for children and young people instead. Initiatives like Sure Start are costly, but it has been estimated that every young person you can divert away from a career of crime saves the State on average £160,000. The most serious criminals will cost the public purse as much as £5 million each over their lifetimes, and even that pales into insignificance compared to the grief caused by their crimes.

The trouble is that such measures are easily characterised as being ‘soft on crime’. The public quite likes a punitive approach. I attended a conference last month at which the Lord Chief Justice



of England and Wales asked, “Is it ethical to punish?” The answer I think is that it is ethical to punish, but it is not ethical to be punitive.

Society needs to be able to take corrective measures when someone is making things intolerable for others, and we convey a message to people that their behaviour is unacceptable both by telling them so and by imposing sanctions.

I am, as the world knows, a confirmed utilitarian. I look at things and ask, “Are they useful?” Punishment, however, cannot just be a matter of usefulness. You cannot get away from the fact that there is a sense of justice – a sense of putting the world back into balance – about making sure that wrongdoers meet their just deserts.

When I say it is not ethical to be punitive, I mean that we are never punishing for the sake of it. We derive no pleasure or benefit of any kind from punishing. We are always looking through the punishment to the purposes it is meant to serve: the message to the offender, the deterrent effect on others, the sense of justice done that will satisfy the victim and society at large, and the scope for reforming the individual and helping him or her not to offend again.

People sometimes criticise the way the justice system seems rather detached and clinical about offences. We punish by means of fines, community service or

loss of liberty, but we do not attempt to shame or humiliate offenders.

But there is a good reason for that. It is really hard to judge wickedness. Dangerousness does not equate to wickedness, as the media sometimes like to suggest. We tend to assume that everyone has free will and therefore they can be held accountable for their actions. But the thing that strikes you about many dangerous offenders, and, indeed, many young people, is how little control they have over their behaviour. We assume free will, but in practice many people’s freedom of action is extremely limited. A lot of what we aim to do with offenders is helping them to regain some degree of control over their lives.

So we need to distinguish between dangerousness and wickedness, and we need to separate out in our minds measures to protect the public and measures to punish the offender.

I am not saying, of course, that wickedness does not exist and that we are all the victims of circumstance. There is plenty of wickedness around. Wickedness is someone who is able-bodied and well able to earn a decent living extorting money out of old people by telling them their roof needs repairing when it doesn’t. Wickedness is keeping dogs for fighting; or using money people have deposited with you in trust as working capital to finance a completely different business. I am not so squeamish that I would object

to a bit of shame and humiliation in some of those cases!

As I have said, the criminal justice system cannot do everything for us. But people often have exaggerated expectations of it.

We have seen that it cannot check the rising number of ‘too difficult’ people in the population.

It cannot make us all ‘safe’: there are unrealistic expectations of public protection. The agencies of the CJS can help to make the streets safer, but a great deal is down to people themselves. Even with everyone’s best efforts there will still be tragic incidents from time to time, and experience shows that we cannot expect the public to be forgiving about them. We have to manage expectations.

It cannot solve all the problems of the past. The CJS has something to contribute, but it can only ever be a part of the solution. I think we need to look for new, more comprehensive approaches which bring together the CJS contribution with the work of *Healing through Remembering* and the work of the Victims Commissioner. I share some of the doubts the Chief Constable has expressed about the cost of Inquiries, but I do recognise that, as I said before, justice is not just about doing what is ‘useful’: sometimes it has to be done for its own sake.

And as Lord Scarman said, “You can’t have criminal justice without social justice”. A criminal justice system has to be based on basic fairness or it is nothing. And even then it can only be a part of the structures that underpin a fair and decent society. That is why we emphasised in our recent report that the problem of hate crime is one for society at large, not just for the criminal justice agencies.

Northern Ireland now faces big challenges.

It is not for me to comment on the politics of Sinn Fein’s movement towards accepting and working with the PSNI and the rest of the criminal justice system. But any list of current challenges would be incomplete without it. With Sinn Fein on the Policing Board, there will be scope for consolidating the progress that has been made; without them, it will be difficult to achieve the comprehensive support for policing across the community which the community itself needs.

Increasing inward migration is likely to bring new sources of organised crime: people trafficking and drug trading – things which up to now have been a relatively minor part of the crime problem in Northern Ireland. In the long run diversity is a strength to a community, but as our recent report on Hate Crime pointed out, the transition to diversity is fraught with problems.



In future, under devolution, the economic cost of crime is likely to bear on Northern Ireland more directly. At the same time there is going to be a financial squeeze for the justice system, and it will become imperative to find ways of delivering greater effectiveness in terms of law and order with static or diminishing resources.

We are going to need to think seriously about the balance between prevention and cure. We now have new legislation promised which will provide for greater safeguards in relation to violent and sexual offenders, and the MASRAM arrangements are steadily being improved.

But at some point the question will arise as to how much surveillance and pre-emptive, precautionary action is going to be tolerable? Human rights are likely to come under pressure as the technological ability to anticipate criminal behaviour increases.

There is going to be a premium on diversionary measures, as we have noted. People will need to be kept out of the formal justice system wherever possible, and new ways will need to be found of dealing with low-level offending quickly and inexpensively, without recourse to adversarial legal procedures.

When people do come into the system, we urgently need to speed up the delivery of justice.

However much we may try to hold down the prison population, we shall need significant new investment in custody facilities, not replacing like for like, but taking the opportunity to create a more diverse range of facilities to deal with women prisoners, low risk offenders and mentally disordered offenders, and we need well-run supervised accommodation to help manage offenders who are returned to the community.

Policing is going to have to be 'policing with the community', because police resources will no longer be sufficient to tackle the job in any other way. Having the good will and co-operation of the whole community will be not just desirable, but essential.

The justice system will need to fit in with the new structure of local Councils, whatever that turns out to be. CJI has recommended that the functions of Community Safety Partnerships and District Policing Partnerships should be pulled together and integrated into community planning under the auspices of the new Councils. But the RPA framework is not yet secure, and I have a serious concern that without early, binding decisions on the future structure the agencies are not going to be able to plan the transition effectively.

Northern Ireland is well-placed to address these issues. It will not be easy. But the things we need to do to improve the criminal justice system are not rocket science. It is often just a question of getting the simple things right: making sure files are fit for purpose; getting the agencies talking to each other; changing working practices and bringing them into line with best practice in other jurisdictions.

For the future, we have good people in the agencies and in the voluntary sector here, we have the expertise, we have the enthusiasm. I believe above all we have the shared values to enable Northern Ireland to buck the trend of punitive criminal justice elsewhere and to establish a new model, based around an evidence-based balance between sanctions, restorative procedures and therapeutic interventions, especially for young people.

The full text of the speech can be found on the website www.cjini.org under 'publications'