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Crime and Criminal Justice in Northern Ireland: Conflict, Transition and the Legacy of the Past

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‘Bomb Kills Officer in Northern Ireland’.\(^1\)
‘Northern Ireland Prison Officer Shot Dead in Motor Way Ambush’.\(^2\)
‘Ulster Flag Protests: Police Injured in Petrol Bomb Attacks’.\(^3\)
‘IRA Terror Suspects Lose Right to Immunity’.'\(^4\)
‘UK Must Pay for Troubles Killings Investigations Says European Official’.\(^5\)
‘Bloody Sunday Investigation Faces Judicial Review’.\(^6\)
‘Mairia Says Exiled IRA Sex Abusers in “Double Figures” Now’.\(^7\)
‘9 Face IRA Charges in Both Parts of Ireland’.\(^8\)
‘On the Runs: Record-Keeping of Cases Criticised’ \(^9\)
‘Legal Bid over Probe into Alleged Security Forces Collusion in 1992 UVF Murders’.\(^10\)

Introduction

Consider the above selection of recent media headlines from national and international outlets related to crime or justice provision in Northern Ireland. These headlines demonstrate that crime and criminal justice issues stemming from the legacy of violent and political conflict continue to command international media and political attention and dominate legal and public discourses on Northern

\(^3\) The Telegraph, 12 January 2013.
\(^6\) BBC News, 10 November 2014.
\(^10\) Belfast Telegraph, 23 November 2014.
Ireland. More pertinently, they also underline how issues related to past abuses, stemming from the ‘conflict’ or what are euphemistically known as the ‘Troubles’, are inextricably bound up with issues of national identity—both in terms of how Northern Ireland ‘imagines itself’ (Anderson 1983) as a society transitioning from conflict as well as how it is perceived on the world stage.

The purpose of this edited volume is to locate the Northern Ireland experience of criminal justice in transition in a broader historical, social, political, cultural and comparative context. The book considers the core aspects of policymaking and justice provision in Northern Ireland which are central to the process of post-conflict transition (McEvoy and Newburn 2003). This includes, inter alia, reform of policing, judicial decision-making, correctional services such as probation and prisons and mechanisms for correcting error. It will also examine contemporary trends in criminal justice in Northern Ireland as related to various dimensions of crime such as female offenders, young offenders, sexual and violent offenders, and restorative justice, and how these relate to or differ from developments elsewhere. Finally, the book seeks to examine the impact of devolution and the transitional context in this regard and the extent to which criminal justice in Northern Ireland continues to be shaped by the legacy of the conflict.

Until relatively recently, academic discourses on criminology and criminal justice pertaining to Northern Ireland could be said to have suffered from two key deficits. The first is the historical and indeed contemporary focus on England and Wales as the dominant paradigm within ‘British’ criminological discourses with scant mention of the other jurisdictions which constitute the United Kingdom—namely Scotland and Northern Ireland. The second is that whatever Northern Ireland focused scholarship there was, has tended historically towards positivist uncritical accounts. As McEvoy and Ellison (2003) note, these discourses took two distinct forms: those directly engaged in the study of political violence and terrorism (for example, Wilkinson 1986; Wright 1991; Clutterbuck 1994); and those concerned with ‘ordinary crime’ (for example, Brewer et al 1997; O’Mahony et al 2000). In addressing both of these shortfalls, this collection will mark out new territory in the critical conceptualisation of criminal justice in societies undergoing transition from political violence.

In relation to the first aspect, there has been a general neglect of Northern Ireland within national and international debates on criminology and criminal justice. International comparative criminal justice which makes reference to the United Kingdom is invariably England and Wales focused, with the other jurisdictions in the United Kingdom simply ‘tacked on’ at best or at worst overlooked completely. As Garland (1999: xiv) notes ‘the UK’ usually ‘really means England and Wales’. Even within British texts, the focus is predominantly on England and Wales, with little or no mention of Scotland and Northern Ireland. Croall et al (2010: 6), who

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11 This is a contested term for the civil/political unrest that occurred from the late 1960s to the mid-1990s. This period has also been referred to locally as the ‘Troubles’. Both terms are used interchangeably throughout this volume to refer to this period.
have sought to counter this tendency with respect to Scotland, identify this as ‘an unjustifiable and curious omission’ given the often marked differences in regional approaches.

In this respect, the book will represent a critical theoretical and empirical examination of key aspects of crime and criminal justice in contemporary Northern Ireland, which are distinct as well as those which have resonance and origins elsewhere. Indeed, the book will also consider the extent to which crime and criminal justice issues in Northern Ireland are being affected by the broader political process of devolution. In particular, human rights and transitional justice frameworks are central to the process of rebuilding the structures and mechanisms of state justice and in moving on from the legacy of an abusive past (Teitel 2000; Elster 2004; Morison et al 2007).

More broadly, a body of work on comparative penal reform (for example, Newburn and Sparks 2004; Nelken 2007; Reichel 2008) has generally highlighted the spread of penal policies which appear to have originated in the United States (for example, Christie 2000; Garland 2001). Within this comparative context, this book will provide an insight into the wider dynamics of ‘policy transfer’ (Newburn 2002; Jones and Newburn 2006), globalisation, transnationalism and localism. The term ‘policy transfer’ is generally used to describe the convergence of penal policies between neo-liberal societies such as the United States and the United Kingdom. Such societies are generally characterised by social exclusion of deviants, incapacitation as the dominant penal ideology and high rates of imprisonment (Wacquant 2001). The policy transfer thesis, however, is not ‘one-dimensional’ but is instead subject to important socio-cultural differences in the way in which policies are reformulated and reconfigured within national and localised cultures (Muncie 2005; Crawford 2006). The chapters also examine whether there is evidence of ‘diffusion, differentiation and resistance’ (Newburn 2010), within a variety of criminal justice settings in Northern Ireland as one of the jurisdictions which constitute the United Kingdom.

In relation to the second dimension, as McEvoy and Ellison (2003) have pointed out, older criminological scholarship in Northern Ireland has been generally positivist or administrative in nature being centrally concerned with normative uncritical accounts of the functions of the different arms of criminal justice without much upsetting the overall balance of the system. Indeed, historically, there has been a fundamental disconnect between political conflict and critical criminological discourses, with Jamieson (1998: 480) noting that criminology has been ‘largely aloof and unmoved’ by debates concerning political conflict and its resolution. More recently, however, a growing body of Northern Irish scholars have drawn out the utility and significance of critical criminology as a template for assessing the complex role of the criminal justice process during the conflict. For some such scholars, the study of criminology and criminal justice emerged as a ‘political project’—in effect ‘a guide to criminological praxis during the process of conflict resolution’ (McEvoy and Ellison 2003: 45).

As these authors have also noted, the establishment of the Institute of Criminology and Criminal Justice (ICCJ) at Queen’s University Belfast in 1995 (now
located within the School of Law) has facilitated the development of a cohesive criminological and criminal justice research culture and the building of a composite picture about crime and criminal justice issues (McEvoy and Ellison 2003). Prior to this date, while there were a number of academics within Northern Ireland’s two universities with an interest in criminological and criminal justice issues and a few more within NGOs, the creation of the ICCJ provided a central disciplinary focus and a resource for local policymaking (McEvoy and Ellison 2003). The emergence of a distinct Northern Irish Criminology, initially related to regional, political and policy developments and the needs of local justice agencies, has simultaneously produced world leading research by some of the most renowned national and international scholars in the field.

The book in this sense also offers an exposition of the breadth of Northern Irish and related scholarship across the key contested domains of criminal justice. The individual chapters offer a snapshot of the cutting edge of critical thinking in criminal justice practice and transitional justice contexts and represent an attempt to theorise change at the micro-level as well as the macro-level. Such a nuanced focus is central to an understanding of the governance of justice and security in general (Crawford 1999; Rose 2000; Garland 2001; Loader and Walker 2007). Using a range of settings and sites of crime from across the criminal justice sphere, collectively the chapters provide a blueprint for new trends and pathways that are beginning to emerge in societies undergoing significant change (McEvoy and McGregor 2008). It offers new ways of thinking about crime and criminal justice in a transitional context, chiefly by relating these issues to broader social and political issues in contemporary Northern Ireland as well as the United Kingdom as a whole. The book draws on comparative experiences in Canada, the United States, England and Wales, Scotland, the Republic of Ireland and elsewhere. It also situates that analysis within supranational and sub-national frameworks.

The remainder of this chapter will provide an overview of the historical, legal and policy contexts to the devolution of policing and justice in Northern Ireland as a society transitioning from political conflict. The structure of the chapter is as follows: the chapter begins with an examination of the Northern Ireland legal and criminal justice system as a constituent part of the United Kingdom and in particular the shared history of policy development with England and Wales. This is followed by the main part of the chapter which considers the core elements of the Northern Ireland conflict and transition in a criminal justice context. These include key themes from the literature on transitional justice and the role of criminal justice reform therein; a brief overview of the history of the conflict; the road to devolution including in particular landmark developments following the Belfast (Good Friday) Agreement (1998)12 such as the structural and policy reforms following the

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12 This is the name given to the ‘peace agreement’ reached following multi-party talks on Good Friday, 10 April 1998, in Belfast. It is variously termed the Good Friday Agreement, the Belfast Agreement, or the Peace Agreement, and the terms are used interchangeably by commentators as they are throughout this volume.
Crime and Criminal Justice in Northern Ireland

An Overview of Legal Systems and Traditions

The constituent legal systems of the United Kingdom—comprised of England and Wales, Scotland and Northern Ireland—have undergone significant change in recent decades. Changing political environments and the advent of recent ‘law and order’ rhetoric gave rise to a greater willingness to review the system (Garland 2004). In particular, the development of risk-based regulatory policies (Ericson and Haggerty 1997) across the United Kingdom has changed the governance of security and justice wherein criminal justice sanctions have become a regulatory tool (Shearing 2000; Loader and Walker 2007). However, while concerns about ‘risk’ and ‘governance’ may have dominated political and policymaking discourses on crime and justice within and across the United Kingdom, for varied reasons criminal justice policies have at times diverged or converged across the Union.

The United Kingdom has three separate legal and criminal justice systems; one each for England and Wales, Scotland, and Northern Ireland. This reflects its historical origins and the fact that both Scotland and Ireland, and later Northern Ireland, retained their own legal systems and traditions under the Acts of Union 1707 and 1801. Scotland had its own system of laws which was in existence before the union with England and Wales in the eighteenth century. The Act of Union of 1707 expressly allowed these to continue, and so Scotland retains many distinctions from the English system (see Gillespie 2013). Since the partition of Ireland in 1921, Northern Ireland’s legal system has remained broadly similar to that in England and Wales (Dickson 2013). However, Northern Ireland has some unusual features within the legal system, many of which relate to the political instability and violence which have existed since its establishment.

In brief, Northern Ireland has had a shared legal history and tradition with England and Wales where the legislative relationship between the jurisdictions emerges as a rather intricate one (McLaughlin 2005). The Government of Ireland Act 1920 partitioned Ireland, establishing six of the nine northern counties of Ulster as Northern Ireland within the United Kingdom from May 1921. Although

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13 England and Wales, although two separate countries within the UK (along with Scotland and Northern Ireland), have an integrated legal and criminal justice system. Therefore, both jurisdictions are usually discussed as a single entity in terms of criminal justice provision as they are throughout this book.

14 The Irish Free State was simultaneously established as a dominion of the British Commonwealth comprised of 26 of the 32 counties. In 1937, the creation of Ireland as a sovereign state replaced the 1922 constitution. In 1949, it secured full independence as the Republic of Ireland (see Tonge 2005).
sovereignty was retained with the UK Parliament, the Government of Ireland Act established a Parliament of Northern Ireland (based on the Stormont estate in Belfast and referred to as ‘Stormont’). This new parliament was given power to legislate over almost all aspects of Northern Ireland’s internal affairs (with the exception of conducting foreign affairs, armed forces, currency and coinage). The Stormont Parliament sat from 7 June 1921 to 30 March 1972, when it was suspended with the introduction of direct rule from the UK Parliament at Westminster in London (see Carmichael and Knox 2004).

As a result, criminal justice policies enacted for Northern Ireland have had a ‘consistent’ and ‘shared’ relationship with those adopted by the British Government but have also been modified to meet Northern Ireland’s ‘own strategic political needs’ (Pinkerton 1994: 29). More broadly, as Pinkerton (1994: 28) has argued, in many areas of social policy the step by step or ‘parity principle’ has held sway (see also Kelly 1990: 78). Where social policies were not enacted directly for Northern Ireland at the same time as England and Wales, reciprocal legislation was often enacted a short time afterwards. Under the period of direct rule between 1974 and 1999, following the first reintroduction of the Stormont Government in the aftermath of the Belfast (Good Friday) Agreement 1998, this ‘process of assimilation between the content of the law in Northern Ireland and that in England was, if anything, fortified’ (Dickson 2001: 8). Criminal justice policies, however, were rather different. The criminal justice process was perhaps the state’s key armory in the response to political violence and thus the mainstreaming of ‘exceptional’ aspects of criminal justice (for example, emergency laws, juryless courts, a heavily militarised police force, and a unique prison system) have left a profound impact on the shape and culture of the criminal justice system. At the same time, as noted above and as will be highlighted throughout this volume, Northern Ireland has also been influenced by policy developments elsewhere.

The exceptional aspects of the Northern Ireland criminal justice system as shaped by the legacy of the conflict also have to be considered alongside the complexities of contemporary UK politics, including devolution. As there is no unified criminal justice system, explaining the development of criminal justice policy across the United Kingdom is rather complex. However, what is evident is that in the last 15 years, the three separate criminal justice systems have experienced a series of key legislative and institutional reforms (Matthews and Young 2003; Croall et al 2010). England and Wales, for example, since the years of the ‘New Labour’ Government, has experienced an overhaul of the criminal justice system. In its eight years in government, New Labour passed over 50 Acts of Parliament relating to crime, disorder, policing, criminal justice and punishment (Emmerson and Frayne 2005: 7). This ‘hyper innovation’ (Moran 2003) is also evident in Northern Ireland where many of these measures, such as those relating to young offenders or sexual and violent crime, were simultaneously extended to Northern Ireland or subsequently enacted a short time afterwards. Driven by the ‘tough on crime’ rhetoric and a move to refocus the balance of the justice system towards victims of crime, justice reform remained a priority for the Coalition Government (Fitzgerald and Hale 2013). While political economy and resulting governing
strategies are commonly referred to as the underlying drivers of criminal justice developments (Cavadino and Dignan 2006; McAlinden 2012), there is no single narrative of criminal justice developments across the United Kingdom. Indeed, in relation to Northern Ireland, recent developments within criminal justice need to be set against broader debates about the interplay of political process, conflict, the rule of law and the role of transitional justice.

It is often claimed that the criminal justice system is central to the political and constitutional integrity of any state (Walker and Telford 2000: 53–55). While this is the case in most ‘settled’ societies, this statement has enhanced relevance for a divided society emerging from decades of violent and political conflict. Understanding the criminal justice agenda and policy divergence or convergence between Northern Ireland and the rest of the United Kingdom necessitates consideration of wider political ‘post-conflict’ objectives. As a divided society emerges from conflict, the transitional process is complex often calling for significant political, social and legal reforms. From the shadows of political violence, Northern Ireland is still undergoing transition some 20 years after the end of the conflict.15

As discussed throughout this volume, this transitional process has been spearheaded by significant political, institutional and legal reforms where transitional justice frameworks and new governance mechanisms are, for the most part, firmly established across Northern Ireland’s criminal justice landscape.

**The Northern Ireland Conflict and the Transitional Justice Context**

In order to fully understand the transitional framework of criminal justice in Northern Ireland, the devolution of policing and justice, and developments since, it is necessary to provide a brief overview of the core elements concerning the conflict and transition in a criminal justice context. In this vein, the remainder of this chapter deals with a number of key issues: the key elements of transitional justice and how criminal justice and legal reforms feature within this; political conflict in a divided society; landmark events in the road to devolution; and the impact of the conflict on ‘ordinary’ crime and criminal justice.

**Transitional Justice Frameworks**

Within previously conflicted societies, the policy and practice of transitional justice has become central to the search for justice in dealing with the legacy of an

15 Note, although the precise date at which the conflict is thought to have ended is the subject of some contention, this is generally agreed as being the signing of the Belfast (Good Friday) Agreement in April 1998.
abusive past. Broadly understood as making reference to some form of profound political transformation, transitional justice has been defined as ‘the conception of justice associated with periods of political change, characterised by legal responses to confront the wrong doings of repressive predecessor regimes’ (Teitel 2003: 69). For many transitional justice scholars, transitional justice is a question of a new and more liberal regime, developed and implemented in order to confront past wrongdoings, in the pursuit of justice and political change (see Kritz 1995; Méndez 1997). According to Kritz, for example, the question of transitional justice presents as ‘the first test for the establishment of real democracy and the rule of law—the very principles which will hopefully distinguish the new regime from the old’ (1995: xxi). The field of transitional justice is, therefore, predisposed to view the past as something ‘bad’ and the core business lies in consolidating democracy rights and strengthening the rule of law (Teitel 2000: 22).

Transitional justice processes generally involve a range of models which are aimed at helping a society come to terms with previous large-scale human rights abuses, in order to ensure accountability for wrongdoing, and achieve justice and reconciliation for victims (Huyse 1995; Teitel 2000; McEvoy and McGregor 2008). These may include judicial or extrajudicial mechanisms such as prosecution or other forms of reparation (Elster 2004; Grief 2006), truth commissions (Freeman 2006; Hayner 2001), apology (McMillan 2010), amnesties (Mallinder 2008), and ultimately institutional reform. Within this broader context, a broad programme of legal and criminal justice reform and the introduction of new or improved governance frameworks are usually vital elements of dealing with the legacy of the past. In particular, the development of the state’s capacity to deliver justice is viewed as a core element of rebuilding governance structures more broadly in post-conflict societies (Brinkerhoff 2005). In the late twentieth century—from the aftermath of the Second World War, structured transition (from military dictatorship to democracy) in Latin America in the 1980s, transitions in eastern and central Europe in the late 1980s, or the peacemaking process in post-apartheid South Africa from the early 1990s—political and legal reforms have formed an integral part of post-conflict transitions and ‘the genealogy of transitional justice’ (see generally Teitel 2003).

While several commentators have underlined the importance of law and a programme of legal and institutional reforms as the structuring principles of transition and state reconstruction (see, for example, Huyse 1995; Osiel 1997; Campbell et al 2004: 305–28), the hegemony of legalism in transitional justice discourses more broadly has been the subject of sustained critique (see especially McEvoy 2007). In this respect, a number of underpinning discourses have emerged as being of central importance to transitional justice, ‘the policing of the past’ (Cohen 1995) and the process of peacemaking. These relate to the use of ‘other forms of knowledge’ (McEvoy 2007) such as the ongoing development of human rights frameworks to promote institutional accountability, the provision of restorative or reparative justice, local mechanisms for truth recovery and the role of other non-state or non-legal actors at the grass roots level (McEvoy and McGregor 2008).
Such discourses have also emerged at the forefront of transitioning to a new legal and political order in Northern Ireland and the provision of criminal justice in particular as highlighted in many of the chapters throughout this volume.

In the context of Northern Ireland, a number of transitional justice measures have been initiated, implemented, or been ‘put on hold’ since the Belfast (Good Friday Agreement) 1998. Such initiatives include the creation of a Human Rights Commission tasked with developing a human rights culture (including the potential development of a Bill of Rights); the Independent International Commission on Decommissioning established to oversee the decommissioning of paramilitary weapons; the Commission for Victims and Survivors established to coordinate the delivery of services for victims of political violence; the Sentence Review Commission established to oversee the early release of ‘politically motivated’ prisoners;\(^{16}\) several high profile inquiries (including the Bloody Sunday Inquiry\(^ {17}\) and the Cory Inquiries);\(^ {18}\) consultation on dealing with the past (including the Healing Through Remembering project); the setting up of the Historical Enquiries Team, a unit of the police set up to investigate the over 3000 unsolved murders committed during the conflict from 1968 to 1998; and the establishment of a reformed police service (Police Service of Northern Ireland). At the time of writing, the Stormont House Agreement (NIO 2014) was signed in December 2014 to take forward many of the residual issues of dealing with the legacy of the past, including the outstanding aspects of the Belfast (Good Friday) Agreement and subsequent political agreements. In order to understand this transitional process, the chapter will move to briefly consider the historical context to the conflict and the driving forces for both legal and institutional change in Northern Ireland.

\(^{16}\) Prisoners were deemed as ‘politically motivated’ if they were serving a ‘conflict-related’ sentence and were convicted of scheduled offences during the conflict in Northern Ireland. Scheduled offences are those offences listed as an appendix to the various emergency legislation in Northern Ireland (including sch 1 of the Northern Ireland (Emergency Provisions) Acts 1973, 1978, 1996). Scheduled offences are those normally associated with the commission of terrorist acts (eg; murder, manslaughter, explosions, serious offences against the person, rioting, collecting information likely to be of use to terrorists etc). Those convicted of scheduled offences were members of or had connections with various paramilitary organisations including (but not limited to) the Provisional Irish Republican Army (PIRA), Official Irish Republican Army (OIRA), Irish National Liberation Army (INLA) from the republican community, and the Ulster Volunteer Force (UVF) and Ulster Defence Association (UDA) from the loyalist community.

\(^{17}\) The Bloody Sunday Inquiry, under the chairmanship of Lord Saville, was tasked with examining the events in Derry on Sunday 30 January 1972 which led to the death of 13 unarmed civilians who were shot dead by the British Army following a civil rights march. The report found that the killings were both ‘unjustified and unjustifiable’. Following the publication of the Saville Report the British Prime Minister, David Cameron, made a formal apology on behalf of the United Kingdom.

\(^{18}\) The Cory Inquiries were established to investigate alleged collusion between the security forces and the paramilitaries in relation to a number of high profile murders including that of Pat Finucane, Rosemary Nelson, Robert Hamill and Billy Wright. Prior to the enactment of the Inquiries Act 2005, Mr Justice Cory recommended that inquiries be held in all four cases which occurred in all but the first of these cases.
Political Conflict in a Divided Society

Between the late 1960s and early 1990s, Northern Ireland was locked in an ethno-national conflict, known colloquially as the ‘Troubles’. There are many different ways of understanding the beginning and cause of the conflict in Northern Ireland. However, MacGinty and Darby suggest that ‘it is a measure of political sensitivities in Northern Ireland that even selection of a date to mark the origin of the conflict is viewed with suspicion’ (2002: 14). Many look to the twelfth century with the Norman invasion of Ireland (Darby 1995), while others contend that the roots of the conflict can be traced back to the Plantation of Ulster in the seventeenth century (see O’Leary and McGarry 1996). The plantation of settlers, from Scotland and England, led to three culturally distinctive communities (Irish, Scottish and English) which were divided by language, culture, religion, and political rights and freedoms. These divisions remained up to and following the partitioning of Ireland in 1921 (which for others may have been the date to mark the start of the conflict).

As the new Northern Ireland state was made up of a Protestant majority (with a 65 per cent Protestant and 35 per cent Catholic population at the time of partition), the Stormont Parliament was dominated by the Protestant/unionist community (MacGinty and Darby 2002). In consequence, the underrepresentation of Catholics extended throughout most levels of Northern Ireland government. Since the creation of Northern Ireland, political tensions were constant. The Protestant/unionist community felt threatened by the possibility of a United Ireland being imposed, in which their rights would be curtailed within an overwhelming Catholic country. Catholics in Northern Ireland were alienated, suffered discrimination under the Stormont Parliament, electoral malpractice and ethnic bias in the distribution of housing and welfare services (MacGinty and Darby 2002: 15). While Tonge (2002) notes that there existed disagreement on the occurrence and controversy over the extent of discrimination, the genesis for the most recent conflict can be traced to the late 1960s. The rise of the civil rights movement challenged the political and social system regarding structural discrimination against Catholics (Hewitt 1981; Purdie 1990).

The civil rights demands led to intensifying political tensions and intercommunity violence between the Protestant/unionist and Catholic/nationalist communities. After the deployment of the British Army in response to the violence and street protests, the British forces along with republican paramilitaries and

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19 By the 2011 census, the Protestant population in Northern Ireland had declined—48 per cent of people in Northern Ireland gave their religion as Protestant, 45 per cent of the resident population as Catholic or brought up Catholic, with the remaining 7 per cent belonging to another religion or no religion. See www.nisra.gov.uk/archive/census/2011/results/key-statistics/summary-report.pdf.

20 The British Army, locally recruited regiment (the Ulster Defence Regiment) and the police—the Royal Ulster Constabulary (RUC) as it then was.

21 The Provisional Irish Republican Army (PIRA) and the Irish National Liberation army (INLA).
loyalist paramilitaries\textsuperscript{22} became embroiled in a ‘triangular’ conflict comprised of loyalists who sought to retain Northern Ireland’s connection to the United Kingdom, republicans who want Irish reunification and the complete withdrawal of the British state (Campbell and Connolly 2012: 3). The Troubles soon became ‘a more violent expression of existing animosities and unresolved issues of nationality, religion, power and territorial rivalry’ (McKittrick and McVea 2012: 1).

The early 1970s was witness to key political events including internment without trial (1971), Bloody Sunday (1972)\textsuperscript{23} and the intensification of political violence. The year 1972 saw the highest death toll in which 467 people were killed, 143 of them in explosions and almost 5000 were injured; there were 10,628 shooting incidents, 1382 explosions and 1932 armed robberies (Wichert 1991: 162). That year, the Stormont Government was suspended and direct rule was imposed from Westminster as a response to the growing political crisis. However, direct rule did not succeed in bringing peace and stability, and for years the British and Irish governments sought to facilitate a political settlement in Northern Ireland. These efforts included the failed attempt at establishing a consociational power-sharing government of Northern Ireland through the Sunningdale Agreement in 1973, and the Anglo-Irish Agreement in 1985 between the United Kingdom and the Republic of Ireland aimed at bringing an end to political violence in Northern Ireland. The Anglo-Irish Agreement was viewed as ‘coercive consociationism’ and, similar to the Sunningdale Agreement with regard to intra-community relations, failed due to the lack of necessary intra and inter relations in Northern Ireland society (McGarry and O’Leary 2004: chapters 2–3).

Without political recourse, the Government continued, as it had done before the outset of the conflict, to utilise the legal system to ‘manage’ the conflict and gain civil control. A criminal justice response and the introduction or reintroduction of numerous emergency legislative measures featured heavily throughout the conflict. In 1971, the British Government reintroduced internment under the Civil Authorities (Special Powers) Act 1922, giving the authorities the power to indefinitely detain terrorist suspects without trial (Spjut 1986; White and White 1995). The introduction of the Northern Ireland (Emergency Provisions) Act 1973 and the Prevention of Terrorism (Temporary Provisions) Act 1974 meant that regulatory tools of the state and ordinary legal process, including due process, were substantially modified to deal with the political situation throughout this period. By way of example, key components of the criminal justice system were altered, including increased policing powers and procedures, which provided the police and army with wider powers of arrest, stop, search and seizure, as well as the introduction of special juryless (Diplock) courts to try people accused of ‘conflict-related’ offences (Jackson and Doran 1995).

\textsuperscript{22} The Ulster Defence Association/Ulster Freedom Fighters (UDA/UFF) and the Ulster Volunteer Force (UVF).

\textsuperscript{23} See n 17 above.
Crime and Justice: The Road to Devolution

As noted above, between 1921 and 1972 the Northern Ireland Parliament at Stormont legislated on matters within its own competence as laid down by the Government of Ireland Act 1920. However, when Parliament was prorogued in 1972, the legislative-making powers reverted to Westminster, including most notably ‘law and order’ powers. Despite law and justice issues remaining at the top of the political agenda throughout the conflict, direct involvement by Westminster in the law and order affairs of Northern Ireland was to last nearly 40 years.

In 1998, the Belfast (Good Friday) Agreement called for a devolved government, with a power-sharing Executive in which unionist and nationalist parties would share power. The Agreement contained provisions on policing, decommis- sioning and demilitarisation, security normalisation, early release of prisoners and human rights. The Agreement also included the arrangement of a parallel wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation), to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others (Belfast (Good Friday) Agreement 1998: paragraph 9.5). The Agreement also set out that the Government ‘remains ready in principle … to devolve responsibility for policing and justice issues’ (Belfast (Good Friday) Agreement 1998: paragraph 9.7).

As noted throughout this volume, the Criminal Justice Review was one of the most important and far-reaching assessments of criminal justice in Northern Ireland. There were nearly 300 recommendations for change (CJRG 2000). Key recommendations included the promotion of a human rights culture within the criminal justice system; a new independent Public Prosecution Service to replace the current Director of Public Prosecutions; the establishment of an independent Judicial Appointments Commission and an independent Criminal Justice Inspectorate. Other issues to be addressed were the needs of victims of crime, an independent Law Commission, improvements to arrangements for young people and the integration of restorative justice into the justice system. Many but not all of its recommendations were implemented through the Justice Act (Northern Ireland) 2002, and the Justice Act (Northern Ireland) 2004. Although the main aims of the subsequent legislation were to ‘normalise’ and to update the system in line with the rest of the United Kingdom (Walker 2011), as is discussed within this volume, many ‘special’ provisions remain.

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24 Devolved government by the Northern Ireland Assembly under the Northern Ireland Act 1998 began on 2 December 1999. Devolution was suspended on 14 March 2002. Devolved powers were restored to the Northern Ireland Assembly on 8 May 2007.

25 During the consultation process the then Secretary of State, Mo Mowlam, stated that the Criminal Justice Review would operate in parallel with, but separately from, an independent review of policing (Belfast Telegraph, “Legal review “offers scope for change””, 27 August 1998). This was undertaken by the Patten Commission (ICP 1999), which eventually led to the formation of the new Police Service of Northern Ireland.
Critics of the Criminal Justice Review have argued that the exclusion of policing and emergency legislation restricted the scope of the Review and meant that it ‘was unable to address the very issues which have done more than anything to prevent all sections of Northern Ireland society having confidence in the criminal justice system’ (Jackson 2001: 169). Jackson remarked that ‘asking the review to address the issue of confidence in the context of future criminal justice arrangements without looking at policing and emergency legislation was therefore rather like asking an architect to design a house without walls and a roof’ (2001: 169–70). Notwithstanding the significant changes across the criminal justice system, for over a decade after the Agreement, police and criminal justice matters were looked after by the Secretary of State for Northern Ireland.

During this period tensions remained within the devolved government, but a key juncture came in 2006 with the St Andrews Agreement, which set in place a road map to facilitate key changes, including the operation of the power-sharing institutions, provisions for human rights and called for the devolution of policing and justice powers from Westminster to Stormont by May 2008. However, the two main parties in the Northern Ireland power-sharing Executive, the Democratic Unionist Party and Sinn Féin, remained at odds over the transfer of policing and justice. The 2008 deadline came and went and progress remained slow. In December 2009, the Northern Ireland Assembly passed the Northern Ireland Act 2009, paving the way for the devolution of policing and justice, the establishment of a Department of Justice and the appointment of a Minister of Justice. After a series of further negotiations, the Hillsborough Agreement (2010) set the date for devolution. After nearly 40 years, policing and justice affairs were finally devolved to the Northern Ireland Assembly on 12 April 2010. Since the signing of the Belfast (Good Friday) Agreement and following the devolution of criminal justice in 2010, the Northern Ireland criminal justice system has experienced significant legislative and institutional reforms and more recently has been witness to substantial reviews, including the prison system and youth justice reviews. Many of the chapters in this volume critically examine the implementation of these justice reforms and consider what progress has been made since.

The Impact of the Political Conflict on ‘Ordinary’ Crime and Criminal Justice

During the Northern Ireland conflict, more than 3700 individuals were killed and 40,000 injured (McKittrick et al, 2007). Although the criminal justice system was dominated by the processing and management of political violence, in parallel it also had to deal with ‘ordinary’ crime. In this respect, a final interesting dimension is the impact of the political and violent conflict on so-called ‘ordinary’ crime and criminal justice provision both during and in the aftermath of the conflict.

The impact of the conflict on the ordinary criminal process in Northern Ireland is well documented (see Morison and Geary 2000; McEvoy et al 2002).
Notwithstanding the political unrest, Northern Ireland had one of the lowest levels of recorded crime in Western Europe throughout the duration of the conflict (CJRG 2000: chapter 2). In comparison to England and Wales, the Northern Ireland population experienced a lower incidence of most crimes during the Troubles and this continued up until the 1998 peace agreement. At the time of the Belfast (Good Friday) Agreement Northern Ireland’s crime rate represented 6450 per 100,000 population compared with the rate of 9785 per 100,000 in England and Wales (CJRG 2000: 12). Of course figures must be interpreted with a degree of caution and statistics only reflect a portion of crimes that occur in any society, namely those discovered by or reported to the police.

Interestingly, ‘post-conflict’ Northern Ireland continues to have a much lower level of reported crime compared with England and Wales. In 2013/2014, England and Wales had an overall crime rate of 66 per 1000 population while Northern Ireland has an overall crime rate of 56 per 1000 population (PSNI 2014). Crime levels in Northern Ireland have shown a downward trend for the last 10 years, from the peak of 142,496 in 2002/2003 to 100,389 recorded crimes in 2012/2013 (PSNI 2014). This is reported as the lowest level of recorded crime since the year of the Agreement in 1998. Furthermore, while Northern Ireland had one of the highest prison populations per capita in Western Europe during the conflict (with three-quarters of the prison population convicted of ‘conflict-related’ offences) (Dwyer 2004), it currently has one of the lowest. At present Northern Ireland has a prison population of 98 per 100,000, this compares with England and Wales which has a prison population of 149 per 100,000 (Prison Statistics 2014/NIPS 2014). Moreover, this figure is also lower than most other European nations apart from Sweden, Finland, Norway and Cyprus (Council of Europe 2014).

Various theories have been developed regarding Northern Ireland’s significantly lower ‘ordinary’ crime rates. Sociological theories of crime focus on a range of social forces which include a sense of community, stability and tradition which may be associated with lower levels of crime. So, for example, Brewer et al (1997) suggest that increased ghettoisation arising from the conflict had the effect of creating more tightknit communities. As a result, informal social controls emerge as a by-product of role relationships, mutual trust, group identities and enmeshed interdependencies. Adler (1983) supports this view and suggests that the crime rate is a product of the strong sense of moral control exerted through religion and family.

Criminological theories of informal social control also extend to an understanding of the role of ‘surveillance’ by local residents and the ‘norms of conduct’ by which residents are regulated. Brewer et al (1997) conclude that ‘political violence’ has ironically protected Northern Ireland from some of the ‘worst vagaries of community breakdown and dislocation witnessed in Britain’s inner cities. The knock-on effect of this for ordinary crime levels in Northern Ireland are positive irrespective of other effects of political violence’ (Brewer et al 1997: 216). According to this view, the low levels of crime in Northern Ireland can in part be explained by the ‘informal’ or ‘alternative’ criminal justice system which has
evolved since the beginning of the conflict. In opposition to the police, particularly within the republican/nationalist communities, paramilitaries began to fill a vacuum and ‘police’ their own areas. ‘Paramilitary policing’ is characterised by the dissemination of a range of punitive measures against individuals ‘who violate some community norms, as defined by paramilitary groupings’ (which include anti-social behaviour, joyriding, criminal damage, and sex offending behaviour) (see Knox 2002: 172). Knox (2002) further notes that some paramilitary groupings also use this alternative system to ‘police their own’, to maintain internal discipline within the organisation. Sanctions may include threats, warnings, curfews, public humiliation, exile, punishment beatings or executions (Knox 2002: 164).

This ‘alternative justice system’ is embedded in many local social structures that continue to survive and offer an alternative system of social control to some areas within Northern Ireland. More broadly, as several of the chapters highlight, it also continues to impact in a variety of ways on contemporary criminal justice provision in Northern Ireland including, inter alia, policing and the management of violent and sexual offenders.

An Overview of the Chapters

The first part of the book sets out the conceptual framework for examining crime and criminal justice in transition in the Northern Ireland context. The first substantive chapter in part I, written by Cheryl Lawther, explores truth recovery and dealing with the past in Northern Ireland. In particular, the chapter examines the work of the Historical Enquiries Team (a police led cold case review of all conflict-related deaths), the Office of the Police Ombudsman, the Inquest System, the Criminal Cases Review Commission and litigation by both victims and former combatants. In exploring the capacity and limitations of ‘ordinary’ criminal justice in a transitional context the chapter argues that the Northern Ireland experience speaks to a range of themes in the transitional justice literature concerning the meaning of accountability, the ways in which hierarchies of victims are created and sustained, the capacity of former prisoners and ex-combatants in seeking redress and the limitations of legalistic variants of truth recovery.

Central to the transition in Northern Ireland is the suggestion that human rights should be at the heart of the new dispensation. In chapter three, Colin Harvey examines how the criminal justice system was and remains a particular target for rights-based reform. In the attempts to ensure institutional transformation, ‘rights-talk’ began to flow into almost every sphere of the transitional process and the reform of policing and justice in particular. The emergent regimes of accountability and change were plainly intended to ‘take rights seriously’. Harvey sketches the human rights transitional context in Northern Ireland and explores how the attempts to mainstream rights have progressed in the sphere of criminal justice, including proposals for a Bill of Rights. He questions where a culture of respect
for human rights is emerging in Northern Ireland whether this transformation is evident in the criminal justice system.

The fourth chapter, written by Brice Dickson, explores the key institutional reforms and examines who and what brought about this transformation, seeking to pinpoint the key protagonists and critical junctures which stimulated the reforms, how they were delivered and through what processes they are now being maintained. In his chapter Dickson seeks to identify the key agents of change and considers whether it is possible to generalise from Northern Ireland’s experience so that other conflicted societies might benefit from the lessons learned.

Examining what it means to ‘govern through risk’, Clare Dwyer in chapter five shows that governing criminal justice in a transitional society emerging from decades of political violence, involves a permanent readjustment of the traditional forms of risk management, particularly in light of the possible consequences and incalculability of the risk of the return to conflict. By focusing on the role of risk assessment during and after a political conflict, this chapter draws out the key differences in the evolution of risk strategies and assessment within the criminal justice system in Northern Ireland and highlights the impact this has had on wider penal and social policy development.

Opening the second part of the book, ‘The Criminal Justice Process’, John Topping explores the issues of policing reforms and policing change in Northern Ireland. Chapter six sets out to demonstrate that in spite of both the political and financial capital invested in the reforms, a number of issues persist which both challenge and limit the extent to which a ‘normalised’ policing service can be delivered within any ‘Peelian’ conception of the term. This is particularly the case when set against the broader policing landscape, a continuing, ‘severe’ terrorist threat, and ongoing paramilitary ‘policing’, and the potential for mass public disorder associated with ritualistic parades and protests. This chapter charts the development and delivery of policing in Northern Ireland, juxtaposing both the police organisational and societal transitions which underpin the present reality of security and safety in a society transitioning from conflict.

In the seventh chapter, John Morison examines judicial appointments and the Northern Ireland Judicial Appointments Commission. He explores how a non-departmental body (NIJAC), charged by statute with producing a judiciary that is reflective of a changing wider society, has gone about trying to effect widespread, deep-rooted institutional change. Drawing on original empirical data, chapter seven emphasises the relationship between judicial appointments and changes to the wider legal environment, and how the barriers to a more representative judiciary are in large part a product of the legal culture in the local professions. This puts the focus on how ideas of suitability and, particularly, ‘merit’, are constructed and resonate within the legal profession well beyond the appointment stage, and how they reveal much about the nature of the society in which they operate.

In their chapter, Kieran McEvoy and Alex Schwartz examine the role of judges and judicial culture in Northern Ireland. Drawing on extensive interviews conducted with judges in Northern Ireland and elsewhere, chapter eight considers
challenges for the judiciary both during the conflict itself and more recently in coming to terms with the past. Building on that interview data, they focus in particular on the notion of judicial performance arguing that judicial behaviour may be understood as addressing a range of ‘imagined’ audiences, namely, Parliament, the public and judges themselves. They also argue that in a context wherein discussions are ongoing about whether or not Northern Ireland should have some form of truth recovery process to ‘deal with the past’ the judiciary itself should be one thematic focus of such a process.

Chapter nine, written by Phil Scraton, examines the complex dynamics of incarceration in contemporary Northern Ireland, within the context of a society undergoing transition from conflict. He demonstrates the impact of the legacy of conflict on the prison estate, operational practices and organisational culture and the challenges and impediments to reform. Reflecting on the range of prison reviews, contextualised by the legacy of conflict, this chapter critically analyses and evaluates current policies, regimes, and staffing and practices within the context of Northern Ireland’s three remaining prison establishments: Maghaberry (high security, complex mix of remand/convicted; short-term/long-term; politically affiliated prisoners); Magilligan (low and medium risk prisoners/sex offenders/foreign nationals); and Hydebank Wood Prison (women only) and Young Offender Centre.

Chapter ten is an analysis of prisoner reintegration in post-conflict Northern Ireland, with particular emphasis on the experience of ‘politically motivated’ former prisoners. In this chapter Clare Dwyer explores the ways in which organisations who work with and for, the ‘politically motivated’ ex-prisoner community, were developed through an ethos of ‘self-help’. In presenting a critical analysis of the concept of ‘self-help’ and its application to the experience of the reintegration process, this chapter illustrates the fundamental importance of the ‘self-help’ approach to reintegration, particularly for prisoners released following a political conflict. Set within Northern Ireland’s unique circumstances as a society transitioning out of conflict, this chapter explores the ethos of ex-prisoner ‘self-help’ and the potential lessons for those seeking to promote desistance from crime and violence, politically motivated and otherwise. The chapter concludes with discussions on the wider implications of the Northern Irish experience for the reintegration of prisoners more widely, including the role of reintegration in peace-building and conflict transformation more generally.

In chapter eleven, Nicola Carr examines how the conflict has had profound effects on the contours and culture of probation practice within Northern Ireland. The chapter analyses how the passage of the Criminal Justice (Northern Ireland) Order 2008 and the introduction of a range of ‘public protection’ sentences have intensified probation’s focus on assessing and managing risk. Alongside this, and in common with other jurisdictions, the population under the supervision of the service has expanded. By linking the historical context with the present, this chapter explores changes in the nature of probation practice and community sanctions, particularly in the transition from conflict. Through this lens, Carr explores
the concept of ‘legitimacy’ and its relevance for probation practice and the wider criminal justice sphere.

Chapter twelve considers official acknowledgment of miscarriages of justice in post-conflict Northern Ireland, through the quashing of convictions and the provision of compensation. Marny Requa highlights how conflict-related cases continue to dominate proceedings in this area. She argues that as a consequence, the jurisprudence on miscarriages of justice is distinct from elsewhere in the United Kingdom and has strong political resonance in post-conflict Northern Ireland. The high percentage of conflict-related referrals from the Criminal Cases Review Commission involving convictions under counterterrorism legislation is indicative of a continued political focus on the past. The chapter concludes that as a consequence, this perspective overshadows the development of contemporary criminal standards in more routine cases. Recent case law restricts future referrals in conflict-related cases, adding to what is characterised in this chapter as an ‘acknowledgement gap’ regarding miscarriages of justice in Northern Ireland.

In the opening chapter in part III of the book which explores ‘Contemporary Issues in Criminal Justice’, Linda Moore and Azrini Wahidin analyse the experience of women within the criminal justice system during the conflict and following political settlement. Chapter thirteen draws on primary research and documents fundamental breaches of women’s rights within the criminal justice system. Moore and Wahidin argue that violence and sectarian divisions have shaped penal regimes, both for politically motivated and so-called ‘ordinary’ women prisoners and discuss women’s responses to gendered control and punishment. The chapter explores the historical and current breaches of women prisoners’ rights and references contemporary debates on alternatives to custody for women, the provision of gender-specific approaches and abolitionism.

Chapter fourteen written by Deena Haydon and Siobhán McAlister examines children and young people in conflict with the law in Northern Ireland. This chapter outlines the evolution of youth justice policy as Northern Ireland emerged from the imposition of ‘direct rule’ to devolution. Haydon and McAlister examine three specific forms of state intervention—early intervention targeting those ‘at risk’ of offending, restorative justice, and imprisonment—while also noting informal, non-state interventions experienced by many children and young people. Drawing out comparisons with England and Wales where relevant, in particular the influence and convergence of risk-based policies, this chapter considers what is unique about policy and practice in Northern Ireland and assesses whether claims made about implementation of human rights standards match the reality of young people’s experiences.

Chapter fifteen examines public and policy responses to sexual and violent crime in Northern Ireland within the broader context of national and international trends on crime and justice. Drawing on the theme of ‘policy transfer, Anne-Marie McAlinden argues that both before and after devolution Northern Ireland has to a large extent emulated penal policies on sexual and violent crime which have been put in place in England and Wales. Drawing on original empirical data
the chapter also suggests that there is a distinct extralegal dimension to policing sexual and violent crime in Northern Ireland stemming from the legacy of the conflict. These factors relate to the presence of paramilitaries, the parochial nature of Northern Irish society and the geographical, land border with the Republic of Ireland. McAlinden concludes that these unique aspects of justice provision in Northern Ireland create additional challenges for offender reintegration, as well as for policing and the criminal justice management of such crimes in a society transitioning from political conflict.

In chapter sixteen, Anna Eriksson explores the development of restorative justice practices in Northern Ireland. The chapter discusses the various challenges of implementing community-based restorative justice in a transitional society and explores how restorative justice has provided tools to aid conflict transformation and reconciliation, including in the field of youth justice. The core strength of restorative justice lies in removing the focus from the outcome and placing it where the important interactions take place, during the process. The chapter explores the important role of restorative justice in ‘building proximity’ and resolving conflict at all levels—within and between communities and between communities and the state. In discussing restorative justice practices initiated both within and outside the formal criminal justice system in Northern Ireland, it draws out the key context-specific lessons as well as those that might be generalised to other jurisdictions.

In the fourth and final part of the book the editors pull together the major themes arising from the book. In chapter seventeen, we seek to locate key recent developments within criminal justice in Northern Ireland within the broader transitional context. This final chapter highlights generic themes related to ‘doing’ criminal justice in Northern Ireland which have broader applicability for discourses on crime and justice. These relate in particular to the significance of the ‘policy transfer’ thesis within neo-liberal societies, and the impact of the past in the contemporary governance of criminal justice. Finally, the chapter identifies areas for further research and charts the likely future directions of criminal justice policy and criminological scholarship within Northern Ireland and beyond.

References


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Clare Dwyer and Anne-Marie McAlindon


