

Hate Crime: the struggle for justice in Scotland

Elinor Kelly asks whether debates within Scottish institutions will lead to greater justice for victims of hate crimes.

In Scotland, there is a long-standing judicial tradition that crimes motivated by hatred of the race, religion or denomination of the victim should be treated the same as any other, even in cases of murder. This tradition was punctured by a number of trials in the 1990s which were so manifestly a travesty of justice that they became *causes célèbres*, the focal point of campaigns which demanded that Scotland's courts change their ways and face the facts of racism and sectarianism. The names of Imran Khan, Surjit Singh Chhokar and Mark Scott are now carved into the history of popular struggle and judicial reform.

At the time this article is being written, a historic debate has just taken place in the Church of Scotland in its May General Assembly and the Scottish Parliament is considering whether to support the insertion of amendments against religious and sectarian aggravation into the Criminal Justice Bill due in the autumn. The Church of Scotland has, at

immigrants from Ireland were confined to the poorest conditions, while Protestant immigrants were preferred. Catholics and Protestants were as effectively segregated in the industrial cities and towns as they were in Northern Ireland, contained within two unequal cultures of separate worship, education, social life and politics.

Few Scots broke the uneasy silence that obscured the bigotry. Frequent mass displays of sectarianism during Orange and Hibernian marches, and by crowds of football fans following the Old Firm — Celtic and Rangers — have been tolerated without protest throughout the twentieth century. There was a strange pact on both sides of the religio-political divide that nothing should be said. The pact was broken in 1999 by one of Scotland's greatest musicians, James Macmillan, when he gave a passionate lecture about 'Scotland's Shame' and by Cara Henderson, who launched the campaign against sectarianism, 'Nil By Mouth'. Macmillan spoke out when he realised that

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last, repudiated its infamous and racist report of 1923 — *The Menace of the Irish Race to our Scottish Nationality* — and undertaken to work with the Catholic Church to try and eradicate sectarianism. This is an impressive shift in the Scottish climate of opinion. It increases the possibility that legal measures against sectarian and religious hatred may be introduced into Scotland. But there is still no certainty, even in the aftermath of September 11th, and yet another murder trial in which sectarian hatred featured prominently.

How can this be? The starting point for understanding Scottish response to crimes of hate lies in the bitter history of struggle between Presbyterian (later loyalist) Protestantism, and Jacobite (later republican) Catholicism that erupted in the seventeenth century and spread into what became Northern Ireland. In the early twentieth century, the Church of Scotland campaigned against Irish immigration on explicitly racist grounds, as documented in their 1923 report *The Menace of the Irish Race to our Scottish Nationality*, and the speeches of the demagogue John White who preached in 1930 that "Rome now menaces Scotland as at no time since the Reformation". In mines and shipyards, housing and welfare, Catholic

the third generation of his family, his daughter, was being subjected to sectarian abuse; Henderson was stirred into action after her friend, Mark Scott, was killed in 1995 and another young man, Sean O'Connor, was viciously attacked in 1997 — because they were supporters of Celtic. Henderson was particularly inflamed when Donald Findlay, the defence lawyer of both the accused men, was filmed singing some of the most inflammatory sectarian songs after trials in which the issue of sectarian hatred was put aside.

Macmillan and Henderson have been supported by Andrew McLellan, Moderator of the Church of Scotland who preached in a Catholic Cathedral and accompanied Scottish Catholics to Rome, and by Donald Gorrie, Member of the Scottish Parliament, who drafted a bill, *Protection from Sectarianism and Religious Hatred*, to make sectarian behaviour an aggravation of a criminal offence.

Parallel with the breaking of silence on sectarianism, Scotland has been severely dented by revelations about racism deep within its justice system. In 1989, Edinburgh police and the high court refused to acknowledge the racism that motivated the killers of Axmed Abuukar Sheekh, a Somali refugee. The campaign for racial justice that was launched around the Sheekh case led to changes in police practice, but

no change in the courts. In February 1998, a Glasgow school boy, Imran Khan, died after a fight between his Asian friends and white youths led by twin brothers renowned for their racism. The subsequent trial became notorious because of statements by Donald Findlay, defence advocate, and the trial judge.

In the same year, Surjit Singh Chhokar was killed in a Lanarkshire town after being ambushed by three men on his way home. Only one of the men accused was brought to trial, but acquitted for lack of evidence, causing the trial judge to make a public statement questioning the way the prosecution had been conducted. A second trial was initiated, resulting in failure to convict. In the aftermath of the first trial the Chhokar Family Justice Campaign was launched led by the young lawyer, Aamer Anwar, who has proved to be an extraordinarily effective critic of judicial complacency by mobilising the anti-racist movement, trade unions, community groups and the media to challenge the status quo.

The Chhokar Campaign coincided with the aftermath of the Stephen Lawrence Inquiry, penetrated the new Scottish Parliament, and caused such major embarrassment that Scotland did not resist the new measures on 'racist aggravation' and

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'racist harassment' that were passed in Westminster. In May 2001, a man charged with a terrifying racist campaign against Nadia Khan and her boyfriend was found guilty not only of attempted murder but also of racially aggravated breaches of the peace. The trial judge sentenced the accused man to twelve years in prison, and made the long-awaited statement "the Scottish courts will not tolerate racially motivated attacks". In 1999-2000, 480 persons were brought to trial charged with one or more statutory racist crime charge; 348 were convicted.

The Khan-Chhokar-Lawrence nexus has proved so effective that it raised hopes of further change. If the culture of Scottish courts could be turned against racist crime, then surely the same could be achieved for other forms of hate crime? For years, Muslims in Britain have been campaigning for amendments in legislation that would give them judicial restitution for Islamophobic abuse and attacks. When, in the aftermath of the September 11th attacks, the Westminster Parliament voted in favour of the *Anti-Terrorism, Crime and Security Act*, and specifically the extension of the measures dealing with 'racist aggravation in crime' to include 'religious aggravation', hopes were high that the Scottish Parliament would immediately vote in favour of the same measures being applied in Scotland. After all, both Muslim and Jewish sites in Scotland had been targeted for attack and Muslim women and children,

in particular, were being subjected to unprecedented levels of abuse. Rapid moves towards judicial restitution of crimes against Muslims were essential. Moreover, if the extension to include religious aggravation were made, would it not make sense to include sectarian as well?

But the Khan-Chhokar-Lawrence effect has faded already. Westminster's measures have not been accepted and Donald Gorrie's proposals have been shunted into legislative sidings. The Scottish Parliament has created a working group on possible legislation to tackle religious hatred. This group has dawdled its way through occasional meetings and Donald Gorrie has now withdrawn his private member's bill. He hopes to achieve more by way of debate through proposing amendments to the *Criminal Justice Bill* that is due to be debated in the Scottish Parliament in the autumn. Scottish inertia, temporarily suspended as a result of campaigning onslaught, has reasserted itself.

The Church of Scotland debate included some uncomfortable moments of soul-searching about its historical role in leading a racist campaign against the Catholic Irish, and in perpetuating sectarianism. The Scottish Parliament debate revealed whether our politicians learned any lessons from the bitter legacy of the 1990s. We are now entering the next round of the struggle between inertia and the urgent need for change if victims of hate crimes are to receive justice.

Dr Elinor Kelly is Honorary Research Fellow, Race and Ethnic Issues, University of Glasgow. She was consultant for the Scottish Police National Equal Opportunities Training Strategy and the Runnymede Trust Commission on The Future of Multi-Ethnic Britain (2000); and has published books and articles about racism, asylum and, more recently, sectarianism. She is a trainer for Scottish police in challenging racism; Secretary of the Scottish Human Rights Centre; and a member of the Glasgow Asylum Rights Campaign.

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