Just News

CAJ
Committee on the Administration of Justice
Promoting Justice / Protecting Rights

Human Rights in Northern Ireland
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Devolution of policing and criminal justice - human rights priorities

After roller-coaster weeks of 'will they, won't they,' agreement on devolving responsibility for criminal justice and policing powers to the Northern Ireland Assembly has now been reached. There are still many i's to be dotted and t's to be crossed, but in general the agreement heralds another step forward for the people of Northern Ireland to take charge of their own affairs.

Creating a culture of rights

In terms of the text of the Hillsborough Agreement, significant to a human rights perspective are the affirmation of an independent judiciary and Chief Constable to protect against partisan and political interest and to ensure that policing and judicial decisions are undertaken in "fair, impartial, objective, and consistent manner" (p. 5). Also welcome is the emphasis on reviews of the powers of the Prisoner Ombudsman; on alternatives to custody; on protocols concerning children and young people; and the development of a victim's code of practice which, if it is rights-based and aims to enhance the well-being of all victims, would also boost confidence by ensuring minimum standards of service. Very important is the need for a comprehensive review and modernisation of the prison service, which has not evolved beyond the conflict and retains a punitive focus on security instead of rehabilitation.

CAJ also maintains that the new Justice Minister needs to consider a comprehensive review of the Public Prosecution Service, particularly in light of issues such as those raised recently by the Robert Hamill inquiry. In an unanticipated interim report, the Inquiry has called on the PPS to urgently review its decision not to prosecute a police officer who had been charged with conspiracy to pervert the course of justice.

By addressing matters such as these, the devolution of criminal justice and policing could clearly facilitate the creation of a culture of human rights in the criminal justice system and police service.

Building confidence

More generally, the devolution of powers for criminal justice and policing provides an opportunity to engender greater local ownership of and confidence in these systems. Public confidence in the administration of justice is and always has been low. Many of the recommendations contained in the Criminal Justice Review that emanated from the Good Friday/Belfast Agreement that were designed to increase the transparency of, and thus public confidence in, the criminal justice system, have not been implemented. Thus, for example, ten years on there is still no system for "equity monitoring" those who go through the criminal justice system, nor is there a reflective workforce strategy in place. CAJ's experience in the implementation of these and other recommendations has been of significant resistance and a lack of commitment to genuine change at the highest levels. We hope that devolution and local responsibility will provide the required impetus to ensure that accountability, transparency and human rights compliance of the criminal justice system is achieved.

We also hope that devolution will allow local ownership of policing and criminal justice, so as to allow local solutions to be developed for local issues. Initiatives 'borrowed' from other parts of the UK over recent years, such as a community safety strategy that criminalises young people (and their parents) for non-criminal behaviour, and policing partnership or 'crime reduction' models are very often "conflict-blind" and do not recognise the very different history and dynamics at play in relation to police and community relations in Northern Ireland. This needs to be addressed by any local minister, and genuine and meaningful change embraced.

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Council of Europe Anti-Torture Committee publishes report on the UK

On the 8th of December 2008 the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on its sixth periodic visit to the United Kingdom in 2008, concurrently with the state's response. In England and Wales, the CPT delegation raised issues concerning safeguards afforded to the treatment and conditions of detention of those incarcerated in Manchester, Wandsworth and Woodhill. They also looked at the conditions of detention and treatment of young offenders held at Huntercombe, a juvenile young offenders' institution. In Northern Ireland, they touched on the developments in policing and on the changes in Maghaberry and Magilligan prisons since their last visit in 1999. The circumstances of immigration detainees in England, Wales and Northern Ireland were also scrutinised and this included a visit to Harmondsworth, an immigration removal centre. There were also recommendations concerning persons detained under the Terrorism Act of 2000.

The contents of both the CPT report and the states' response, suggests that there are positive developments in policing and in the provision of health care in prisons. Obviously in Northern Ireland, the CPT will be pleased to note the recent breakthrough in the deadlock on the process of devolution of responsibilities for policing and the criminal justice system. Nonetheless, key highlights in the CPT report include the finding that there were no allegations of ill-treatment of persons detained by the Police Service for Northern Ireland (PSNI) and that there was no evidence of severe ill-treatment by the police in England and Wales. It is also noteworthy from the criteria for the use of electro-shock weapons (tasers) by specially trained units and safeguards in place, that the UK has seriously considered the delegation's observation that the extension of the use of tasers by police forces and the current guidance leaves open the door to misuse of such weapons.

It is however, disappointing that there is lack of political will on the part of the UK to co-operate with the Council of Europe on the procedures to be followed when deciding the question of the possible extension of the duration of detention of those detained under the terrorism legislation. The writer agrees with the CPT delegation that all persons detained under the terrorism legislation should be brought physically before a magistrate at the moment when an extension of their custody is being contemplated, instead of the hearing being conducted by video-link. This is consistent with Article 6(1), European Convention on Human Rights which clearly states that, *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'.*

Arguments of efficiency and of financial considerations cannot be used to deny due process, a procedure which is fundamental to the rule of law. Technology cannot be a substitute for physical presence before a presiding officer.

Also, and in relation to Northern Ireland in particular, it can be inferred from both the CPT's report and the state's response that the UK is less committed to providing appropriate facilities for the detention of immigration detainees. The right to liberty is a fundamental human right enshrined in a number of international and regional human rights instruments to which the UK has signed up. Furthermore, the human rights of vulnerable groups, which include certain categories of irregular migrants, are given special protection in international human rights law. Surely, and notwithstanding the recession, lack of resources cannot be a reasonable excuse for curtailing such a fundamental right in a developed country.

Another area of concern is the defensiveness of the authorities in their response to allegations of ill-treatment of inmates by members of the Standby Search Team (SST) at Maghaberry Prison. A similar attempt at justifying the conduct of officials at the expense of human dignity and bodily integrity can be gleaned from the authorities' answer to complaints originating from Maghaberry prison, that there were occasions when the SST conducted full body searches in an inhuman and degrading manner. While agreeing with the authorities that the nature of the duties of the SST invite complaints, it is contended that such complaints should have been taken seriously given the fundamentality of respect for human dignity and bodily integrity.

The authorities' outright rejection of the CPT's recommendation that the 7 metre square cells at Maghaberry Prison should never be occupied by one prisoner is disturbing. This rejection, as read with the CPT's concern that the UK had either not acted or done very little in respect to certain recommendations made in previous reports, is an indication of the state's lack of respect for the principle of co-operation which is at the heart of the European Convention on the Prevention of Torture and Inhuman or Degrading Punishment or Treatment. It is thus hoped that the UK authorities will show respect of this principle by taking decisive action in light of the CPT's latest recommendations.

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Of law and lawyers: lessons from the Iraq Inquiry Committee

In Northern Ireland we have some experience with inquiries of government into allegations of state wrong-doing. The accepted wisdom is often that they are too long, too adversarial and benefit no-one but the lawyers. The Iraq Inquiry, however, has shown us some of the benefits of formal legal inquiries, by demonstrating what happens when a less formal, less adversarial approach is adopted.

Rightly or wrongly, the legality of the war in Iraq, and the advice of lawyers stands at the centre of the Iraq inquiry. Placing the emphasis on the legality of the war has brought the role of lawyers in decisions about when to go to war, to centre stage. One of the key arguments used by those who suggest the war was legal is that as lawyers disagree: the law must therefore be unclear, it is argued, meaning that the war cannot be illegal. In fact, prior to the Iraq war international law on legal recourse to war while unclear in some respects, very clearly outlawed the bases being used to justify war in Iraq. It was clearly established and agreed amongst the vast majority of states and lawyers, and embedded in British legal practice that the UN Charter did not permit (a) pre-emptive strikes against an enemy state's use of weapons (ruling out the 'weapons of mass destruction' argument, even had they been there), and (b) regime change (ruling out the 'Saddam Hussein bad man' argument for war). It was also very clear that the first UN SC Resolution had not authorised the use of force. The first advice of then Attorney-General Lord Goldsmith affirms all these points unequivocally, finding that neither self-defence, averting humanitarian catastrophe nor UN authorisation of the use of force provide a legal basis for invasion.

That left the argument for legality a very tiny one as to whether the first UN SC Resolution, while not authorising force, had left it open that force could be resorted to by states without a further UN SC Resolution. Confused? You should be: it was intended to be confusing. The French, having prevented language that would authorise the use of force, tried to get wording that would require a second UN Security Council Resolution authorising force, but failed. The US and British tried to get wording that made it clear that force could be automatically resorted to in the event of non-compliance, and failed. That left most states able to sign the first resolution, with the US rather ambiguously noting first – that there was no 'automaticity' in the resolution (a statement that supporting key states, including Ireland, tied their vote to) and second – its view that the Resolution's failure to authorise force did not prevent it from eventually using force.

In his first opinion, Goldsmith was less than enthusiastic about the argument that the first resolution had in fact left the use of force open as a basis for establishing the legality of the war in Iraq. In summing up found that '*UN SC 1441 leaves the position unclear*' and was only prepared to *'accept that a reasonable case can be made that resolution 1441 is capable in principle of reviving the authorisation in 678 without a further resolution.*'

Interestingly, it was the military rather than lawyers or politicians who sought greater legal clarity. Too well aware, perhaps, that soldiers found to have acted illegally are more likely to be held accountable than the politicians who sent them to war, wanted a clear answer to whether the war was legal, and not just the rather flaky assurance that '*there is a weak argument used by the Americans which has some merit but is unlikely to be backed up by anyone else'*. In his second advice, as we now know although the advice itself has not been made public, Goldsmith found himself more persuaded by the American argument. That of course, does not make the argument right, or the legal basis for war made out.

So what are we to make of law and the opinions of lawyers? Lawyers can nearly always make arguments on both sides of a case – that is what they are trained to do. However, just because an argument can be made, does not mean it is a persuasive argument, a convincing statement of the law, and a basis for declaring all law to be so indeterminate and unclear that we do not need to worry too much about it at all. That is to act 'lawlessly'. Who cares? Not Tony Blair – in his view the central issue was the morality of removing Saddam. I agree that we should not confuse judgments about legality with judgments about morality. However, international law is enforced through concepts of 'reciprocity' – we will obey it if you will or we are all faced with anarchy and lawlessness. That is why international law and the legality of the war still matters. Moreover, for a public unpersuaded by the moral cause of the war, the question of legality or not was politically important as a clear signifier of immorality.

Paradoxically, the Iraq Inquiry also points to a re-think on the role of lawyers in inquiries themselves. First, and perhaps most strangely, the Inquiry terms of reference are somewhat unclear in a way that no lawyer would advise. The website states '*our terms of reference are very broad, but essential points*' and goes on to describe those points. However, no-where on the website can the exact terms of reference be found. It is unclear whether Sir John Chilcot's statement of his terms of reference (on the website) constitutes the terms of reference or a description of part of them. Without clear publicly transparent terms of reference, no inquiry is likely to deliver a clear conclusion.

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Secondly, the style of the tribunal is not adversarial and has not involved lawyers as the primary interrogators. Had the legality of war been in the terms of reference, then it is unlikely that this would have been the case. No-where was the lack of lawyers more evident than during the testimony of Tony Blair. Questions were long and rambling, with many assumptions and questions packed in – a classic lawyer 'no-no'. Blair was allowed to digress off point, never to be pulled back in. He was allowed to give bits of evidence to back up his arguments, without being confronted with contradictory evidence. For example, he repeatedly argued that the French had sought a stronger first UN Security Council Resolution making it clear that a second resolution had to be obtained before force could be used and had failed, as part of his argument for why going to war without a second resolution was legal. However, never was he confronted with contradictory evidence of unsuccessful US and British attempts to get clear wording authorising force without the need for a second resolution and had not succeeded. No-one confronted him with the fact that several countries (including Ireland) had signed up to the first UN SC resolution on the back of a statement by the UN that it contained 'no automaticity' with regard to war. The lack of legal 'cross-examination' and apparent failure to pick up on the legal documents which existed to counteract some of Blair's testimony, was all the more acute given that Blair himself had legal training and was therefore able to exploit the Tribunals' weaknesses.

The gentleman's club style inquiry does not come out of this very well, although a final judgment must await its conclusions. Rather than 'cure' the deficits of adversarial legalised inquiries it appeared weak and complicit. For those who would decry the use of trained advocates this Tribunal provides food for thought. Even though the outcomes of formal Tribunals of Inquiry are seldom entirely satisfactory, they should at least robustly 'inquire'.

Writing in the week when the Saville Inquiry seems to be finally about to report to government on the events of Bloody Sunday, and where the amount of money spent on lawyers is likely to be used to obscure Saville's substantive conclusions, perhaps we should think through whether there is a way for us as a society to respond in a more constructive way. After all, the money and time have already been spent and, if Chilcot is the new model, will never be so spent again.

The Iraq Inquiry website is at: http://www.iraqinquiry.org.uk/

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Section 44 Developments

On 12 January 2010 a six-year Liberty campaign culminated in a landmark victory in the European Court of Human Rights. The Court ruled in the case of Gillan & Quinton v UK that section 44 of the Terrorism Act 2000 breaches privacy rights. This exceptionally broad power allows police to stop and search anyone in a given area without suspicion of wrongdoing. The Court agreed that section 44 is too broad and contains insufficient safeguards against abuse – complaints that Liberty had been warning the government about for years.

The people

The case started in September 2003 when we heard that section 44 was being used against protesters and journalists at a demonstration outside the DESi arms fair at the Excel Centre in East London. Alex Gask, former Liberty Legal Officer, jumped on his bicycle and sped to the scene. There he spoke to several people who had been searched under the power – people who were simply seeking to take part in or report on a peaceful protest – and gathered evidence about what seemed to be a clear misuse of an anti-terrorism power. Kevin Gillan and Pennie Quinton were among those searched, and Liberty took them on as test cases to challenge the power. But that was just the beginning.

Stop and search without suspicion

In general, police powers to stop and search individuals depend on an officer having reasonable grounds to suspect they are carrying stolen or prohibited items. In 2000, the Terrorism Act created a very different and much broader power. Under sections 44-45 a police officer of the rank of Assistant Chief Constable or above can give an authorisation which permits any constable in uniform to stop any vehicle or pedestrian within a given area and search them for "articles of a kind which could be used in connection with terrorism." And there is no requirement for the constable to suspect that the person is carrying such items. The only condition for giving an authorisation is that the officer considers it would be "expedient" for the prevention of acts of terrorism. There is no limit on the size of the area, the authorisation may be given in secret, and although authorisations cannot last for longer than 28 days, they can be renewed indefinitely.

Section 47 makes it an offence punishable by imprisonment or fine or both to fail to stop when required to

do so by a constable, or wilfully to obstruct a constable in the exercise of the power under section 44.

Misuse of section 44

The breadth of the infamous power has led to massive overuse and frequent misuse. During the course of the case it was revealed that section 44 authorisations had been in place covering the whole of the Metropolitan Police area constantly since February 2001 when the power came into force. In fact, at the time of writing it still applies now. Statistics revealed a three-fold increase in the use of the power in 2007/8, with around 120,000 stops leading to only a handful of arrests. And despite the Metropolitan Police Authority's decision to cut back on its use of the power following its recognition of the potential harm to community relations, the latest figures show a further doubling of the number of stops across England and Wales, to almost 250,000. Protestors and journalists have often been particularly targeted, and the power is still used disproportionately against black and Asian people.

The case

On behalf of Kevin Gillan and Pennie Quinton, Liberty brought judicial review proceedings in the High Court challenging the authorisations and arguing that the exercise of the powers violated Articles 5 (liberty), 8 (privacy), 10 (freedom of expression) and 11 (freedom of association) of the Convention.

One of our key arguments was that section 44 permitted officers to select individuals at least partly on the basis of their ethnic origin. Indeed, it seems unquestionable when one looks at the statistics that at least some officers have been treating black and Asian people with more suspicion than white people. Based on the 2007/8 figures from the Ministry of Justice, Asian people were 5½ times more likely to be searched than white people and black people were almost 7 times more likely to be searched.

The case was initially rejected, and appeals to the Court of Appeal and House of Lords failed. Undeterred, we lodged an application in the European Court of Human Rights and the Court held a hearing in Strasbourg last May to consider the case. On 12 January, more than six years after the journey began, the European Court ruled in our favour.

The judgment

The right to privacy

The Court noted that the type of search permitted by section 44 is an intrusive one, involving the search of all items in an individual's possession. Additionally police officers may require the person to remove headgear, footwear, outer clothing and gloves, and may place his or her hand inside the individual's pockets, feel around and inside his or her collars, socks and shoes and search the person's hair. The Court said that the use of the coercive powers to require an individual to submit to a search of this type amounts to a clear interference with the right to respect for private life. It rejected the Government's argument that a search carried out in public would not normally interfere with privacy rights; in fact it observed that the public nature of the search may in some cases compound the seriousness of the interference because there may be an element of humiliation and embarrassment.

The Court commented on the breadth of the power to make authorisations and of the discretion given to individual police officers, and said that it was struck by the statistics showing the extent of its use. It shared our concern about the risk of the discriminatory use of the power against black and Asian people, as well as the potential for misuse against peaceful protestors.

The Court concluded that the powers created by section 44 were "neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse" and therefore there had been a violation of Article 8 of the Convention.

The right to liberty

In addition to the breach of Article 8, the Court also pointed out that the element of coercion involved when someone is stopped under section 44 – i.e. imposing criminal liability for refusing to comply with a search – was "indicative" of a deprivation of liberty under Article 5, raising the possibility that the use of the power could also violate the right to liberty.

What now?

This ruling by the European Court will not have immediate effect on the legislation, so section 44 remains in force for the time being. However the UK is bound under the Convention to give effect to the rulings of the Court, so once the judgment becomes final the Government will be obliged to introduce legislation to comply with the ruling. Liberty has put forward suggested amendments in the Crime and Security Bill –currently going through parliament – to tighten up section 44. The suggested amendments would allay some of the problems with section 44 by limiting its use to particularly sensitive locations and events, as well as introducing a requirement of "reasonable necessity" for designating areas, and far greater geographical and temporal restrictions.

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Not a Bill of Rights

One welcome result of the Hillsborough Agreement is that several outstanding issues considered at St Andrews will resurface. One of the longest running of these is the issue of a Bill of Rights for Northern Ireland.

If the history of Northern Ireland teaches us anything, it is this: stability and peace are more likely to be sustained if fundamental rights are adequately protected, and appropriate forums for the redress of grievances are made available.

Over the past month, you could be forgiven for thinking that the only issue remaining to be resolved in the implementation of the Belfast (Good Friday) Agreement is the devolution of policing and justice to the Northern Ireland Executive, and the issue of contentious parades. And you could be forgiven for thinking that the peace process stands or falls by progress in this area alone.

However, concentration on these has led to a neglect of other unresolved issues. Recent political events show just how precarious the Agreement institutions can be. They prove, surely, a timely reminder of the importance of giving more permanent effect to the human rights and equality promises held out in the Agreement.

The Belfast Agreement itself addressed this issue, but long-fingered it, providing only for a process for the future consideration of a Northern Ireland Bill of Rights following the Agreement. This was probably a mistake, but there is now little point in wishing that a different course had been plotted at that time.

Over the past ten years, a plethora of official bodies has considered the issue without resolving it. The Northern Ireland Human Rights Commission has reported twice; the all-Party Forum set up as a result of St Andrews has given its views; and the Bill of Rights has played a (relatively marginal) role in political negotiations between the parties.

Now, however, it appears, that we are edging closer to the end game. The Northern Ireland Office (NIO) has now produced an important Consultation Document outlining the form that a Northern Ireland Bill of Rights may take. Some consultations are more important than others, and this one is vital.

Unfortunately, the document is a major disappointment. In fact, it is not only disappointing, but positively dangerous in some of its implications. Rather than ensuring that human rights are better protected in the future, it threatens to undermine the existing provisions advancing equality.

In essence, the issue that needs to be addressed is how far a Bill of Rights should go beyond the existing legal protections, in particular the Human Rights Act 1998 (which effectively incorporates the European Convention on Human Rights into domestic law).

The basic strategy adopted by the NIO in its Consultation Paper has two main strands. The first strand is to focus on the area of equality. That focus is, to say the least, rather strange. Northern Ireland now has an extensive set of equality guarantees, not least the duty on government departments and other public bodies to have due regard to the need to further equality of opportunity.

What, then, does the NIO propose to do in the area of equality as part of a Northern Ireland Bill of Rights? It is unclear, but it appears to involve redrafting this equality duty. At this point alarm bells should ring. It is well known by equality practitioners that this duty is highly unpopular among civil servants in the central government departments. The NIO is hardly a neutral observer of the equality provisions.

There is also an Equality Bill, which does not apply to Northern Ireland, wending its way through the British Parliament containing provisions on equality significantly weaker than the existing Northern Ireland provisions.

The ever-present tendency of the NIO to propose policies that further integration of Northern Ireland with Britain will, more likely than not, lead to the Equality Bill's provisions being seen as the 'obvious' preferred approach, leading to a significant blunting of existing equality law in Northern Ireland.

A useful rule of thumb in assessing proposed changes in public policy is that new proposals should, at the very least, 'do no harm'. Only then should we assess whether they are likely to actually improve things. The NIO's proposals fail both tests. Proposals to redraft the existing equality provisions are, in the existing political conditions, a major worry.

Nor do the proposals contribute to a deeper culture of human rights in Northern Ireland, given the effective rejection of a whole swath of what a modern Bill of Rights should contain.

This is because, in the second strand of the NIO's strategy, the NIO has proposed that many of the rights basic to a modern Bill of Rights are appropriately considered only in the wider British context. These encompass the vast bulk of rights that are most likely to affect the ordinary individual, such as the rights to work, to health, to economic security, and to adequate housing.

It is true that there is now a significant discussion going on in Britain over a possible British Bill of Rights. Don't be fooled. The British debate is not a discussion about how human rights can be further expanded, it is about how rights should be further constrained. Both the Conservative Party and the current British Government, in the run up to the expected General Election in May, are fighting over who can be seen as more sceptical of human rights.

Indeed, if the Conservatives win the next election, they are pledged, according to their website, to 'replace the Human Rights Act, which has undermined the Government's ability to deal with crime and terrorism, with a British Bill of Rights.'

Little thought appears to have been given in this British debate to the implications for Northern Ireland, or for the Belfast Agreement. Indeed, a recent analysis by Justice has demonstrated what a significant hurdle the devolution settlements in Northern Ireland and Scotland will be for the Conservatives to do what they appear to be proposing. Leaving consideration of these rights to that debate is a rather cynical attempt to kill them without saying so.

The NIO proposals should now be ditched. What the Northern Ireland Office proposes is not a Bill of Rights. It is a recipe for turning the clock back. It would be better for there to be no Bill of Rights for the time being than for these proposals to be taken any further.

Unless a radically new set of proposals is produced that is more reflective of the wishes of ordinary people, and contains what any self-respecting modern Bill of Rights should contain, we must bide our time for a more auspicious occasion when a proper Bill of Rights can be enacted.

Those concerned to advance the cause of human rights in Northern Ireland should also throw their weight behind the more effective enforcement of what existing provisions we have: the European Convention on Human Rights, the Human Rights Act, and the existing equality provisions of the Northern Ireland Act. We can, with imagination, and determination, at least seek to make some progress in the interim.

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CAJ at the Belfast Film Festival

Policing and the People

The Policing Programme at CAJ in conjunction with Queen's University will co-host a film strand entitled 'Policing and the People' as part of the 10th Belfast Film Festival. The strand will explore the human consequence of state security including the impact of implementing security policy on the police themselves.
Through documentaries in three profoundly different contexts a people-centred view of fear, vulnerability, and insecurity emerges that challenges the traditional notion of social stability achieved through national security. Films include 'The Fuse of Peace,' which focuses on the events surrounding the Ardoyne Parade in 2009; the stark realities of policing at the frontline of the war against the Taliban are explored in 'The Survivors – Days in Zhari Police Station' and in 'The Fence', the unforeseen social consequences of U.S and Mexican border security are examined. Discussions will follow two of the films and feature a keynote address by Peter Smith QC, member of the Patten Commission and a panel discussion focused on the lead up to an events surrounding the Ardoyne Parade with Junior Minister Gerry Kelly (Sinn Féin) and Chief Superintendent Mark Hamilton PSNI.

Dates for your diary:
Saturday, 17th April, 5pm
The Survivors – Days in Zhari Police Station
BFF Beanbag Cinema

Tuesday 20th April, 2pm
The Fence
QFT, Keynote Speaker Peter Smith QC, former member of the Patten Commission

Wednesday 21st April, 2pm
The Fuse of Peace
QFT, Panel discussion with Junior Minister, Gerry Kelly (Sinn Féin) and Chief Superintendent Mark Hamilton, District Commander 'A' District, PSNI

For ticket information, visit www.belfastfilmfestival.org

BELFAST FILM FESTIVAL

Devolution, 'Policing and Justice' Conference Queen's University Belfast, 27-28 January 2010

The Queen's Law School annual conference coincided with a defining moment in the devolution of policing and justice to the Northern Ireland Assembly. While the political parties were locked in dispute at Hillsborough Castle, representatives from policing and justice bodies, community groups and political parties and researchers from Queen's and other universities addressed the detail and subtleties of justice and accountability, policing, community engagement, criminal justice, prisons and punishment, and institutional challenges. Opening the conference, Professor Phil Scraton stated the significance of reflecting on recent research and community-based initiatives to identify the complexity of policing and justice including the means through which all people in all communities have their voices heard and their concerns fully acknowledged.

Professor Colin Harvey, Head of the Law school, noted that the current political debates about structures, timing, control and responsibility were crucial. Both he and Professor Christine Bell (University of Ulster) suggested that the core questions are: What sort of criminal justice system do we want? What do we want to do with devolution? What do we want to achieve? With political imagination, Professor Bell suggested, we might reframe this 'project of technicalities and bargaining', and Professor Harvey argued that the human rights values employed in the constitutional process should animate and give life to these structures.

Professor Bell emphasised that accountability is central to community confidence, stressing that although many structures are in place, critical elements remain unfulfilled. Both warned against complacency regarding the lack of constitutional protections of rule of law institutions and the failure to produce a robust Bill of Rights. Professor Harvey recalled the foregrounding of human rights in the Belfast/Good Friday Agreement, Patten Report and Criminal Justice Review, and both suggested that the prioritisation of rights was now in doubt. Professor Bell noted that cross-party veto politics creates a threat to vulnerable groups, and proactive constitutional safeguards must be implemented to protect those excluded from this 'cosy consensus.'

Baroness Nuala O'Loan considered it 'important to remember where we have come from'. She detailed aspects of recent history that would 'bedevil our future running of our criminal justice system' and asserted that the legacies of conflict and diminished community confidence in policing and criminal justice could not be ignored. Serious issues remain in the Prison Service, Public Prosecution Service, and disparate accountability mechanisms. Peace, she argued, would and could be delivered collectively, and bodies such as the Police Ombudsman and the strong NGO sector provide important assurances of accountability.

Mary O'Rawe (UU) and Dr Graham Ellison (QUB) noted that while the British Government claims to have 'implemented Patten', its more radical and far-reaching recommendations have been lost. Little evidence exists of a truly participative approach, hindering development of a coherent community safety strategy in urban working-class communities. 'Neighbourhood policing' has lacked imagination and 'apes the failed strategies and policies' in the UK. They presented a 'rallying cry that devolution could signal a distinctive opportunity for the more radical aspects of the Patten report to be revisited, revitalised and restored.' Concerned about what devolution might 'entail in practice', Dr Aogan Mulcahy (University College, Dublin) warned of 'political partisanship' and the potential for 'inappropriate interference in policy and operational matters.' While this could be resolved through 'robust oversight mechanisms' improvement in 'service delivery' was unclear given the absence of 'concrete proposals.' Communities are a 'key resource and conduit' and it is essential to engage effectively with the most marginalised, 'maximising local capacity to resolve local problems' to build 'long-term, community-based strategies.'

Jim Auld (Community Restorative Justice Ireland) called for a 'new relationship' with the police, addressing: agreement on what constitutes 'community policing' and 'policing within the community'; the challenges posed by working with officers on the ground, especially building trust and respect; and how the structure of the PSNI creates difficulties for operational community policing. Tom Winstone (Shankill Alternatives) raised similar concerns about relationship barriers with police, arguing that 'community engagement' demands building trust through shared, open and transparent conversations. While 'community confidence is there', questions remain about police commitment to 'buy into the community ethos' and to establish and work towards common goals. Dr John Topping (UU) considered that the PSNI required the 'tools to embed some of the more fundamental changes required to engender the community policing philosophy throughout the entire organisation.' Challenging the assertion that local communities 'have a say in policing matters' that affect them, he criticised the PSNI for its 'lack of effort' in community engagement, concluding that it is essential to create 'new spaces for thinking on policing' with 'engagement from the community perspective.' Based on recent research with children and young people Dr Siobhán McAlister (QUB) noted the impacts of: transition, masculinity, cultural identity and violence, intergenerational attitudes and demonization particularly regarding their presence on the streets. They were outside the debate on

policing and justice and it is crucial 'to engage the most marginalised young people in meaningful consultations, local partnerships and community groups.'

Summarising, Dr Pete Shirlow discussed the achievability of expectations, how 'dealing with the past' might help or hinder processes moving forward, the impediments to implementing alternative forms of policing and criminal justice and the generation of a 'shared idea' about key issues within communities. Conservatism within Northern Ireland, persistent resource competition, legacies of the past, conceptions of crime, the tendency for reactive legislation and the disconnection between research and policy-making each pose challenges to progressive alternatives.

On criminal justice, Professor Brice Dickson (QUB) proposed that 'challenges' arise from financial pressures, vested political and professional interests, and from the weight of tradition. Alternatively, 'opportunities' are presented by 'the chance to indulge in creative thinking … to pick and choose solutions that have worked elsewhere or that are entirely novel.' Professor John Jackson (UCD) discussed accountability within the Public Prosecution Service, recalling the Criminal Justice Review's recommendations for a non-Ministerial department answerable to the Attorney General and the Assembly. Deena Haydon (QUB) identified key issues for a rights-based approach to youth justice, including regarding under-18s in conflict with the law as 'children' first, prevention of offending as a collective social responsibility, reducing punitive sanctions, promoting participation of children and young people and promoting and protecting the rights of all children. Assuming the Justice Minister role, Mike Ritchie (CAJ) emphasised: policing with the community; strong policing oversight mechanisms; police justification of their budget; initiation of a societal conversation about prisons; public confidence in the PPS; mechanisms for addressing the past; 'freshening' the civil service; establishing a Scrutiny Committee; reviewing emergency powers; public education; and creating an MI5 watch.

Pauline McCabe (Prisoner Ombudsman) discussed what 'fit for purpose' means for prisons, arguing that unlike policing, many of these questions remain unanswered in Northern Ireland. Citing prison population statistics, and the goal to 'reduce the likelihood of reoffending', she highlighted key 'areas for investment': mental health, addictions, vocational training, work experience, job search, literacy, education and resettlements. Under the current system challenges to effective 'return on investment' include: prison culture, lack of cohesion between ministries, the need for fresh and creative expenditure ideas, public education and inappropriate sentencing of young people. Chief Inspector of Prisons, Dr Maguire identified challenges including establishing consensus for a reform agenda while recognising public indifference and the inherent difficulties with penal reform.

A 'new debate' on 'what we want prisons to do' should consider a 'clear and identifiable purpose for prison' in the context of a 'comprehensive strategy for offender management.' Dr Linda Moore (UU) noted the opportunity to 'overhaul the justice system for young people' and challenge the 'demonisation of children' while consolidating a 'culture of rights.' She called for the decarceration of children, the raising of the age of criminalisation and an immediate end to strip searching and physical restraint. Professor Phil Scraton argued that the unmet needs of women prisoners had to be resolved against a backdrop of violence and restraint, strip-searching and the systemic denial of bodily integrity, self harm, segregation, appalling physical and mental healthcare in the contexts of facilities shared with men, punitive detox programmes, minimal contact with families and children, bereavement, inadequate preparation for release and authoritarian and poorly trained guards.

Chief Superintendent Andy McQuiggan (PSNI), Dr Bill Lockhart (Chief Executive, Youth Justice Agency), Brian McCaughy (Director of Probation) and Robin Masefield (Director of the Prison Service) gave detailed responses to the institutional challenges faced by each of their agencies. Closing the conference, Professor Shadd Maruna emphasised devolution as an opportunity towards a fresh approach. Citing positive assets of Northern Ireland's context for new beginnings, despite the apparent challenges, he identified its strong communities upon which to draw alongside a vibrant community/voluntary sector. The population in Northern Ireland is politically astute and engaged and the ex-prisoner population is mobilised and active, offering a vocal, personalised perspective of the criminal justice system. Already at the forefront of human rights, equality and policing and criminal justice debates, Northern Ireland's transition from conflict offers opportunities for developing new approaches and initiating 'root and branch' change. The conference succeeded in extending the focus of debate from essential but narrow concerns about policing to the complex issues of justice in its social, political and material contexts.

The full conference report will be available free, from the School of Law, Queen's University in April. Contact: Deaglan Coyle: d.p.coyle@qub.ac.uk

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Civil Liberties Diary - January/February

12th January
Raymond McCord meets Assistant Chief Constable Drew Harris to express victims' anger over the transfer of Operation Ballast to the PSNI. The Historical Enquiries Team had previously investigated allegations of collusion.

13th January
The European Court of Human Rights rules against the UK, finding the police use of counter-terrorism stop and search powers on peace protesters and photographers to be unlawful. The judges found that there was a clear risk of arbitrariness in how police used the powers under section 44 of the Terrorism Act.

16th January
The Equality and Human Rights Commission writes to the Home Secretary over concerns about the proposed introduction of body scanners at airports. The body claims the devices risk breaching an individual's right to privacy.

18th January
In the High Court in England, Mr Justice Silber rules that compensation is to be paid to two terror suspects whose control orders were quashed after "secret evidence" was used.

19th January
Lawyers for Liam Holden seek full disclosure of a secret dossier as part of a legal bid to overturn his conviction. He claims water torture was used to extract a confession for the murder of a British soldier in 1972. He was the last man to be sentenced to death in Northern Ireland.

The HET reveal that a review of the investigation into the murder of Sean Brown by the LVF in 1997 could take up to two years. The team said the case was complex and would require a substantial review of documents, forensic links and possible links to other cases.

20th January
The Irish Minister for Justice publishes a Bill allowing for the establishment of a national DNA database in the Republic. If the Bill passes into law everyone who is arrested will be required to give a sample.

Civil rights activist Bernadette McAliskey calls for an inquiry into child sex abuse in Northern Ireland. Writing in The Irish News she calls on the NIHRC and the Children's Commissioner to be involved.

21st January
The Northern Ireland Policing Board report says anti-terrorism law by police to stop and search suspects should not be seen as an easy alternative to more traditional policing. Figures show that nearly 10,000 people were challenged last year, more than twice the previous year.

22nd January
The Court of Appeal overturns the conviction of Pat McCourt. The trial is the latest of several Diplock trials to be overturned.

The Irish Supreme Court rules that the courts are to review the proportionality decisions that affect fundamental rights. The ruling allows a Nigerian woman Abosede Oluwatoyin Meadow to bring a judicial review challenge to a deportation order.

29th January
An inquest into the death of John Hemsworth is abandoned after it emerges that two members of the jury were related to police officers. He died of a brain clot six months after being allegedly beaten by RUC officers on his way home.

A HIV-positive South African woman launches a legal challenge to being removed from Northern Ireland by immigration authorities. The asylum seeker, who has spent years living in Belfast, was taken to a removal centre in Bedfordshire.

2nd February
The Home Affairs Select Committee calls for an investigation into claims that asylum seekers are mistreated, tricked and humiliated by UK border agency staff.

Pope Benedict XVI condemns UK equality laws as threatening religious freedom and contrary to "natural law." The legislation prevents Catholic adoption agencies from discriminating against gay couples.

9th February
Raymond McCartney and Eamonn McDermott lose their appeal against the denial to compensate them for 17 and 15 years spent in jail. The pair were convicted of murder but the guilty verdicts were declared unsafe by the Court of Appeal in 2007.

10th February
The Department of Health withdraws guidelines for health professionals on abortion. The move follows a High Court ruling in December which said the guidance did not deal properly with issues of counselling and conscientious objection.

11th February
Lord Neuberger, Master of the Rolls, condemns the British security services for failing to respect human rights, deliberately misleading parliament and having a culture of suppression that undermined government assurances about its conduct. The case disclosed evidence that MI5 were involved in the ill treatment of Binyam Mohammed.

15th February
The Northern Ireland Human Rights Commission launches a free phone line to enable whistleblowers to report bad treatment of the elderly in nursing homes.

16th February
Former UDR member Neil Latimer calls on the Historical Enquiries Team to investigate the murder of Adrian Carroll in 1983. The convictions of three co-accused defendants were quashed after judges found police interview notes had been altered.

The Oireachtas committee finalises child rights proposals that will be put forward for constitutional amendment. A referendum could take place during 2010.

Professor Chris McCrudden warns that government proposals for a bill of rights for Northern Ireland risk "turning the clock back" on equality safeguards.

18th February
A Belfast nightclub is fined £15,000 after a court finds that it had discriminated on the grounds of sex and race against Joanne McGuinness and Domingo Lopes. Their case was supported by the Equality Commission.

19th February
The Independent Commission for the Location of Victims Remains adds the name of Joe Lynskey to those who were "disappeared" by the IRA. His place of burial will now be investigated following information recently received.

Gerry Adams calls for a public inquiry into the killing of eleven people by British soldiers in west Belfast 40 years ago. The Ballymurphy massacre happened between the 9th and 11th August 1971.

22nd February
A former Patten Commissioner and prominent lawyer, Peter Smith QC, criticises the new policing and justice arrangements. He says the deal would profoundly distort the policing structure set up under the Patten Report and would leave the PSNI Chief Constable vulnerable to political influence from any future justice minister.

23rd February
The Northern Ireland Court of Appeal hears a challenge to the 270 year old ban on the use of the Irish language in court proceedings in the north. The three judge panel is told that the Administration of Justice (Language) Act of 1737 was discriminatory and breached the ECHR. The legislation has been repealed in both Scotland and Wales.

25th February
Councillors in Derry hear submissions from both the Equality Commission and the Community Relations Council on proposals to amend the city's name from Londonderry or alternatively to redefine the city boundaries.

26th February
The Public Prosecution Service announces it will not review its procedures despite the family of Thomas Devlin calling for the service to be completely overhauled by independent experts. Acting director of public prosecutions Jim Scholes said the service was satisfied that its internal review system had led to a successful conviction.

Compiled by Mark Bassett from various newspapers

It was necessary for CAJ to issue a double February/March 2010 edition of Just News due to our office move. We apologise for any inconvenience.

CAJ has moved!

From Donegall Street to Queen Street.
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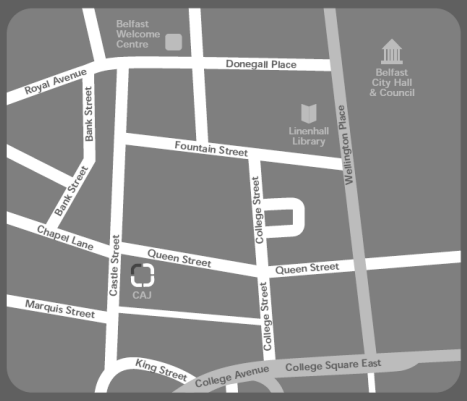
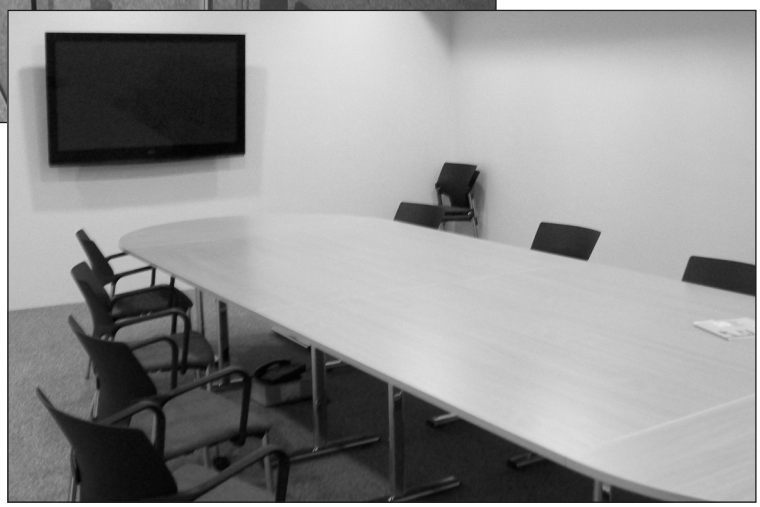


See our new contact details on the left and some pictures of our new office below.



Just News

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