

'On the Runs' and What Might Really Not be Known

The political outcry which followed the *Downey* judgement is strangely reminiscent of the storm five years ago which ultimately was used to deliver a resounding blow to the last serious 'official' attempt to deal with the past by the Eames-Bradley consultative group. On that occasion one of the group's recommendations, for a recognition payment of £12,000 to go to all families who lost a loved one in the conflict, was leaked in advance of the publication of the report with the purpose or effect of overshadowing the group's broader recommendations. The NIO Secretary of State moved to rule out the payments before the formal consultation exercise had begun.

The political outcry following the *Downey* 'On the Runs' judgement, did not just culminate in the threatened resignation of the First Minister, but also in the announcement from the UUP leader that he was abandoning party leaders discussions on the Haass proposals, although other parties have remained. The connection between the 'On the Runs' issue and abandoning the Haass proposals appears difficult to reconcile. Haass, in putting forward an Article 2 compliant mechanism offered the potential for an investigations process which would, if established properly, be immune from the shackles of political deals, given the Article 2 requirements of independence and effectiveness.

The 'judge-led' inquiry David Cameron established following Peter Robinson's threatened resignation is to be headed by Lady Justice Heather Hallett and is scheduled to be completed by the end of May. This review is not a public inquiry with compulsion powers (albeit such powers given the controversial Inquiries Act 2005 could be subject to ministerial intervention anyway). The NI Affairs Committee at Westminster has also announced an inquiry, using the powers it has as a Parliamentary committee. The 'On the Runs' scheme has also been discussed at the Policing Board and Justice Committee, and no doubt will continue to be discussed, and the PSNI have commenced their own review of the individual letters.

There is a further key question that sits outside the inquiries' terms of reference, except insofar as they may comment on 'related matters'. This question was put publicly by CAJ when the *Downey* judgement was made public and is namely: *whether there have been any guarantees given to other categories of persons that they will not face prosecution?* An obvious example are the regularly raised questions about whether informants and their handlers have been afforded some state protection from effective investigation and prosecution. Another 'related matter' which could be explored *Lady Hallett's inquiry* are the extent that any such guarantees are then 'implemented' through systems established to regulate investigations. For example, a 2009 PSNI protocol formalised a system where by the PSNI Serious Crime Branch (C2) would take decisions on action on the back of HET findings and provided a power for the Assistant Chief Constable (ACC) of Crime Operations to bypass the HET process altogether. The protocol sets out C2 had "assumed responsibility for any case where the HET process uncovers evidence requiring arrest and prosecution." The PSNI have set out, in response to a freedom of

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information request, that once the HET had completed a review which “identifies evidence that a person may have committed a serious offence then that case is referred to C2 (Crime Operations) and then it is a decision for C2 to take further action.” There is also the question of how and who controls intelligence and other material that informs legacy inquiries and investigations. Whether any light will be shed on these matters remains to be seen, the first aim of the Justice Hallett’s inquiry is “*To produce a full public account of the operation and extent of the administrative scheme for ‘On the Runs’ (OTRs)*” a matter in which in itself is already covered in some detail in the 57-page *Downey* judgment.

Whilst there is no doubt further detail that may emerge on the OTR system, (particularly as to how ‘effective’ reviews that led to the issuing of letters were) the OTR scheme is however potentially the system we already knew most about. This is given the amount of detail that was already in the public domain before the judgement. In the 2001 UK-Ireland Weston Park Agreement both governments would “*take such steps as are necessary in their jurisdictions*” in relation to those for whom there were outstanding prosecutions for pre-1998 offences “*so that those concerned are no longer pursued.*” It was reported a number of ‘on the runs’ cases, relating to persons who had escaped custody, had already been settled by then.* In April 2003 the NIO produced its blueprint for implementing its Weston Park commitments, in a document entitled “*Proposals in relation to On the Runs (OTRs)*”. The ill fated *Northern Ireland (Offences) Bill 2005*, introduced shortly after IRA decommissioning, would have set up a legislative basis for a scheme. Its application beyond OTRs to others including state actors, led to it not progressing in to law. Post the 2006 St Andrews Agreement it was evident however some system was in place, given the issue could not just have gone away. In 2007, shortly after the restoration of devolution the *Belfast Telegraph* reported on the issue referencing a total of 194 cases, 84 of which had been settled. The Eames-Bradley report updated the figures with around three quarters of 200 cases having been settled by 2009. What is less clear is how the UK government’s desire to protect state actors was addressed post the withdrawal of the 2005 bill.

On OTRs’ the *Downey* judgement references the restarting of the ‘administrative scheme’ following the fall of the legislation and the commencement of the PSNI’s *Operation Rapid*, responsibility for which sat with PSNI Serious Crimes Branch (C2), with the ACC Crime Operations providing C2 the list of individuals for review. Names had been submitted by Sinn Féin to the Northern Ireland Office, the department which subsequently issued the letters. The evidential test for prosecution was amended from its usual threshold of whether there was sufficient evidence to afford a reasonable prospect of conviction to whether there ‘was now, or could ever be, sufficient evidence to meet the test for prosecution.’

The *Downey* judgement does contain some detail that there are outstanding questions in relation to the process. As well as the issue of the PSNI not referencing the interest of the Metropolitan Police in Downey what is not clear from judgement is why Downey was not subject to arrest on any of the listed previous seven occasions from 2010-2013 he was in Great Britain. Downey was ultimately arrested in Gatwick Airport on the 19 May 2013, just a few days before OFDMFM published the ‘Together: Building a United Communities’ strategy which set out the intention to hold multi-party talks on, among other matters, how to deal with the past, which ultimately became the Haass-O’Sullivan process. It is not clear, what was the sequence of events and decisions which led to a 2008 HET investigation to place Downey on a PSNI wanted list. This is important as the judgement indicates he was not on the PSNI list in 2009. This in itself again prompts broader questions about what happens when HET investigations are passed to the PSNI’s Crime Operations branch and what criteria are applied as to whether ‘further action’ is instigated by C2 on the back of HET reports. This is coupled with questions as to which cases actually get referred to C2 or for prosecution. In July 2013 HM Inspector of Constabulary found it ‘striking’ that since 2010, after the introduction of the 2009 HET-C2 protocol, “*not one state involvement case relating to the British Army has to date been referred to the PSNI for further investigation or for prosecution.*” Whether the present inquiries will shine any light on any of these PSNI processes remains to be seen. What is clear is all of the above very much strengthens and highlights the need for an independent process, protected from political or police interference, to deal with the past.

*See Eyes Shut Tight – Brian Rowan on how a mountain of OTR information was missed 25 March 2014

Washington Matters

Brian Gormally, Director of CAJ, travelled to Washington D.C. during St Patrick's Week to lobby on behalf of the Human Rights Consortium in relation to a Bill of Rights for Northern Ireland and to raise CAJ's specific concerns. The interest around Northern Ireland in the USA was heightened this year, both because of the involvement of Richard Haass in the all-party talks and also the sense of crisis in our continuing peace process. CAJ underscored the point about a crisis in our briefing paper:

Northern Ireland is again in crisis. Recently the First Minister threatened to resign over letters of comfort given by the UK Government to some Republicans who thought themselves wanted by police. Prior to that, the all-party talks chaired by Richard Haass failed to come to agreement on contentious issues that threaten the peace. In CAJ's view, the instability in the peace process is due to the "rollback" of human rights commitments made in the Belfast Good Friday Agreement and the other pacts that made up the peace settlement. In particular, the failure to deal with the violations and crimes of the past keeps disrupting the present and threatening the future of our society.

Of course, one of the major elements of rollback on human rights commitments is the failure to legislate for a Bill of Rights. The Human Rights Consortium delegation stressed that the Bill of Rights was a UK Government commitment and that could not be reneged upon under the cover of the lack of political consensus amongst local political parties. The Westminster administration was failing to show leadership by initiating and galvanising a process that might achieve consensus and was failing in its own responsibilities.

The delegation sought to convey our message to a range of influential people and the level of interest was the highest for a number of years. Dr Haass spoke at a sub-committee hearing of the House Committee on Foreign Relations, together with Geraldine Finucane, Nuala O'Loan and a representative from Amnesty International. Dr Haass stressed that the unfinished business of the process was a threat to the peace.

The Congressional Tom Santos Commission on Human Rights also organised a briefing on the Northern Ireland situation, at which Brian Gormally gave evidence.

Washington matters to the Northern Ireland peace process. The politicians, interest groups and the Administration itself have made a major investment in the process in the past. If, as we believe, the peace is in danger of unravelling because of unmet human rights commitments, that will be of major concern on the other side of the Atlantic. Voices raised in Washington will be listened to by the UK Government and local parties. We might wonder why US leaders should be interested when there are many pressing problems in the world. CAJ's briefing answered that question in the following way:

What happens in Northern Ireland matters to the United States and the rest of the world. The conflict devastated Northern Ireland, a region within the boundaries of a major Western European and G8 power, but the peace process was largely based on a human rights framework. In so far as there is instability, it is because of the "rollback" of human rights guarantees. The lesson – that human rights can build peace out of war – needs to be fully learned in Northern Ireland to prove its relevance to other conflicts.

We therefore call on all friends of Northern Ireland, and of human rights world-wide, to help us halt and reverse the rollback of the human rights framework of our peace process. We ask you to influence the UK Government and the Northern Ireland political parties to:

- *Hold a full public inquiry into the murder of Pat Finucane*
- *Legislate for the Haass proposals on investigating conflict-related killings and injuries*
- *Fully implement the outstanding commitments in the peace agreements*
- *Guarantee the human rights framework and underlying values of the peace settlement by passing a strong and inclusive Bill of Rights, building on the European Convention rights incorporated into domestic law by the Human Rights Act*

Intersectionality as a Way forward for Equality and Good Relations in Northern Ireland?

On 7 March 2014 a unique conference exploring the intersection between Lesbian, Gay, Bisexual and Transgender (LGBT) identities with issues of Race, Gender, Age, Disability, Political Opinion and Religion took place in Unison's headquarters in Belfast. As befits an intersectional agenda, a diverse range of speakers, workshop facilitators and delegates assembled to consider the conference themes.

The morning of the conference featured the launch of a booklet *Addressing Whole Identities or Fragmenting Lives* which serves as an introductory guide to service providers and employers on multiple identities and discrimination in Northern Ireland. The co-Authors of the Guide, Maria Noble of Unison and myself Dean Lee of the Rainbow Project chose to illustrate intersectionality by way of personal examples, highlighting aspects of our own multilayered identities; in Maria's case as a Black, Lesbian, Trade Union activist with a disability and myself as a Gay, Male, Catholic, Chinese, Counsellor. We had both been inspired to write the Guide following our exploration of intersectional identity and discrimination with other members of the Gay Ethnic Group (GEG) which was established in 2011 as a social support group for individuals from minority ethnic backgrounds who also identify as LGBT.

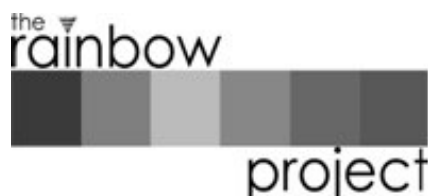
Key Note speaker, Samantha Rankin of the Equality Network, Scotland continued to emphasise the difference between multi strand and intersectional discrimination. Her work with The Equality Network over the last six years in Scotland has included formal research into the needs of LGBT people from minority ethnic backgrounds including Asylum Seekers, Refugees and persons with a disability. This in turn has led to programmes, support services, training and more detailed guides on how to meet needs arising from intersectional identity - all obvious next steps that could be taken in Northern Ireland.

To kick off a more policy and legislative focused afternoon a presentation by Daniel Holder of CAJ highlighted the intersection between LGBT and religious rights as well as the disjointed nature of Northern Ireland's Equality legislation and the lack of a Single Equality Bill. Daniel's presentation provided food for thought for a panel discussion which included MLAs Anna Lo and Catriona Ruane both of whom were quick to point out their support for the introduction of a sexual orientation strategy. The political representatives were not unfortunately given the opportunity to respond to GEG's recommendation to introduce a statutory definition of "good relations" in Northern Ireland at least in line with legislation in England, Scotland and Wales. Their Equality Act 2010, S149(5) links the definition of good relations to the formulation of tackling prejudice and promoting understanding among 6 categories rather than just the 3 categories currently mentioned in Northern Ireland's current Good Relations duty, Section 75 (2).

With or without a more prescriptive and extensive Good Relations legal duty the guide and conference remain ethical and business reminders of the counter productive nature of all forms of prejudice, discrimination and oppression.

Raising awareness of equality strands through a complex intersectional not a simplistic single identity lens can help promote the attitudes and skills needed to take us further away from our troubled, combative past towards a more enlightened, collaborative, productive future for all individuals and fragmented communities in Northern Ireland (not just for so called "both" communities).

For more information contact dean@rainbow-project.org



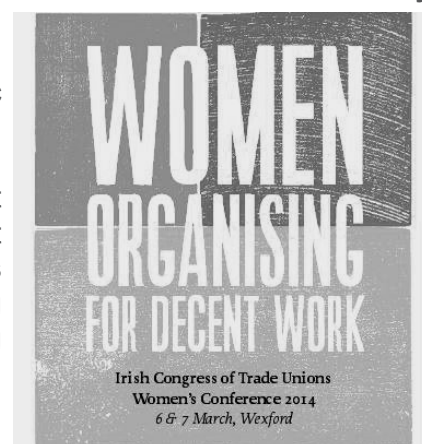
Women Organising for Decent Work

Irish Congress of Trade Unions

Women's Conference 2014

CAJ were asked to host a fringe event at the ICTU women's conference on monitoring and implementation of the Convention on the elimination of all forms of discrimination against women (CEDAW). This event took place in the broader context of this year's theme, 'Women Organising for Decent Work'. Austerity measures both in the North and South of Ireland and the proposed changes to welfare reform in Northern Ireland not only influenced the theme of the conference but also many of the motions.

Women are the most affected during a recession, there are cuts to public services and the welfare reforms will have a bigger negative impact on women compared to men, women are also taking on more low paid, high risk, part time work. Taking this into consideration it was extremely relevant to bring women trade unionists possessive attention to the international best practice and human rights standards of CEDAW. This fringe event also fits with many of the trade unions work over the past year with many lobbying and campaigning on austerity, welfare reform and a Bill of Rights among other areas such as the application of UNSCR 1325 Women, Peace and Security to Northern Ireland, marriage equality and universal childcare.



CAJ discussed the background to CEDAW and highlighted the concluding observations which came out in July 2013 that can be used for lobbying government in the work of the trade unions. The concluding observation on employment and economic empowerment was of particular interest to the women:

"The Committee recalls its previous concluding observations of 2008 (A/63/38, paras. 286 and 287) and appreciates the State party's efforts to provide flexible working arrangements for women and men, and to introduce shared parental leave envisaging new legislation in 2015. The Committee is concerned at reports of persistent discrimination of pregnant women in employment and their access to justice. Furthermore, the Committee is concerned at existing occupational segregation and persisting gender pay gap, and the high unemployment rates of women with disabilities. The Committee notes, however, that the State party launched a voluntary, rather than compulsory, gender equality analysis and reporting initiative, and that it intends to introduce legislation requiring tribunals to order a pay audit in the event that an employer loses an equal pay claim.

The Committee recommends that the State party should:

- (a) ***Intensify its efforts to promote the use of flexible working arrangements and introduce shared parental leave to encourage men to participate equally in child care responsibilities;***
- (b) ***Continue to take proactive and concrete measures to eliminate occupational segregation and to narrow the gender pay gap;***
- (c) ***Create more opportunities for women with disabilities to access employment;***
- (d) ***Assess the effectiveness of the voluntary reporting initiative under Think, Act, Report, to ensure transparency of salaries in enterprises, and;***
- (e) ***Ensure women's access to justice in employment cases, including in cases related to discrimination on grounds of pregnancy and motherhood.***

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The Committee recalls its previous concluding observations (A/63/38, paras. 286 and 287), and is concerned at the excessive costs of childcare. It is also concerned at reports that the proposed reforms to the welfare system would exacerbate the cost of childcare for low income families due to reductions in Childcare Tax Credit.

“Recalling its previous recommendation, the Committee urges the State party to provide affordable childcare and to mitigate the impact of the proposed reforms of the welfare system on the costs of childcare for low income families and the increased burden for care on women.”

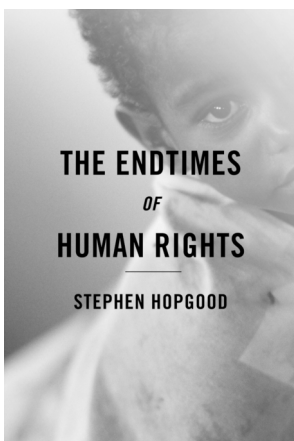
Niamh Reilly, a Senior Lecturer and co-director of Global Women's Studies at the School of Political Science and Sociology NUI also presented on CEDAW to discuss lessons and concluding observations from Ireland. The Irish Government have not responded to the CEDAW committee since 2003/04 combined 3rd and 4th report and their last hearing was in 2005, which makes these concluding observations quite old now but it is expected that Ireland will combine their 5th and 6th periodic report soon.

The trade unions now have their chance in the south to try to have some influence over the state reporting and an opportunity to input into NGO shadow reports and also in the North to use the concluding observations from July 2013 to press for substantive equality changes for women.



*Emma Patterson-Bennett (CAJ),
who spoke at the Conference in Wexford*

The Endtimes of Human Rights, by Stephen Hopgood – A timely challenge?



Hopgood's trenchant and eloquent critique of Human Rights is an uncomfortable, if timely read. Written in an ebullient, rhetorical style, Hopgood takes a scalpel to what he terms 'a kind of secular monotheism with aspirations to civilize the world'. He examines both the metanarrative and empire of Human Rights, with the objective of interrogating 'the hype' that he views as surrounding the sector. The International Criminal Court (ICC) and the document of Responsibility to Protect (R2P) are specifically within his sights, as the highpoint of what he terms the Human Rights Imperium.

In stark contrast to the recent pronouncements by Tony Blair, that 'extremist religion' is at the root of 21st century wars (Observer – 26/1/2014), Hopgood presents a more considered argument that resurgent religion, while clearly a factor, is but one factor in the forthcoming 'neo-Westphalian' world, with the latter also characterized by renewed

sovereignty, globalized markets and the rollback of universal norms with regard to human rights. The neo-Westphalian context is seen more in terms of political calculation and the combined power-brokers of China, Russia and the United States, with less influence of accepted moral considerations and Europe. In this scenario, where multipolarity extends to power client interests (Israel, Sri Lanka and Syria respectively), Hopgood notes that the main distinction is the hypocrisy of the United States as compared to the assertive real politik approach by China and Russia. This, arguably, leaves Africa as the 'moral laboratory' of both the ICC and R2P intervention when major power interests are not at stake.

The study differentiates Human Rights from human rights. The former are dubbed an imperium – with development, institutionization and manifestations (including buildings) documented. Attendant INGOs, such as Human Rights Watch, Amnesty International and the International Red Cross, are discussed with an insightful analysis of how funding, structuring and donor outcome demands influence the priorities and advocacy approaches of such organisations.

The US-influenced operational pragmatism of Human Rights Watch is contrasted with the democratic tensions of Amnesty's membership management, culminating in the controversy surrounding the recent short-lived Executive Directorship of Amnesty International USA (AIUSA), Suzanne Nossel. Hopgood is critical of reliance on elite advocacy while recognising the challenges of broader popular mobilization.

When considering human rights without the capitalization, Hopgood refers to activists who seek to publicize the abuses that their local communities experience, attempting to exert pressure on both governments and international agencies to address them and offer support. He asserts that 'the endtimes' can never come for this form of human rights, but equally the reality of negotiating local circumstances, micro-narratives, and often contradictory forces, can be complex and, of necessity, nuanced in practice. In contrast to the bleak forecast for the top-down non-negotiable authority of the 'Church of Human Rights', the bottom-up 'non-hegemonic language of resistance' is deemed to have no preset future. However the reality remains that while being highly effective and influential, the Mothers of the Plaza de Mayo (Argentina) have no seat at the top tables in Geneva or New York where the elites predominate. The local interface between Human Rights and social justice is also noted in practice, with a concern that the everyday discrimination and violence, which constitutes much of what people experience as oppression, finds little space in the clearer cut 'good-versus-evil narrative' that global Human Rights advocates prioritize.

This book poses important questions – What is it that gives Human Rights its moral authority? How do Human Rights advocates, who assume unto themselves the right to speak for everyone, mobilize the faithful and legitimate their demands? If Human Rights are by their nature universal, secular and categorical how can they trump competing norms in a world marked by increasingly fractured power relationships? The lack of any attempt to offer answers can be frustrating; while the interesting – but arguably somewhat self-indulgent – vade mecum descriptions of aspects of the Human Rights Imperium that serve to bolster Hopgood's thesis of Human Rights as a secular substitution for a Christian god, can be a distraction. Nevertheless, consideration of the possible 'endtimes of Human Rights' is a salutary read with important arguments that challenge both certainty and complacency.

Review by Avila Kilmurray

The Endtimes of Human Rights – Stephen Hopgood (2013)
Cornell University Press, Ithaca & London

Civil Liberties Diary - February 2014

4 February

Over the past four years, nearly £200,000 has been paid in compensation for individuals injured during July 12th violence. While there was only 1 claim paid out in 2012, nearly 30 claims were successful last year, for an increase of £93,000 (cost differential increase between 2012 and 2013). Further, over the past four years, approximately £42.8million has been paid out as a result of criminal acts across Northern Ireland, however, the yearly pay out trend of these criminal acts compensation claims has decreased.

6 February

Northern Ireland Health Minister Edwin Poots has ordered a review of services at the Royal Victoria Hospital. The Royal Victoria Hospitals emergency operations have been under scrutiny after a major incident was declared in January. This was due to a large backlog of patients waiting to be seen at the A&E department. Additional staff had to be called in and extra beds opened on order to relieve the pressure on the unit.

18 February

An inquest into the 1976 Kingsmill shootings has opened in Belfast. Though the IRA never admitted responsibility for the shooting of 10 Protestant workmen, the Historical Enquiries Team (HET) investigation found that members of the IRA were behind the sectarian attack.

20 February

Nationalist politicians have called for a review of the parading laws,

after more than 170 parades were allowed to go ahead despite not naming organisers on application forms. It is claimed that loyalists had completed these forms. Almost 70% of these cases were referred to the PSNI by the Parades Commission but the PSNI has refused to prosecute stating that it is not in a position to prosecute under existing law.

24 February

The National Society for the Prevention of Cruelty to Children (NSPCC) has reported that 25,820 children called the Childline helpline for counselling in Northern Ireland between 2012 and 2013. The majority of these calls related to relationships, depression, bullying and self-harm/suicidal issues. 424 calls, involving 713 children, were referred to the PSNI or social services.

The Police Ombudsman has launched an investigation into the actions of the RUC between 1988 and 1993. The investigation is a result of new concerns, uncovered while investigating 'other matters'. The probe will look with particular interest at the Castlerock and Rising Sun (Greysteel) murders in 1993.

25 February

A police source has reported that dissident republicans lack the membership and weaponry to detonate major bombs or mortars.

The Northern Ireland Audit Office found that around 20,000 students were absent for more than 15% (or approximately 6 weeks) of the 2011/2012 school year. Students who miss 15% of the year are referred to the Education Welfare

Services by individual schools, however, only 132 of the cases resulted in action by the EWS.

26 February

The OFMDFM have blocked Justice Minister David Ford's PSNI Chief Constable recruitment plan. The plan would have removed the requirement that PSNI officers must have served in a senior role in an outside force to be eligible for the Chief Constable position, making it a desirable criteria instead of an essential criteria. This criteria has already been overturned in Great Britain and had never applied to An Garda Síochána.

Following the collapse of the criminal case against alleged Hyde Park bomber John Downey, it has emerged that the government has issued 'letters of assurance' to former IRA members who are 'on the run'. The letters state that the on-the-run are not at risk of prosecution, which may be considered a de facto amnesty.

Compiled by Elizabeth Super from various newspapers

Just News

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