

Criminal Law Review

2016

Publication Review

Criminal Justice in Transition: The Northern Ireland Context

Anne-Marie McAlinden (ed.), Clare Dwyer (ed.)

Reviewed by Jonathan Doak

Criminal Justice in Transition is a collection of 17 essays exploring some of the key aspects of the changes to the criminal justice system which have been implemented since the Belfast Agreement in 1998. The essays examine a wide range of questions concerning, inter alia, the roles of truth-recovery, human rights, policing, the judiciary, prisons and probation. Notwithstanding the breadth and dynamism of the subject matter, the essays merge seamlessly together to present a sophisticated and critical analysis of the complex issues which have prevailed in criminal justice reform since the beginnings of the peace process.

The volume is organised into four parts. The first examines broader conceptual issues pertaining to the transitional context of the criminal justice system; the second explores the criminal process; the third explores a number of contemporary issues; while the fourth ponders some of the key questions pertaining to the future.

Four aims for the volume are set out by the editors in the first chapter. These are, "to locate the Northern Ireland experience of criminal justice in transition in a broader historical, social, political context"; to consider the "core aspects of policymaking and justice provision ... which are central to the process of post-conflict transition"; to "examine contemporary trends in criminal justice in Northern Ireland"; and to explore "the impact of devolution ... and the extent to which criminal justice ... continues to be shaped by the legacy of the conflict" (p.4). As the editors further note, there has been a general neglect of Northern Ireland in terms of international criminological and criminal justice debates. This is lamentable: as the essays proceed to show, there has been considerable innovation across a number of highly contested criminal justice domains. While law, policy and practice have not always kept afoot with such innovation, criminal justice reform arguably has the potential not only to reflect the values of transition, but may also assist in driving it forward.

Chapter 2, by Cheryl Lawther, explores the thorny issue of truth recovery in the province. While many other aspects of criminal justice reform are apparently "settled"—at least for the moment—truth recovery and dealing with the past remain fraught with political difficulties. Lawther presents a lucid account of how previous efforts to deal holistically with the past have ended without political agreement. She proceeds to analyse the "piecemeal" approach, identifying four key themes: the limitations of "legal variants" of truth recovery; the meaning of accountability; the creation of victim hierarchies; and the capacity of victims and former combatants. She concludes that while the criminal justice system has played a role in dealing with aspects of the legacy of the conflict, its inherent limitations mean that it is ill-equipped to do so in a holistic fashion.

Human rights are the theme of Colin Harvey's chapter. As he notes in his introduction, there is something of a paradox insofar as human rights discourse has played a prominent role in the transition, yet by the same token "the tools to deliver more inclusive legal protection are still missing" (p.47). In a similar vein to Lawther, the crux of the argument in this chapter is that legalism and formalism have served to limit the practical implementation of human rights. In order to realise rights, Harvey contends that the focus needs to shift from legal compliance towards "behavioural / cultural / institutional change and transformation" (pp.61–62).

The fourth chapter, by former Human Rights Commissioner Brice Dickson, considers the agents of change in the Northern Ireland justice system. Noting that "[v]irtually every aspect of the system has undergone root and branch reform" (p.67), the chapter proceeds to outline the nature of certain embedded obstacles to reform and the ways in which these were removed over a period of time. Whilst political will and circumstance provided a useful context for moving forwards, the role of key individuals and leaders—sometimes beyond the media gaze—has also played an important role in removing these obstacles and propelling the transition.

"Governing through risk" is the central theme of Ch.5. Here, Clare Dwyer plugs a considerable gap in the literature by exploring the concept of risk in transitional societies both during and after the conflict, outlining how "the readjustment of the understanding and interpretation of risk in a society emerging from political violence can create a distinct criminal justice system" (p.100).

The role of institutions in the criminal justice process is the focus of the second part of the book. Chapter 6 sees John Topping consider the much contested subject of policing which seemingly dominated political debate until the St Andrew's Agreement of 2007. Although the "blueprint" for policing reform "has created one of the most overseen, accountable and human rights compliant police services anywhere in the world", Topping contends that "the normalisation of policing cannot ... be made where politics, terrorism and community resistances continue to dictate the police agenda" (p.125). Thus while the task of organisational change may appear to be complete, distinct challenges remain in "doing policing".

The following chapter turns to the equally thorny question of judicial appointments. Here, John Morison digests the role of a judge in a transitional context, paying particular attention to the role and experience of the Northern Ireland Judicial Appointments Commission. Drawing on two previous studies into the Northern Ireland judiciary, Morison presents a convincing argument that although the idea of merit has a certain innate attraction, it is essentially a social construct which is defined by small groups of elites and is, as such, devoid of any consensus in terms of its meaning or methods used to assess it. Instead, he suggests that "it is necessary to start thinking of the judiciary and the wider legal system as a *public resource*, and consider what the public might want or legitimately expect from the judiciary" (p.152).

The judicial theme continues in Ch.8 as Kieran McEvoy and Alex Schwartz explore "Audience, Performance and the Judicial Past". Drawing on previous fieldwork, the authors present a compelling insight into how judges saw their roles in "performing" for certain key "audiences" (these being parliament, the public and their peers) during the years of the conflict. The chapter is not, however, merely of historical interest since "one cannot

properly 'judge the judges' ... without a keen grasp of how they were shaped as legal actors by the previous years of violence and how they in turn helped shape understandings of the rule of law which have outlasted the violence". (p.158)

In particular, questions around judicial performance have a direct bearing as to how the vexed question of dealing with the past might be addressed in the future.

The next four chapters of the volume explore a number of post-conviction issues. Phil Scraton traces the impact of the transition upon Northern Ireland's prisons, noting the challenges that prevailed in effecting much-needed institutional and organisational change. In the following chapter Clare Dwyer picks up on the theme of resettlement and reintegration, drawing on the Northern Ireland experience of prisoner self-help groups for "politically motivated" ex-prisoners. As she suggests, there are valuable lessons here that might be applied beyond the province. In Ch.11 which examines probation and community sanctions, Nicola Carr draws extensively upon primary research exploring probation practice during the troubles and considers the challenges that lie ahead for the probation service in terms of building legitimacy. Attention then turns to past miscarriages of justice. Marny Requa explores the role of the Criminal Cases Review Commission and the Northern Ireland courts in addressing cases from the period of the conflict. Citing an "acknowledgement gap" in which previous miscarriages of justice "are only exceptionally and partially recognised" (p.268), she argues that the acknowledgement of the nature and extent of conflict-era miscarriages of justice has been insufficient. In this sense, the "ordinary" criminal justice system is unable to address issues arising from this period in history.

The third section of the book which comprises four chapters considers some specific contemporary issues with which law and policymakers, and indeed criminologists, continue to grapple. Chapter 13 sees Linda Moore and Azrini Wahidin consider the role of women in the Northern Ireland transition. As in some of the previous chapters, the authors integrate previous fieldwork to support their argument that the transition has done little to address the fundamental breaches of women's rights and that the gendered nature of the criminal process and the impact of incarceration on women have largely remained untouched by the transition. Next, Deena Haydon and Siobhán McAlister contemplate the changes to youth justice during the period of transition, particularly in the areas of early intervention, restorative justice and imprisonment. While conceding that the youth justice system as a whole may have improved as a result of the reforms, the authors express their concern about certain areas of practice, the apparent "demonisation" of young people (p.313), the failure to use custody only as a measure of last resort and the lack of enforceability of international human rights norms, including the International Convention on the Rights of the Child.

In Ch.15, Anne-Marie McAlinden analyses contemporary policies in relation to sexual and violent crime within the broader context of national and international debates on crime and justice. Although many Northern Irish policies have mirrored those introduced in England and Wales, McAlinden contends that the legacy of the conflict—including the presence of paramilitaries, the parochial nature of Northern Irish society and the geographical border—have had an ongoing influence on shaping policy responses in this area.

Chapter 16 reflects on the evolution of restorative justice in Northern Ireland. Both community-based, informal approaches to restorative justice alongside formal, state-led

approaches have operated in parallel in the province for some time. Anna Eriksson argues that restorative justice holds certain "bridging capabilities" which have the potential to act as a valuable tool in propelling the transition (p.342). Restorative justice values and practices may achieve this through reducing "social, cultural, historical and political distance" *within* communities, as well as *between* the community and the state (pp.350–352, emphasis added).

The fourth part of the book draws together the main themes from the collection in a closing chapter by the editors. Here, they state that the book has "attempted to go beyond the surface and populist views of criminal justice in Northern Ireland to explore key trends in criminal justice ... examining the core ideologies and working practices which have shaped it" (pp.365–366). The collection, they point out, was not intended to constitute a text which would provide an easy frame of reference by which straightforward comparisons could be made with the UK, or elsewhere. Yet it stands as a superb account in its own right, with its value lying in the highly cogent, lucid and sophisticated analysis that each of the authors brings to their contribution.

While—for good reasons—the world's attention may not be as focused on Northern Ireland as it has been in years gone by, this volume will be of interest not only to lawyers and criminologists with an interest in Northern Ireland, but also to scholars who seek to gain a more nuanced understanding of the creative potential—as well as complex challenges—which can beset criminal justice reform in an era of transition.

Having grown up in the province and spent the early part of my academic career there in the formative years of the peace process, I was always struck by the dynamism and passion of those working for change and striving for solutions in a criminal justice system which had been scarred by decades of political turmoil and upheaval. As the transitional process continues apace, it is good to see that this same passion for innovation and change—coupled with a healthy dose of astute analytical rigour—is shared by the authors of this superb collection.

Jonathan Doak

Nottingham Trent University

Crim. L.R. 2016, 9, 690-693