The criminal justice system in Northern Ireland

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CHAPTER OUTLINE

Introduction

As with any country, crime and justice and the contours of criminal justice have to be situated within the particular historical, social, and political context. Nowhere is this truer than in Northern Ireland, where the criminal justice system that has emerged has been shaped by a violent political conflict which spanned over three decades (from the late 1960s to the late 1990s). In the transition to peace, the reform of criminal justice agencies has been central—to a wider project of state legitimacy. This chapter begins with a brief historical overview of Northern Ireland and some of the key ways in which various aspects of criminal justice have been impacted by the Troubles. It then provides a brief overview of the current system of government before outlining the existing criminal justice context in Northern Ireland and the key criminal justice agencies involved in the criminal justice system. This includes a particular focus on the police, probation, prisons, the youth justice system, and criminal justice oversight bodies. The challenges of the transition from conflict for the criminal justice system, the ongoing reform, and the continued legacies of the conflict are explored.

Northern Ireland in context

The Government of Ireland Act (1920) led to the partition of the island of Ireland into two separate jurisdictions—the Irish Free State (which subsequently became the Republic of Ireland) and Northern Ireland which is part of the United Kingdom. The end of the 1960s marked the eruption of the Troubles in Northern Ireland, a 30-year political conflict that resulted in more than 3,500 deaths and 40,000 casualties (McKittrick and McVea 2012). The causes of the political conflict are complex and linked to Ireland's history. The Northern Ireland state formed in 1921 comprised a majority Protestant population at the time of partition (65 per cent compared to 35 per cent Catholic). The Northern Ireland parliament was dominated by Protestant/Unionists and there was an under-representation of Catholic/Nationalists at all levels of government. In the 1960s, Catholic/Nationalists sought to highlight structural discrimination through civil rights protests. These protests led to political tensions and violence and, in August 1969, British troops were deployed on the streets of Derry and Belfast in response to the civil unrest. The situation quickly escalated and Republican paramilitaries who sought a united Ireland, Loyalist paramilitaries, who wanted to retain the connection to the United Kingdom, and the British army became involved in a sustained conflict (Dixon and O'Kane 2011). In this context, the British government suspended the Northern Ireland parliament in March 1972 and imposed Direct Rule from Westminster.

Crime, justice, and political conflict

During the period of Direct Rule, criminal justice policies in Northern Ireland often paralleled legislation in England and Wales and were made distinct only by the rebranding of an Act by adding 'Northern Ireland' to its title. In other respects the criminal justice system in Northern Ireland differed markedly, most notably by the extent through which various aspects of the system were mobilised to suppress and contain political conflict (McAlinden and Dwyer 2015). This included the introduction of 'Emergency' legislation, which allowed for: internment (the indefinite detention of terrorist suspects without trial), increased police and army powers, and the introduction of juryless 'Diplock' courts in cases of alleged terrorist offending.

The role of the police force, the Royal Ulster Constabulary (RUC), during the Troubles has been the subject of particular critique. There were concerns about police accountability, allegations of collusion with Loyalist paramilitaries, and institutionalised discrimination (Hillyard and Tomlinson 2000; Ellison and Mulcahy 2001). In the course of the conflict, over 300 police officers were killed. Because of a legitimacy deficit in policing, paramilitary groups adopted quasi-policing roles within their communities. This involved punishment beatings, exiles, shootings, and executions and involved the regulation of behaviour in local communities in the absence of an accepted form of policing (Feenan 2002). In Loyalist communities, the emergence of paramilitary regulation from the early 1970s was initially viewed as an adjunct or assistance to the police (Monaghan 2004). The types of behaviour that have attracted censure from paramilitaries have included so-called 'ordinary' crime or antisocial behaviour (such as theft, 'joy-riding', drug-dealing, and vandalism).

Prisons in particular were also key sites of political conflict. This was due to the introduction of measures such as internment and policies regarding the treatment of political prisoners. Prison officers were considered 'legitimate targets' by paramilitary organisations and, in the course of the Troubles, 29 prison officers were killed by paramilitary groups. Internment was reintroduced into Northern Ireland in 1971 through the activation of emergency legislation which authorised the detention of a person suspected of acting or having acted in a manner prejudicial to the preservation of peace in Northern Ireland (Spjut 1986). Between 1971 and 1975 (when the practice ended), 1,981 people were interned. One of the immediate effects of internment was the expansion of the detention population. Internees were held in prisons and in old military facilities such as Long Kesh.

Alongside internees, the prisons also contained political prisoners, those sentenced or remanded for conflict-related offences. In contrast to the mainstream prison population, referred to colloquially as 'Ordinary Decent Criminals' (ODCs) (Gormally et al. 1993), initially political prisoners were allowed to wear their own clothes and associate freely. Political prisoners and internees were held separately from ODCs and prisoners of opposing paramilitary groups. In a shift in this policy in 1976, the British government removed the 'political status' of prisoners convicted of terrorist offences, by requiring that they be treated in the same manner as other convicted offenders (e.g. having to wear a prison uniform, limiting their associations, etc.) (McEvoy 2001). The Maze—a new high-security, purpose-built prison—was constructed on the Long Kesh site, and prisoners convicted of terrorist-related offences were accommodated there.

In reaction to the change in their status, Republican prisoners protested. Objecting to the fact that they were no longer allowed to wear their own clothes, large numbers of prisoners refused to wear prison-issue clothing, covering themselves only with blankets when leaving their cells. The protesting prisoners soon became known as the 'Blanket Men' (McKeown 2001). This protest subsequently escalated into a 'no wash' or 'dirty protest' and led to prisoners smearing their cells with excrement. These protests extended to other prisons including Armagh Women's Gaol (Corcoran 2007). The prison protests continued into the 1980s. Frustrated by their lack of success, prisoners in the Maze went on hunger strike in an attempt to achieve special category status. The British government refused to accede to the prisoners' demands, and ultimately ten prisoners starved to death (Beresford 1987).

Transition to peace

The most marked aspects of violent political conflict ended in 1998 following the success of the Belfast Peace Agreement (more commonly referred to as the Good Friday Agreement) (NIO 1998). Following this agreement, the Northern Ireland Assembly was restored in 1999. The Northern Ireland Assembly is responsible for legislation in certain matters, for example policy in relation to employment, education, and health and social services. Similar to the position of the devolved governments in Scotland and Wales, matters considered to be of national importance remain the responsibility of the Westminster parliament. This includes areas such as international relations, defence, and national security.

The Northern Ireland Assembly comprises 90 directly elected parliamentary representatives (Member of the Local Assembly or MLAs). (For context, the population of Northern Ireland is 1.86 million and the number of MLAs was reduced from 108 under the Assembly Members (Reduction of Members) Act 2016. This number remains high compared to the country's population when compared to the Scottish Parliament, which has 129 Members serving a population of 5.4 million, and the Welsh Parliament, which has 60 members serving a population of 3.16 million.) From the Assembly, a first minister, deputy first minister, and 12 other Members are appointed to the Northern Ireland Executive. Because of the historically contested nature of criminal justice, policing and justice powers were not devolved to the Northern Ireland Assembly in 1998. The Good Friday Agreement set out plans for the establishment of an independent commission to make recommendations for the future policing arrangements of Northern Ireland (ICP 1999) and a parallel wide-ranging review of other areas of the criminal justice system (Criminal Justice Review 2000).

The reviews of both policing and other aspects of the criminal justice system led to a series of reforms that are described further in this chapter. Most prominently, these included the establishment of a new police force, the use of restorative justice within the youth justice system, and new institutions for the oversight of the criminal justice system. The peace agreement also involved a commitment to release prisoners who had been convicted of conflict-related offences. Characterised as the final piece in the devolution jigsaw, policing and justice powers were devolved to the Northern Ireland Assembly in 2010 (NIO 2010a), and a justice minister was appointed. Indicative of the priority areas for the new department, the Minister for Justice initiated two substantive independent reviews—one of prisons and the other of the youth justice system in Northern Ireland.

Crime and justice in Northern Ireland today

Information on recorded crime is provided by Police Service of Northern Ireland (PSNI) statistics. As with all official crime statistics, the usual caveats apply—not all crime is reported to the police and there is usually under-reporting of particular types of crime (e.g. hate crime and domestic violence). Recorded crime is also reflective of police practices and priorities (Maguire 2015). Crime reporting is also affected by confidence and trust in the police which, because of the legacy of political conflict, bears a particular resonance in Northern Ireland (Ellison and Mulcahy 2001). Victim surveys are another source of crime data. The Northern Ireland Crime Survey (NICS) is conducted annually amongst a representative sample of households. It measures victimisation rates even where crimes have not been reported to the police, perceptions of crime, and public confidence in the police and the wider criminal justice system. The questions in the NICS are similar to the questions asked in the Crime Survey for England and Wales (CSEW) allowing for comparisons across different jurisdictions.

The rate of crime in Northern Ireland has fallen over time, reflected by both the PSNI and NICS data. Between 2002/3 and 2015/16 the numbers of recorded crimes fell from 138,132 to 105,023 (PSNI 2016). Theft offences, including burglary and criminal damage, account for the greatest proportion of recorded crime (52 per cent in 2015/16). Offending involving violence against the person (including sexual offences and robbery) accounted for 38 per cent of recorded crime in this period (PSNI 2016). Within the overall context of declining crime, there has been an upward trend in recorded sexual offences; the figure for 2015/16 was the highest level recorded since 2000/1 (PSNI 2016). There were 21 homicides in Northern Ireland in 2015/16. There has been an overall downward trend in the number of homicides particularly when compared to the periods of most intense political conflict (376 in 1972). Comparisons between the NICS and the CSEW show that the risk of becoming a victim of crime (8.9 per cent) remains lower in Northern Ireland than it does in England and Wales (15.2 per cent) (Campbell 2017).

Alongside the main crime statistics, the police also publish information on the 'Security Situation'. These statistics provide information on the levels of recorded 'security-related deaths', shootings, bombing incidents, and arrests made under the Terrorism Act. While there is a marked decrease in levels of violence since the Troubles, there is still ongoing activity including five killings between March 2015 and March 2016 (PSNI 2017). Information is also recorded on so-called 'paramilitary style' shootings and assaults. These are particularly likely to be under-reported; nonetheless, the available information shows continued levels of paramilitary activity within communities.

The Northern Ireland criminal justice system

Similar to the criminal justice systems of England and Wales and Scotland, the Northern Ireland criminal justice system comprises a range of agencies involved in the administration of justice. This includes the police, prosecution services, the courts, probation, and prisons. For young people under the age of 18, there is a separate but parallel system—the youth justice system. Elements of these systems and key features of their characteristics in Northern Ireland are described in the next section.

Policing and police reform in Northern Ireland

Reform of policing was seen as integral to the peace process, particularly given the extensive criticisms of the role of the Royal Ulster Constabulary (RUC) during the Troubles. The Independent Commission on Policing (ICP) in Northern Ireland, chaired by Chris Patten, published its report in September 1999 setting out 175 recommendations for police reform (ICP 1999). The Patten Report foregrounded the protection of human rights as a core function of the police and placed a strong emphasis on accountability and transparency. It recommended that the force should be renamed the Police Service of Northern Ireland and it called for equal recruitment of Catholics and Protestants and the establishment of new governance structures.

Following the passage of the Police (Northern Ireland) Act 2000 in 2001, the RUC became the Police Service of Northern Ireland (Mulcahy 2006). A new uniform, badge, and an oath for new officers were introduced and the first PSNI-trained officers took up post in April 2002. The Northern Ireland Policing Board (NIPB) was also established as an independent public body by the Police Act (Northern Ireland) 2000. The NIPB comprises 19 political and independent members. The main statutory duties and responsibilities of the NIPB are to secure an effective and efficient public service, set priorities and targets for police performance, and appoint (and dismiss, if necessary) the

most senior police officers. It is also responsible for monitoring the performance of the PSNI in complying with the Human Rights Act 1998.

As the Patten Report observed (ICP 1999), the RUC was not representative of the society it policed. Catholics constituted 8 per cent of the force, despite comprising over 40 per cent of the Northern Ireland population. In order to encourage more equal representation of Catholics and Protestants within the police workforce, a 50/50 recruitment policy was introduced. The policy was in place for ten years (2001–11), and during this time the Catholic composition of the workforce increased from 8.3 to 29.38 per cent. Noteworthy also is the fact that the proportion of females in the police increased from 12.6 to 25.54 per cent during that period. There is a much smaller proportion of officers from ethnic minority backgrounds (0.45 per cent), but this is reflective of the broader composition of the Northern Ireland population (NIO 2010b).

As well as these systemic reforms, there were also attempts to shift the focus of policing towards a more community-based model (Ellison and O'Rawe 2010). This has involved the establishment of Policing and Community Safety Partnerships (Justice Act 2011). However, the extent to which this has been successfully implemented has been questioned (Topping 2015). Some of the continued challenges to normalisation of policing include the Dissident Republican threat. Since 2001 two police officers have been killed by dissidents (Constable Stephen Carroll was shot in 2009 and Constable Ronan Kerr was killed in a car bomb in 2011), and the continued level of overall threat is assessed as 'significant' (PSNI 2017). The continued activities of paramilitaries within communities is another source of concern.

Prosecution, courts, and sentences

The Public Prosecution Service (PPS) in Northern Ireland carries out a similar function to the Crown Prosecution Service in England and Wales. Its main role is to decide whether there are sufficient evidential grounds for prosecution and if prosecution is within the public interest. It is responsible for prosecuting cases at court. The courts in Northern Ireland are run by the Northern Ireland Courts and Tribunal Service (NICTS). The court structure in Northern Ireland is similar to England and Wales. Magistrates' courts hear less serious criminal cases, while the Crown Court hears all serious criminal cases. Recourse to appeal can be made to the Court of Appeal. There is a separate youth court for under-18s. The vast majority of prosecutions that proceed to court are finalised at the magistrates' court level. There has been some concern about the length of time it takes cases to progress through the courts (CJINI 2010). Monetary penalties (fines) are the most frequently used disposals in Northern Ireland courts—almost 54 per cent of all cases before the courts were dealt with in this way in 2015. Just over 12 per cent of cases resulted in a prison sentence, 15 per cent received a suspended prison sentence, and 13 per cent received a community sentence (Graham and Ramsden 2016).

Community sanctions and measures

The Probation Board for Northern Ireland (PBNI) is the organisation responsible for the supervision of people in the community subject to Community Sanctions and Measures (CSMs). Such sanctions and measures are defined as those:

> . . . which maintain suspects or offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment. (Council of Europe 2017)

This definition encompasses both community sanctions imposed by the court and the supervision of people in the community instead of a prison sentence or following release from prison.

The following are the main community sentences which can be imposed by the courts in Northern Ireland:

- **Probation Order:** this places a person under the supervision of a probation officer. The courts can sentence someone to this order for a period of between six months and three years.
- **Community Service Order:** this requires a person to carry out unpaid work in the community. It may be given to anyone over the age of 16 and for a period ranging from 40 to 240 hours.
- **Combination Order:** this is a sentence which combines a Probation Order with a Community Service Order. The element of probation supervision can last from one to three years and the community service component can range from 40 to 100 hours.

These three orders are supervised entirely in the community. The courts can also impose sentences which involve a period of imprisonment followed by a period of supervision in the community following release from prison:

- **Determinate Custodial Sentence:** this is a sentence of imprisonment for a period set by the court. The

first half of the sentence is spent in custody and the second half in the community.

- **Extended and Indeterminate Custodial Sentences:** these were introduced in Northern Ireland in the Criminal Justice (Northern Ireland) Order 2008. They are sometimes referred to as 'public protection' sentences (Carr 2015), as they can only be imposed if a person has committed a serious offence and the court is of the view that a person is 'dangerous' and likely to commit further offences that would result in serious harm. For an Extended Custodial Sentence (ECS), the court must specify the maximum time to be spent in prison at the point of sentence. For an Indeterminate Custodial Sentence (ICS), no release date is set. At the point of sentence the court sets a 'tariff' date, which is the earliest point at which a person subject to an ICS can be considered for release.

The Parole Commissioners for Northern Ireland (PCNI) determine the point at which prisoners subject to these sentences can be released on licence. They also consider the point at which a person subject to a life sentence, which is imposed for the most serious offences (such as murder), can be released. The PCNI is a statutory body comprising of 41 commissioners who work on a part-time basis and are appointed based on their professional expertise (e.g. law, psychiatry, policing, and probation). They make their decisions based on a number of factors, including an assessment of the risk of further offending and the likelihood of a person causing further serious harm. They must also consider what is best to support the rehabilitation of the prisoner (PCNI 2016).

When a person is released on licence, a range of conditions that they must adhere to is specified. These typically include a requirement to reside at an approved address, to keep in touch with their probation officer, a prohibition on travelling abroad without prior permission, and to not commit further offences. Further specific conditions can be imposed based on the particular characteristics of a person's offending history and the assessed level of risk. These can include restrictions on contact with specified individuals or groups, restrictions on specific activities, and curfew requirements, which can be subject to electronic monitoring. A failure to adhere to the conditions of a licence can result in a person being 'recalled' to prison.

Probation officers are employed by the Probation Board for Northern Ireland (PBNI) and supervise people subject to community sentences or those released on licence in the community. The arrangements for probation in Northern Ireland differ from other UK jurisdictions. The PBNI is a non-departmental public body, which means that although it receives most of its funding from the government, it operates at arm's length from government departments. It is governed by a board, which comprises representatives from the community (Fulton and Carr 2013). Probation offices are located throughout Northern Ireland and some probation officers also work in prison. In Scotland, criminal justice social workers (the equivalent of probation officers) work in local authorities (McNeill 2016), while in England and Wales probation services have recently been privatised and the majority of supervision has been outsourced to private Community Rehabilitation Companies (CRCs) (Robinson 2016).

The distinct governance structure of probation in Northern Ireland is linked to the political conflict. In the 1980s, the decision to establish a board comprising members of the community was based on the view that probation should be representative of the entire community. The PBNI adopted a 'neutrality' stance during the political conflict, which meant that it only worked with people involved in politically motivated offending on a voluntary basis. The rationale for this approach was that those who had become involved in the criminal justice system as a result of politically motivated offending did not consider that they required 'rehabilitation'. As a result of its neutral stance, probation officers were able to operate in communities that were considered no-go areas by other criminal justice agencies such as the police. It also meant that, unlike prison officers or the police, probation officers were not considered 'legitimate targets' by paramilitaries and no probation officers were killed during the conflict because of their occupation (Carr and Maruna 2012).

The stated purpose of community sentences such as probation orders is to 'secure the rehabilitation of the offender' and to 'protect the public from harm' (Criminal Justice (Northern Ireland) Order 1996). This dual emphasis on rehabilitation and public protection has become a common feature of probation practice in many countries (Robinson and McNeill 2016). The emphasis on assessment of risk (both of reoffending and the likelihood of causing serious harm) is a central component of practice. Probation officers write pre-sentence reports for the courts on request. These reports provide information on a person's background and reasons for their offending. They also provide an assessment of risk and make recommendations to the court accordingly. Ultimately, the court decides the sentence.

Table 1 provides a snapshot of the numbers of people under the supervision of PBNI in April 2016—this includes people subject to community sentences and post-custodial supervision (i.e. those released on licence from prison). To help you make sense of the figures, the term 'Juvenile Justice Centre Order' applies to under-18s who are sentenced to detention in the Juvenile Justice Centre and who are then subject to supervision for a period following their release; a 'Sex Offender Licence' involves supervision of people who have been convicted of a sexual

Orders/Licences	Number
Combination Order	396
Community Service Order	700
Custody Probation Order	78
Determinate Custodial Sentence	1,159
Enhanced Combination Order	47
Juvenile Justice Centre Order	21
Probation Order	1,364
Life Sentence Licence	250
Sex Offender Licence	103
GB Transfer Licence	51
Extended Custodial Sentence	194
Indeterminate Custodial Sentence	32
Other	13
Total People:	**4,247**

Table 1 People under supervision of PBNI in April 2016 by Order/Licence

Source: PBNI (2017)

offence following their release from custody; and a 'GB Transfer Licence' is for people who have been served a sentence in a prison in England, Wales, or Scotland and who are supervised in Northern Ireland for the period of their licence. It is also worth noting that some people may be subject to more than one order.

Alongside the range of sentences and licences supervised by the PBNI, another noteworthy feature is the number of people subject to some form of supervision in the community. In the following section we will see that the average daily prison population in Northern Ireland at the end of 2016 was just over 1,400 prisoners (NIPS 2016). The ratio of people under supervision in the community compared to those in prison is therefore approximately 3:1. The relationship between prison and probation populations is one that has been under scrutiny in different countries (Aebi et al. 2015; Heard 2015). In many contexts, community sentences are advocated as a means of reducing prison populations. In other words, sentencers are encouraged to use community sentences rather than short prison sentences. However, in an analysis of trends in Europe, Aebi et al. (2015) found that community sentences can have a 'net-widening' effect. This means that rather than reducing the prison population, we see increasing numbers of people both in prison and subject to some form of community supervision; we also see movement of people from prison to community and vice versa.

One of the ways in which people move from the prison to the community and sometimes back into prison is through the practice of 'recall'—when people are returned to prison for breaching their licence conditions. A report published by the Criminal Justice Inspection Northern Ireland (CJINI 2016a) documents that between 2010 and 2015, of 2,505 prisoners release from custody on licence, 723 were subsequently recalled to custody, a recall rate of 29 per cent. These numbers clearly have an impact on the overall prison population. There are also broader issues raised by recalls, including the evidence used to support the process and the extent to which it may delay the process of desistance from offending (Digard 2010; Irwin-Rogers 2016).

Prisons in Northern Ireland

As outlined earlier, the political conflict had a profound effect on Northern Ireland's prison population. The overall population rose dramatically following the outbreak of the conflict (from approximately 600 prisoners in 1969 to 3,000 in 1979) (McEvoy 2001). During the decades of conflict, political prisoners constituted up to two-thirds of Northern Ireland's prison population and, as noted earlier, the entire prison regime, in particular approaches to security, was shaped by this fact (McEvoy 2001). The release of political prisoners was a key element of the Good Friday Agreement. Two years after the agreement, the Northern Ireland (Sentences) Act 1998 enabled the release of political prisoners on licence. Between 1998 and 2007, 449 politically affiliated prisoners were released (Dwyer 2007). The Maze prison, which had been used to detain political prisoners, closed in 2000 and the remaining political prisoners who did not qualify for release were moved to Maghaberry prison just outside Belfast.

The release of prisoners led to a significant reduction in Northern Ireland's prison population. The remaining prisons in Northern Ireland (Maghaberry, Magilligan, and Hydebank Wood) accommodate remand, committal prisoners, and young offenders. Table 2 provides an overview of the current prison estate. Since the closure of the women's prison, Armagh Gaol, in 1986 there has been no separate site for women prisoners. Initially women were accommodated in Mourne House, a unit situated on the Maghaberry prison site. After numerous critical reports, this unit was closed and another facility, Ash House, was opened in the grounds of Hydebank Wood Young Offenders Centre (Scraton and Moore 2005, 2007). Specific provision for women prisoners

Prison	Type	Category	Average daily population 2015/16
Maghaberry	Male High Security	Remand and Sentenced	931
Magilligan	Male Low/Medium Security	Sentenced	506
Hydebank Wood College	Young Offender Centre	Remand and Sentenced	102
Hydebank Wood (Ash House)	Women	Remand and Sentenced	53

Table 2 Northern Ireland prison estate and average daily population 2015/16

Source: Crone (2016)

remains an issue (O'Neill 2016), as does the treatment of politically affiliated prisoners and the suitability of accommodation within the prison estate (Scraton 2015).

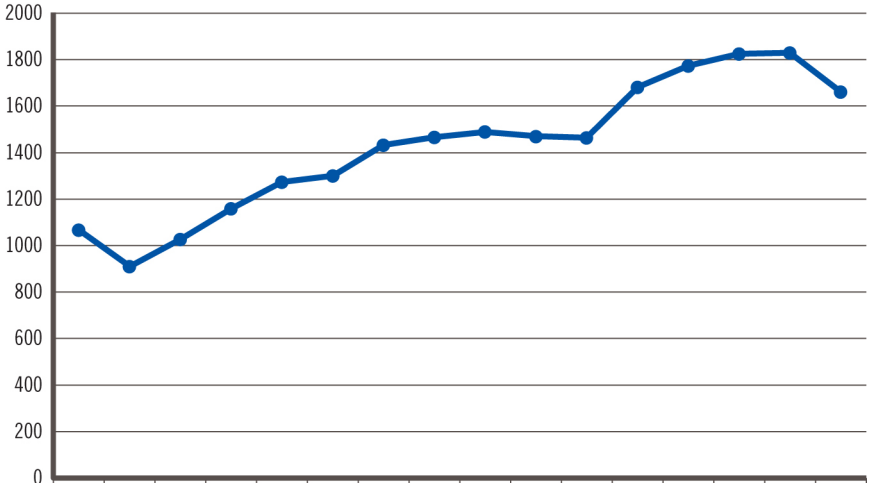
The question of reconfiguring and reorienting a prison regime that is so rooted in its role in political conflict remains a challenge. Following the devolution of policing and justice powers to the Northern Ireland Assembly in 2010, the Minister for Justice, David Ford, appointed a Prison Review Team (PRT) to investigate the current situation in prisons and make recommendations for reform. In the PRT's subsequent report, it observed the following:

> The prison system that has developed in Northern Ireland is intimately connected to its history. Not only has the approach of those working in the service been conditioned by the experience of the Troubles, but events in prison play out in the community and vice versa. Prisons therefore have political, as well as criminal, resonance and importance. (PRT 2011: 9)

The PRT identified a number of shortcomings in the Northern Ireland prison system and their observations reflected what has been described as a 'decade of stagnation' (Scraton 2015: 192) within the prisons following the Good Friday Agreement. The PRT recommended the reconfiguration of Maghaberry prison, that Hydebank Wood Young Offenders Centre be redesignated as a 'secure college', and that a separate bespoke facility be built for women. It also proposed a 'twin-track' approach to 'refreshing and developing' staff, noting the fact that while there were relatively high staff-to-prisoner ratios within the prisons, there had been little recruitment into the service for a number of years. It noted the need for the appointment of a 'change management' team to drive the reforms with appropriate oversight at senior political level.

The recommendations of the review were accepted in full by the Minister for Justice and in the intervening years, some of the reforms have been implemented. However, a number of challenges remain (Scraton 2015; Moore and Wahidin 2015; Butler 2017). Inspections of Maghaberry prison highlight some of the continued difficulties with the regime including overall safety and in particular the treatment of vulnerable prisoners. The regime for separated prisoners (politically affiliated prisoners continue to be held in a separate unit) and the continued security-focused orientation remain concerns (CJINI 2015a, 2016b). No new women's prison facility has been built but the Hydebank Wood Young Offenders Centre was redesignated as a 'secure college' in 2015 (CJINI 2016c). Illustrative of the fact that prisons are still entwined with the wider political context, two prison officers have been killed in recent years: David Black in 2012 and Adrian Ismay in 2016. Both killings are believed to have been carried out by dissident Republicans.

The prison population rate in Northern Ireland at 87 per 100,000 is significantly lower than in Scotland (143 per 100,000) and England and Wales (148 per 100,000). The prison population in Northern Ireland at the end of 2016 was 1,415 (NIPS 2016). This represented a reduction from recent years, in which the population had been steadily rising (the average daily prison population in 2003 was 1,138). Part of the reason for the rise in numbers over time (see **Figure 1**) includes greater numbers being processed through the courts, an increase in short prison sentences, and a high use of remands (exacerbated by delays in the criminal justice system) (PRT 2011; Department of Justice 2014). A further factor impacting on the prison population is the aforementioned issue of people being recalled to prison for breaches of their licence conditions, so-called 'back-door' sentences (Weaver et al. 2012).



2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
1068	910	1026	1160	1274	1301	1433	1466	1490	1470	1465	1682	1774	1826	1830	1661

Figure 1 Northern Ireland Average Daily Prison Population 2000-2015

Source: Allen and Dempsey (2016) and Crone (2016)

Youth justice in Northern Ireland

In common with other UK jurisdictions, in Northern Ireland there is a separate system of justice for under-18s. Following a recommendation by the Criminal Justice Review (2000), the Youth Justice Agency was established to administer youth justice in Northern Ireland. The enabling legislation (Justice Act (Northern Ireland) 2002) also set out the main sanctions for young people involved in offending. A distinct feature of the Northern Irish system is that restorative justice-based youth justice conferences are the main disposals used for dealing with youth offending (Haydon and McAlister 2015). Restorative justice initiatives had been developed at a community level as a response to paramilitary violence and the legitimacy deficit in policing (Eriksson 2009). Community-based projects intervened using restorative justice principles to prevent paramilitary punishments and beatings. The Criminal Justice Review Group (2000) noted the success of these projects, but recommended that restorative justice approaches should be brought under the umbrella of the formal justice system and administered by the Youth Justice Agency (Doak and O'Mahony 2011).

There are two types of youth justice conferences: a youth justice conference that is directed by the court (court-ordered youth conference) or one that is directed by the Public Prosecution Service (diversionary youth conference). The latter means that a young person engages in a youth justice conference at the direction of the PPS without going to court. The legislation specifies that where a young person goes to court, a youth justice conference should be the main method for dealing with offending if (a) the young person admits the offence and (b) consents to participate in a conference. There are only a small number of serious offences (e.g. those for which, in the case of an adult, a life sentence would apply) where the court is not obliged to order a conference when these conditions are met.

The conference is facilitated by a conference coordinator who is employed by the Youth Justice Agency and is a meeting involving the young person, a police officer, an appropriate adult, and where possible the victim of the offence. The conference is based on restorative justice principles, the central aim of which is to restore the harm caused by offending (Van Ness and Strong 2014). The conference will involve a discussion of the offence and the reasons for offending. In some instances, if the victim is present, the young person may make an apology. The outcome of the conference is an agreed plan. Conference plans typically involve a young person engaging in forms of reparation (e.g. voluntary work), offence-focused work, and purposeful activities (e.g. attendance at school). For court-ordered conferences, the plan must be approved by the court and the young person will then be made subject to a Youth Conference Order. For diversionary conferences, the PPS approve the plan.

Research and evaluations of youth justice conferences note some positive aspects of this approach, particularly when contrasted with alternative models of justice. In an evaluation, Campbell et al. (2005) found that conferences

facilitated more participation by the young people and victims than a traditional court setting. Victims who attended youth conferences reported high levels of satisfaction. Research exploring young people's perceptions of conferences has found mixed experiences: some young people find the process stigmatising, particularly when their life experiences are not taken fully into account (McAlister and Carr 2014). As there is no limit on the number of conferences to which a young person can be made subject, some young people report 'conference fatigue' and a sense of going through the motions of the process (McAlister and Carr 2014). In research exploring the relationship between youth conferences and desistance from offending, Marsh and Maruna (2016) reported that conferences in which a young person meets a direct victim of violence are particularly impactful.

Figure 2 provides an overview of all of the referrals made to the Youth Justice Agency between 2009/10 and 2015/16, with the 'Other' category including Juvenile Justice Centre Orders (JJCO) where the Youth Justice Agency is involved in supervising the community element, Reducing Offending Programme (ROP), voluntary referrals, bail support cases, and work with probation. You will see that diversionary and court-ordered youth conferences account for approximately 90 per cent of all referrals. The Youth Justice Agency also supervises community orders—Attendance Centre Orders (an order between 12 and 24 hours requiring a young person to attend a designated centre to undertake a structured programme of activities); Community Responsibility Orders (a form of community service which combines a specified number of hours—between 20 and 40—to be spent on practical activities and instruction on citizenship); and Reparation Orders (these require a young person to make reparation to either the victim of the offence or the wider community for a maximum time of 24 hours). However, because of the aforementioned presumption towards the use of youth justice conferences within legislation, these community orders only ever constitute a small proportion of referrals (4 per cent in 2016).

Youth custody

There is one juvenile custodial facility in Northern Ireland which is operated by the Youth Justice Agency. The Juvenile Justice Centre (JJC)—Woodlands—is situated just outside Belfast. It is a purpose-built facility which replaced training schools, where Protestant and Catholic children were separately detained (Convery 2014). Woodlands has a total capacity for 48 children. It comprises six units and accommodates both males and females. There are three routes through which a young person can be admitted to the centre: (a) on remand from the court; (b) under a court sentence; and (c) under a PACE admission (Police and Criminal Evidence Order 1998). The PACE Order allows for the secure detention of a young person in the JJC pending a court appearance. Typically, PACE admissions are for short periods (e.g. one or two days). The average daily occupancy of Woodlands in 2015/16 was 26 young people. On any given day, most young people are detained on remand.

In common with other jurisdictions, the overall number of young people in detention in Northern Ireland has declined over time (Bateman 2012; Hamilton et al. 2016). However, concerns have been expressed regarding the 'churn' of young people through detention. For example,

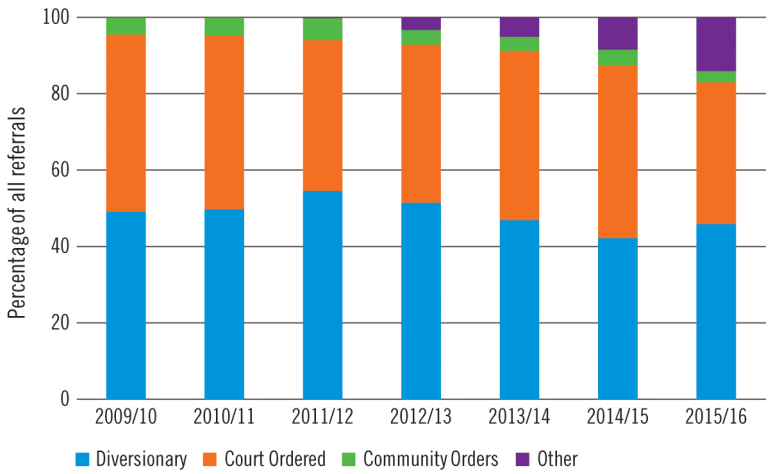


Figure 2 Referrals to the Youth Justice Agency—2009/10–2015/16

Source: McCaughey (2016), Youth Justice Agency Annual Workload Statistics 2015/16

in 2013/14 there were 528 admissions to the JJC of 196 children. This means that some young people move in and out of custody on multiple occasions (CJINI 2015b). Another consistent issue has been the over-representation of Looked After Children (LAC) in custody. In 2015/16, 21 per cent of young people detained were looked after (McCaughey 2016). The reasons for the over-representation of LAC in the youth justice system are complex and include individual and systemic factors, such as complex needs and the lack of appropriate alternative accommodation (Carr and McAlister 2016).

Reviewing youth justice

After the devolution of policing and justice powers to the Northern Ireland Assembly, and following a commitment made in the Hillsborough Agreement, in 2010 the Minister for Justice established a review of the youth justice system. The review reported in 2011 and made 21 recommendations (YJRT 2011). One of the most prominent of these was that the minimum age of criminal responsibility (MACR) should be raised from 10 to 12 with immediate effect and that consideration should be given to raising it further to age 14 within two years (YJRT 2011). In support of its recommendation, the review team noted that young people in this age group constituted a relatively small proportion of the population (under 12s less than 3 per cent and under 14s less than 15 per cent) and therefore raising the age, while important in symbolic terms, would not have a drastic effect on the numbers processed through the system. While the Minister for Justice accepted the recommendation, he did not receive wider political support and therefore the MACR in Northern Ireland, like England and Wales, remains the lowest in Europe (Goldson 2013).

Another significant recommendation of the YJRT was a proposal to introduce a mechanism that would allow young people's criminal records to be erased. Again, this recommendation was stymied. Legislation has been introduced which allows certain 'old' and 'minor' records to be filtered in criminal record disclosures but this is limited in scope. Furthermore, the current criminal record regime means that in certain cases information on juvenile offending, including that which was dealt with by way of diversionary measures, can be disclosed. Research conducted with young people suggests that there is limited understanding of the criminal record regime, which raises concerns about the nature of informed consent when young people agree to certain disposals (Carr et al. 2015).

Oversight and criminal justice

To ensure the effective operation and public legitimacy of the criminal justice system, a range of justice inspection and oversight bodies operate in Northern Ireland. An Office of the Police Ombudsman for Northern Ireland (OPONI) was established under the Police (Northern Ireland) Act 1998. The office is independent of the police and investigates complaints made against the police. It comprises two directorates dealing separately with current and historic investigations against the police. The office receives about 1,500 complaints per year. Most current complaints fall into the categories of failure in duty or oppressive behaviour. The Historic Investigations Directorate deals with complaints relating to the police role during the Troubles.

A Prisoner Ombudsman for Northern Ireland (PONI) was established in 2005. The Ombudsman is appointed by the Minister for Justice and operates independently of the prison service. The office investigates and reports on all deaths in custody and also deals with complaints from prisoners and visitors to prison. The PONI's powers regarding investigation of complaints by prisoners or visitors to prison establishments are set out in the Prison and Young Offender Centre (Northern Ireland) Rules 2009. In 2015/16, the office received over 1,500 complaints, the majority of which were received from separated Republican prisoners in Maghaberry prison, and initiated investigations into the deaths of two prisoners and four ex-prisoners (PONI 2016). Reports of investigations into prisoner deaths are published.

Criminal Justice Inspection Northern Ireland (CJINI) was established under the Justice (Northern Ireland) Act 2002 as an independent statutory inspectorate following a recommendation by the Criminal Justice Review (2000). It has responsibility for inspecting all aspects of the criminal justice system, with the exception of the judiciary. It carries out inspections of all of the main criminal justice agencies (e.g. policing, prosecution services, courts, prisons, probation, and youth justice) as well as other agencies involved in the administration of justice (e.g. community-based restorative justice projects, the Health and Safety Executive). It carries out inspections of the operation of institutions and agencies as well as thematic reviews of aspects of the system (e.g. delays within the criminal justice system). By law, it is required to make its reports publicly available and must also lay its reports before the Northern Ireland Assembly.

The challenges of dealing with the past

Northern Ireland's transition from violent political conflict has been held up internationally as an example of success. However, questions of how to deal with the legacy of violent political conflict remain. While various aspects of criminal justice have been subject to reforms necessitated by the transition to a post-conflict situation, there has been no systematic process of truth recovery to deal with the past (Bell 2002; Lawther 2015). In the absence of agreed mechanisms for 'dealing with the past', the criminal justice system has become the default for redress for past injustices to be sought (Lawther 2015). For example, the PSNI and the Office of the Police Ombudsman have been involved in investigating conflict-related offences (Lawther 2008) and redress for historic miscarriages of justice has been sought through the courts and criminal appeal mechanisms (Quirk 2013; Requa 2015). There have been a number of identified difficulties with these approaches, including the extent to which ordinary criminal justice bodies are equipped to carry out such tasks with impartiality or effectiveness (Lawther 2015).

Issues regarding the 'past' do not only reside there, and there have been points throughout the post-conflict period where the political stability in Northern Ireland has faltered because of these unresolved concerns. While quite clear progress has been made through a range of criminal justice reforms, there are a number of continuing challenges. Not least of these is the continued activity of paramilitaries within communities and the complex challenges that this presents.

Summary

This chapter has described key elements of the criminal justice system in Northern Ireland with reference to the historical, social, and political context. The violent political conflict in Northern Ireland had a clear impact on the shape and contours of the criminal justice system and, in the transition to a post-conflict society, attention has focused on reform of a range of criminal justice institutions. Continued challenges remain. Despite its history, the rate of crime in Northern Ireland is lower than elsewhere in the United Kingdom but other issues, including continued paramilitary violence which is unlikely to be fully captured in official crime data, remain.

FURTHER READING

Healy, D., Hamilton, C., Daly, Y., and Butler, M. (eds) (2016) *The Routledge Handbook of Irish Criminology.* London: Routledge.

This handbook provides an overview of crime and the criminal justice systems in Ireland North and South. Some of the chapters deal with agencies which respond to crime. The contributions contrast the different systems in place in the Republic of Ireland and Northern Ireland and provide a good overview of the Northern Ireland criminal justice system and an entry point for a comparative analysis.

McAlinden, A. and Dwyer, C. (eds) (2015) *Criminal Justice in Transition: The Northern Ireland Context.* Oxford: Hart Publishing.

This edited collection considers the criminal justice system in the context of the transition from conflict. Chapters cover different aspects of the criminal justice system, e.g. policing, courts, prisons, probation, and youth justice. There are also contributions considering some of the challenges facing criminal justice in transitional societies, such as how to effectively deal with the past.

McKittrick, D. and McVea, D. (2012) *Making Sense of the Troubles: A History of the Northern Ireland Conflict.* London: Penguin Books.

The particular contours of the Northern Ireland criminal justice system are linked to the political conflict and the post-conflict transition. This book provides an excellent overview of the Northern Ireland conflict. It traces the historical factors that led to the eruption of violent conflict in the late 1960s and describes key events in the Troubles. It also documents the transition to peace in the 1990s and the development of the political power-sharing arrangements.

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