CJM
CRIMINAL JUSTICE MATTERS

ASTONISHING OMISSIONS

Northern Ireland: Lessons ignored by the Royal Commission

It would be difficult to find a more vivid example of the neglect of Northern Ireland in criminal justice debates in the rest of the United Kingdom than the failure of the recent Royal Commission on Criminal Justice to consider Northern Ireland. The Commission's terms of reference did not, of course, extend to Northern Ireland but one of the tasks it set itself was to look at other systems to see what lessons could be learned from them. The Commission commissioned research on continental systems of justice and it was prepared to visit Scotland but Northern Ireland is hardly mentioned in the Royal Commission report at all.

Yet there are a number of areas where the Commission might have benefited by looking at practices and procedures in Northern Ireland. The most obvious example is the area of terrorism. The Commission gives little attention to this problem despite the fact that many of the famous cases of miscarriage of justice which led to its establishment had a terrorist dimension. One of the logical starting points might have been for the Commission to examine Northern Ireland's considerable record of dealing with terrorist offences and terrorist suspects. Terrorist suspects are tried in Northern Ireland without a jury by a single judge in what are known as Diplock courts. Although this mode of trial has proved controversial, Diplock courts would appear to have a better record of avoiding miscarriages of justice in terrorism cases than the English jury system and they might at least have been worth mentioning by the Commission.

Right of silence

The Commission's unwillingness to examine the laws and procedures governing terrorist suspects may explain why Northern Ireland was so neglected by it. Even if its reluctance to examine this issue were justified, there are certain practices and procedures in Northern Ireland which could have informed the Commission's other discussions. One of the most important issues which it faced was whether the right of silence should be curtailed in England and Wales. Yet nowhere in the report is there any mention of the fact that in Northern Ireland there has already existed since 1988 the very kind of legislation restricting a defendant's right of silence which many critics have been calling for in England. Although this legislation was prompted by Northern Ireland's emergency (in particular the concern that terrorist offenders were maintaining a 'wall of silence' in the police station which made it difficult to obtain evidence against them), it applies across the board to all suspects who are questioned by the police. It is astonishing that the Commission did not even mention this legislation. The Commission's recommendation that there should be no change to the present position in the police station might have been fortified by referring to the concerns that have been raised about its impact. Amnesty International, for example, has concluded that the legislation may well increase the risk that innocent people are convicted as a result of either inferences drawn from their silence or as a result of inadvertent remarks made in order to comply with the added pressure to speak.

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Another notable example of the failure to consider Northern Ireland is to be found in the discussion of the relationship between the Crown Prosecution Service and the police at the investigative stage. The Commission refers to jurisdictions where prosecutors supervise police investigations but not to Northern Ireland where the DPP does not supervise investigations but where he has greater power to direct the police to conduct certain inquiries than in England.

Alternative procedures

Although Northern Ireland is particularly neglected by the Commission, there is little general emphasis placed on alternative procedures in other countries in the report. The Commission rightly makes the point that attempted transplants from other countries may fail to take account of the different history and culture that one finds in different systems. But this is all the more reason to look particularly keenly at the procedures in legal systems such as Northern Ireland which are rooted in the same history and tradition as the English system. The failure to devote much attention to alternative procedures would seem to be better explained by the Commission's view that the current English procedures need to be made more efficient rather than to be radically changed. This approach ignores the lack of confidence that there is in many aspects of the criminal justice system. Its most radical recommendation that defendants should no longer be able to elect for jury trial in cases where they could be tried by magistrates was prompted by concern about the large numbers of defendants who opt for Crown Court trial only to plead guilty when they get there. An alternative approach would have been for the Commission to recognise the deep unpopularity of magistrates' courts in the eyes of many defendants and to consider what alternatives might be more acceptable. This might have involved considering the respective merits and defects of lay magistrates as against professional magistrates. Professional magistrates have long sat in Northern Ireland where there has been no tradition of lay magistracy. Another alternative that could have been discussed for offences that are considered too serious for magistrates' courts but not generally serious enough for jury trial is the system of trial by judge alone such as operates in Scotland's sheriff courts and in Northern Ireland's Diplock courts.

It remains to be seen whether the Commission's recommendations as a whole will do enough to avert the growing lack of confidence in the criminal justice system. If not, further review of the system will become necessary and attention will focus more urgently on the procedures that operate in other countries. It is to be hoped that any such review will concentrate first on how things are done closer to home than on the way things are done in systems with quite different legal traditions from our own.

***John Jackson** is Reader in Law at Sheffield University.*