

Book Reviews

Criminal Justice in Transition: The Northern Ireland Context*

McAlinden, A. and Dwyer, C. (Eds.)

Oxford: Hart Publishing, 2015

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During the last two decades, transitional justice has effected its own, very impressive transition; from the outer peripheries of academic analysis to the substantial occupation of undergraduate and postgraduate curricula worldwide. However, while yards of books address issues of central and tangential relevance to transitional justice, there has remained a noticeable gap in the market for an analysis of a country that is in the early stages of transforming key aspects of how it approaches criminal justice issues. *Criminal Justice in Transition: The Northern Ireland Context* nicely fits this space, showcasing a collection of contemporary essays that reflect recent developments in the political and conceptual bases of transitional justice.

The fact that a subject is large, complicated, and diverse enough to have a book of this nature is not in itself a sign of its intellectual status. However, when I first read who had contributed to this book and reviewed their impressive previous research contributions, I was left with no doubt that the book offered an excellent opportunity for the reader to access a stimulating collection of work written by experienced researchers within the context of transitional justice. Eye catching for this reviewer was the fact that all seventeen chapters of the book related specifically to Northern Ireland; a region of the UK with limited academic contributions in this field of study, with the exception of the occasional chapter in a criminology or criminal justice publication or journal article,

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but not a specific collection of work contextualised within the jurisdiction of Northern Ireland. Professor Shadd Maruna, in the foreword, makes an interesting substantive point in that ‘British Criminologists are almost famously disinterested in reading about Northern Ireland. Cambridge Professor Anthony Bottoms used to joke that by using the words ‘Northern Ireland’ in the title of an article in the *British Journal of Criminology* was the surest way to assure no one would read what you wrote’ (p. v). However, he reflects that there is an enormous amount to learn from Northern Ireland, due to the ‘unique historical, cultural and constitutional context of Northern Ireland’.

It is quite simply an outstanding achievement. I have read reviews that at times appear to enjoy denigrating rather than praising. Negative language (such as irony, sarcasm, disagreement) is much richer than positive language. But clichéd as they sound, the praises invited by this volume—‘indispensable’, ‘the standard source for years to come’, ‘a must for any serious student’—have to be used. First, the editors clearly describe the aim of the seventeen specially commissioned chapters, which cover most of the issues that preoccupy Northern Ireland’s experience of criminal justice in transition in a broad social, cultural, political, historical and comparative context, as well as shining a light on theoretical and empirical research in relation to criminal justice aspects in Northern Ireland. Second, post- devolution political processes are critically examined in relation to criminal justice policy throughout, with a much appreciated analysis of the criminal justice field seventeen years after the Good Friday Agreement brought an end to sectarian conflict in Northern Ireland.

The exemplary opening chapter by the editors clearly and effectively sets the scene for both a post and pre-devolution analysis of penal policy in a country beginning to redevelop itself in many criminal justice areas after a period of violent and sustained conflict. Whilst this reviewer was born in Northern Ireland and spent most of his life living in Northern Ireland, I found the chapter particularly useful in highlighting the historical context of Northern Ireland and political processes, as well as providing a useful insight into how the conflict impacted upon the policies employed during that period.

The seventeen chapters are divided into four parts:

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- (i) The first part under the heading 'Conceptualising Crime and Criminal Justice in Northern Ireland' includes two chapters dealing with issues from the past. The chapter by Dr Cheryl Lawther presents a thorough and engaging interrogation of issues relating to truth recovery, accountability, victims and limitations to a legal approach in seeking answers to the past. The other chapters include Professor Colin Harvey's analysis of a human rights culture within the context of transformation, Professor Brice Dickson's discussion on criminal justice reform with specific analysis of the drivers and participants involved in change in this arena, and finally Dr Clare Dwyer's discussion in relation to the role of risk in the governance of Northern Ireland, post conflict and during the conflict, as well as the impact risk has had on transforming criminal justice policy in Northern Ireland.
- (ii) The second part under the heading 'The Criminal Justice Process' contains seven chapters. There are two chapters on issues pertaining to prisons and imprisonment, as well as prisoner reintegration. Professor Phil Scraton provides an informative and critically reflective account, not only of the prison regime during the conflict in Northern Ireland, but also post-conflict, in which he describes the post-conflict period in prison reform as being one of 'stagnation'. As a Probation Officer myself, I found the chapter on this subject by Dr Nicola Carr particularly informative, especially in relation to the concept of neutrality during the conflict in Northern Ireland. Other chapters in this part include a highly recommended chapter on policing by Dr John Topping in which the nature of policing and its transition, post-Good Friday Agreement, is analysed extensively. There are two chapters on judicial performance and judicial selection processes and finally a chapter on the often controversial issue of miscarriages of justice and the courts in transition.
- (iii) The third part under the heading 'Contemporary issues in Criminal Justice' contains four chapters. Criminal justice issues in relation to women, young people, restorative justice and approaches to work with people convicted of sexual and violent crime are all addressed. The chapter on women in criminal justice provides the reader with a historical context to gender issues in prison during the conflict in Northern Ireland, and subsequent reforms post-conflict. The chapter on young people provides an excellent analysis of welfare and justice debates in relation to interventions employed with young

people during a period of transition, as well as analysing the legacy of past conflict. Anne Marie McAlinden's discussion on responses to sexual and violent crime evidences a sound examination of policy transfer largely adopted from criminal justice policy in England and Wales. The chapter also investigates issues in relation to risk, agencies involved in risk management, public attitudes to sexual offending and conflict legacy issues. Finally in this part Anna Eriksson's chapter is both insightful and engaging in relation to tracing the development of restorative justice practices in Northern Ireland since the Good Friday Agreement in 1998.

- (iv) The fourth and final part under the heading 'Overview and Prospects' addresses the issues of policy transfer, transitional justice and governing through the past and is a substantial critical reflection by both editors on a range of issues discussed within the various chapters in the book. I found this chapter well balanced and considered in relation to potential issues in the future.

The clichéd way of denigrating collections of this sort is to note that the contributions are 'uneven'; however, these seventeen chapters are remarkably even. They present as sober, judicious and genuinely informative, providing everything that average students of this subject area would want to know as well as enough stimulation for better students and criminal justice practitioners to follow up via the references listed after each chapter. There is also—again, with only a few exceptions—a reasonable balance between reflection and substance. Many readers might have preferred menus in some chapters—and there is, perhaps too little polemical jousting in some chapters—but overall, the balance is appropriate for a publication of this type.

Wild Arabs and Savages: A History of Juvenile Justice in Ireland*
Paul Sargent

Manchester: Manchester University Press, 2013

ISBN: 978-0-7190-8916-9, 256 pages, hardback, £65

In this volume, Paul Sargent tracks the development of the Irish juvenile justice system from the mid-nineteenth century through to the present day.

In the introduction he states that there will be no debate, and no attempt at theoretical explanation. He explains that the book comprises four chapters that can be read as stand-alone pieces; they are not linked by narrative. In analysing the Irish juvenile justice system in this way, Paul Sargent has, in effect, provided a detailed literature review that will be of interest to a wide audience: those working within the broader Irish justice system, those with an interest in the development of State services and legislation relating to children and also those with an interest in contemporary service development and provision.

The book begins with an extensive chronology of juvenile justice developments dating from 1801 through to the present day. They include legislative, policy and service provision and demonstrate the slow move away from dependency on institutions and institutionalisation towards today's primarily community-based initiatives and sanctions.

According to the author, from the later nineteenth century religious orders dominated the landscape in the development and provision of services to address juvenile crime through the 'establishment of institutions whose aim [was] prevention, and to humanize and train to industry and order the young waifs and strays into society'. The State took a back seat. He highlights a focus on the destitute and wayward child and the risk posed to their morality. Paul Sargent's research shows that when dealing with these children, nineteenth century Ireland had only just begun to slowly move away from detaining children in a prison system to a system of holding and managing delinquent children in reformatory and industrial schools. This suggested some recognition that the needs of the detained child were different from those of their adult counterparts.

Chapter two explores the development of community-based initiatives, supported and supervised by the Catholic Church, such as playgrounds in deprived urban areas in the early and mid twentieth century aimed at preventing juvenile delinquency.

The book is then split into four main themes which focus on the governance of the troubled or troublesome child. In chapter three, the author examines 'The Changing Visibility of the Juvenile Justice System'. He refers to the 'problem' of juvenile offenders first becoming visible through the separation of juvenile from adult prisoners in the

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establishment of the Smithfield penitentiary for juveniles in Dublin in 1801. The chapter goes on to refer to the contribution of growth of statistical knowledge and innovations in the juvenile justice system, some of which were more 'successful' than others. The author cites the development internationally in the early twentieth century and since of the borstal, secure units, detention and assessment centres, diversion programmes and other community initiatives. Many were imported and applied in Ireland in emerging attempts to manage or regulate the behaviour of juveniles in Ireland through the justice system. How the institutions worked and their often baleful impact is part of the story of modern Ireland. The later community-based and diversion initiatives have contributed to changing the face of juvenile justice more recently.

Of particular interest too, is the narrative and detail regarding the Children Court as it operated in Dublin in 1948. Reference is made to evidence of a more child friendly ethos, where the presence of a Probation Officer was a significant innovation and a significant contributor in the work of that Court.

In exploring the changing rationales underpinning the system, chapter four refers to the emergence of the 'at risk child' and how there has been a move away from the dominance of the reformatory and industrial school model to the present-day juvenile justice system, where community initiatives and sanctions linked to probation, 'psy-expertise' and youth work rationalities are employed.

Chapter five considers the changing technologies used by the Irish juvenile justice system to regulate behaviour. Paul Sargent chooses to place technologies into two categories: disciplinary and pastoral, though he acknowledges that these categories may not be mutually exclusive. Here he refers to Niklas Rose's definition of both terms. He places industrial and reformatory schools, and places of detention under the disciplinary category. Pastoral technologies include the Garda Youth Diversion Scheme, restorative justice initiatives and probation interventions. The author makes reference to the Children Act 2001 as giving 'a wider scope for the technology of Probation to operate'. He attributes this to the Act's emphasis on community sanctions which the Probation Service supervise in community settings.

Chapter six deals with Paul Sargent's final theme: how, at different times, the Irish juvenile justice system has governed children within it, under different forms of childhood identity. He refers to the construction of the 'delinquent identity' in the mid 1800's which recognised such a

child as likely a victim of circumstances beyond their control. Their restoration or 'redemption' was deemed to require education based on religion and truth. Social disadvantage was identified as contributing to their delinquency. Referring to the Children Act 1908, Paul Sargent asserts that there is evidence in it that the State recognised that the child needed both reformation and protection. Regimes in industrial and reformatory schools were based on the idea that the child was 'susceptible to corrective influence' and therefore interactions with school staff were an opportunity for such influence.

Paul Sargent goes on to refer to the identity of the 'psychological child'. The idea that a child's criminality is based on an underlying psychological disturbance came to prominence in the 1920's in the United Kingdom. Interestingly, the author found that it was not until the late 1960's that there was evidence that this identity and thinking actually impacted on Irish government policy.

In drawing the chapter to a close, the author refers to two more identities, first the 'at risk child'. In the mid 1800's, the issue of risk pertained to the child's spiritual well-being. Catholic organisations became directly involved in reforming this population. The Children Act 2001 has now placed the 'at risk [of offending] identity' in a place of dominance in today's Irish juvenile justice system. The Act provides a statutory means to receive such a child into care placements; divert them under the Garda Youth Diversion Scheme; or place them under the supervision of a Probation Officer/on a community sanction.

Finally, Paul Sargent refers to the child as a 'bearer of rights' evidenced by the development and work of the Office of the Ombudsman for Children and The Office of the Minister for Children. He cites the publication of the National Youth Justice Strategy led by the Irish Youth Justice Service, a co-ordinating body under the Department of Children, as evidence of an approach based on acknowledgement of the rights of the child.

Throughout the book, using references to both general and to government/official publications, Paul Sargent has tracked the Irish juvenile justice system which began a little over two centuries ago. Initially, institutionalisation led by religious organisations was the norm. The book charts a slow move toward the mainstreaming of service provision for juvenile offenders to the present day with the State taking increased responsibility. Today, community-based interventions are to the fore, in contrast to the situation which prevailed for much of the

nineteenth and twentieth centuries.

Wild Arabs and Savages is the first history of youth offending and the juvenile justice system in Ireland. Paul Sargent has made a real and substantial contribution to Irish legal scholarship, social history and criminology. For readers interested in juvenile justice, criminology, history and social policy in Ireland this book is an essential and invaluable resource to be revisited many times.

What else could I do?: Single Mothers and Infanticide, Ireland 1900–1950*

Cliona Rattigan

Dublin: Irish Academic Press, 2013

ISBN: 978-0-7165-3140, 272 pages, paperback, €24.95

In this well-researched book, *What else could I do?: Single Mothers and Infanticide, Ireland 1900–1950*, Cliona Rattigan uses the judicial records of over three hundred cases of infanticide tried in Ireland in the first half of the twentieth century to throw light on the social and economic conditions in which these offences were committed. By examining sentencing policy, she illuminates the response of official Ireland and, given the time span of her study, is in a position to compare differences between how cases were disposed of North and South of the border in the period 1920–1950.

This book gives voice to the young women who appeared before the courts charged with infanticide or concealment of birth in Ireland in the first fifty years of the twentieth century. It is this aspect of the work that I found most interesting as it provides access to information about the women's lives, their relationships, their position in society and what motivated them to take the lives of their infants. What emerges from Rattigan's work is a nuanced, multi-layered and complex picture which is both challenging and revealing in equal measure.

Against a socially conservative background, with an emphasis on sexual morality, single pregnant women were, for the most part, left to address their situation alone. Most single pregnant women in the sample

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did not confide in anyone; they concealed their pregnancies, gave birth unattended and took their baby's life shortly after birth. Rattigan emphasises the roles that shame, stigma and poverty played as factors motivating single mothers to take their infants' lives. She also makes reference to the social policy arena in which there was no welfare system of support and only access to private foster-care arrangements, which had to be paid for. The option of placing their child for adoption was not available to them as adoption was not legalised in the post-independence twenty-six county State until 1952. Furthermore, it was not possible for single mothers to seek maintenance from the father of their child until the enactment of the Illegitimate Children (Affiliation Orders) Act in 1930. The lack of provision and support for single pregnant women gives credence to the experience of Ena P. whose voice lends itself to the title of this book 'I gave birth to a child. I killed it. What else could I do?'

The majority of the women, who were before the courts charged with infanticide or concealment of birth, were from poor backgrounds. They came from rural areas, were in their mid-twenties and many of them worked as domestic servants. As domestic servants their income and, very importantly, their accommodation were dependent on their continued employment – employment which they rightly considered as being in jeopardy if their employers became aware of their condition. Bridget N, for instance, was dismissed by her employer because he suspected she was pregnant. Bridget's infant was born in the workhouse and there is evidence that she slept outdoors for some time after being discharged. In fact there are a number of references to young women, isolated and alone, wandering the backroads shortly after giving birth and living in fields and outhouses, perhaps for days, before killing their infants. One such woman was Mary T. who told the Garda Síochána that she had killed her child because she had nowhere to go and nowhere to take it. Mary had given birth alone in a disused house on a backroad. The loneliness, fear and isolation conjured up by Mary's experience is palpable.

The majority of the women in this study acted alone in killing their infants, fearing that the circumstances of their pregnancy would lead to rejection by their family. Some women, however, were aided by relatives, and others by the putative father of their child. Women in the sample from twenty-six counties in post-independence Ireland were most likely to confide in a female relative than their Northern counterparts and there

are a number of cases cited in the book where sisters, mothers and grandmothers appeared before the courts as co-defendants. The reasons proffered for the assistance of female relatives is diverse. Some were acting to protect the family's honour by disposing of the evidence of pre-marital sex; some were anxious to deal with matters to avoid the men of the family becoming aware of what was transpiring. Most women were, however, providing support and there is evidence in some of the narratives of tenderness and loving support provided to women in distress by their female relatives. While Rattigan makes the point that men are 'notably absent from the trial records' there were some exceptions to this. A particularly poignant and distressing aspect of the research was the finding that a small number of couples married in the last stages of pregnancy and still felt compelled to kill their child. This drastic step to conceal the infant is surely an indication of how shameful it was for it to be known that pre-marital conception took place, even if marriage followed.

It is apparent from the evidence surveyed in this study that young single women were subjected to a high degree of surveillance in rural Ireland. They were under constant scrutiny by their employers, family members, neighbours and sometime the civil authorities. Women's involvement in infanticide and concealment of birth was often suspected as a result of this close attention to them and their behaviour. There is an assertion in the book that neighbours were often driven by a desire to settle old scores and petty disputes rather than any higher motive.

Notwithstanding the range of severe pressures the women were under, it is difficult to comprehend the brutal ways in which some of the infants were killed and disposed of. The remains of infants were placed in ditches, rivers, lakes, boxes, suitcases and in one instance a chamber pot. One is left with a strong sense of sadness for the pain inflicted on them and the lack of dignity attached to their disposal. However, it is inferred that some of the women acted under severe mental distress; it is difficult, for instance, to comprehend the actions of the young woman who denied she was pregnant, gave birth alone in her place of employment and then brought sheets heavily soiled in blood downstairs in view of other members of the household. One can only speculate on the fragility of her mental state from this seemingly irrational behaviour.

Rattigan outlines the different legislative frameworks which operated in the Northern six counties and in the twenty-six counties post-independence. In the North the Infanticide Act was passed in 1922

making it a non-capital offence. In the twenty-six counties it took until 1949 for an Infanticide Act to be on the statute books. Nine women in the twenty-six counties were convicted of murder between 1922 and 1950 and while all nine were given the mandatory death sentence all sentences were commuted to life imprisonment with penal servitude. The reality is that women on both sides of the border were treated leniently by the courts and other sections of the criminal justice system. Most women were convicted of the lesser charge of concealment of birth and almost all served less than three years in custody. Two notable differences in relation to sentencing practices are evident between the two jurisdictions post-independence. The first is that in the Northern sample 45.8 per cent of the women are discharged on entering a recognisance, while the corresponding figure in the sample from the twenty-six counties is 17.8 per cent with a further 3.9 per cent discharged on recognisance and marriage, meaning that they gave the court an undertaking that they would marry the father of their child. The other difference between sentencing in the two jurisdictions is the number of women in the twenty-six counties who were sent to convents instead of prison, 49 per cent in the twenty-six counties as compared with 16.6 per cent in the North, if one combines the numbers who went to convents and those who went to the Salvation Army. While Rattigan and the other commentators she cites express the view that the courts may have considered a convent a more fitting place than a prison for a young woman all observers seem to agree that the women were disadvantaged by this arrangement. While Rattigan acknowledges that little is known about the women who served their sentences in convents what little can be gleaned tells us that the women's stay in convents sometimes exceeded the sentence imposed by the court. In the case of Bridget G, Sr. Frances Greer wrote to the county registrar in the Central Criminal Court telling him that the nuns would do their best to 'keep her in safety even after her time has expired'. Women sent to convents were unable to petition for reduction in their sentences, a right that was available to women sent to prison.

There is reference in the book to a letter sent by a Probation Officer, Elizabeth Carroll,¹ to the court but it is impossible to glean much about

¹ Known in Probation Service records as Evelyn Carroll, she was a Probation Officer between 1938 and 1969. Evelyn Carroll featured in the *Irish Probation Journal* 2014 as the author of 'Memorandum Re: Women and Girls Who Come before the Central Criminal Court on Serious Charges – And Other Relevant Matters', pp. 196-207.

the role of Probation Officers in cases involving women charged with infanticide or concealment of birth. One quote from the letter refers to Elizabeth's expectation that she will be travelling to Limerick the following week with another girl. One could deduce from this that this Probation Officer is involved in transporting women from court to a convent in Limerick. This begs further questions about the role of the Probation Service in the fate of women sent to convents as part of a court disposal. I also contend that it also points to the need for the Probation Service to remain vigilant about the role it plays within the broader criminal justice system and to constantly critically interrogate its practice to ensure that it acts in an ethical way, in keeping with its social work values.

This book is intriguing and never lost the capacity to keep this reader engaged. It identifies further areas for study, including what happened to the women sent to convents as part of the sentences imposed by the courts. A most compelling question raised relates to the impact and nature of Catholicism; was the expression of Catholicism different in Ireland than in other parts of the world? Did young single women in other Catholic countries experience the same shame and isolation that drove women in this study to kill their newborn infants? Was there something particular about the expression of Catholicism in the Irish context that enabled this to happen? These are questions for another day. In the meantime I highly recommend Cliona Rattigan's book – I particularly recommend it as compulsory reading to those working in a statutory context to address issues of marginalisation in our society, issues which are so often defined by prevailing social attitudes.