

There is a multi-million pound industry in Northern Ireland which is booming. After meteoric growth in the early 1970s, its visible turnover now expands steadily year by year. In 1997/8 it will reach £934m. It is an industry into which British governments have put over £25 billion during the last quarter century. Yet it remains largely unprivatised and, strangely, relatively insensitive to the level of demand. Employment in its various branches - exceeding 30,000 if subsidiaries are included - continues to grow

years and worse, no-one is quite clear who is running it.

The shareholders of this business - aside from a vocal minority who cause trouble at AGMs - either don't care, are blindly loyal, or are trying to put their money into dubious off-shore rivals. Sometimes the chief executives appear to be in charge of policies and operational matters, especially when the going is rough, but at other times government ministers make quite detailed interventions and calculated moves. One theory is that the industry is really

at worst mutinied and taken the law into their own hands, often assisting renegade elements in the process.

While some attempts have been made to establish fair trading, the watch dogs are currently being weakened. This leaves regulation to international bodies whose processes are cumbersome and expensive, and whose rulings are either unenforceable or flouted.

This is the criminal justice industry.

A formidable legacy

The next Secretary of State for Northern Ireland and the minister with direct responsibility for criminal justice agencies will inherit a formidable legacy, not merely in terms of the scale and complexity of the agencies involved but also the huge political baggage of unresolved issues. If they don't know it already, they will quickly discover that 'criminal justice' in Northern Ireland is essentially a question of law and order and of counter-terrorism. In the portfolio they will find that most issues are readily reduced to these terms and they themselves - if they do not have it already - will rapidly acquire the necessary discourse of demonisation.

Lord Lloyd's report on the future need for specific counter-terrorism legislation, published at the end of October 1996, may be of some assistance here. He proposes widening the definition of 'terrorism' in such a way that the kind of behaviour by the Orange Order, aided in some instances by the RUC, which surrounded the Drumcree stand-off last summer could be included. Terrorism, it is proposed, will no longer be the use of violence for political ends, but will include 'threats' against persons or property 'to intimidate or coerce a government, the public or any section of the public, to promote political, social or ideological objectives.' Lloyd also proposes punishing people more severely than in ordinary criminal cases. The process of conviction could be assisted, he argues, by an amendment to the Interception of Communications Act 1985 allowing phone taps as evidence in court. Terrorists might earn up

Whose law and order?

Mike Tomlinson argues that it is impossible to separate questions of law and order in Northern Ireland from the broader issues that divide the community.

and is much sought after by some people. No-one seriously bothers to measure productivity, even if accountants have begun to make themselves felt in the last few

branches. At particularly testing moments, there have been complaints that the employees have, at best, worked to rule and



Francis Jacoby

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to two-thirds remission (as well as a safe house in Surrey presumably) by giving evidence against fellow terrorists.

Labour's response

If Labour forms the next government, they will be comfortable with at least part of this agenda for permanent counter terrorist measures, having lined up with former RUC Chief Constable Sir Hugh Annesley and Ulster Unionist leader David Trimble on the phone tap proposal. In general Labour welcomed the Lloyd report as 'a very fair piece of work' and in all too familiar terms stated how the proposals showed that an end to violence would 'transform the framework of law and order for people throughout the United Kingdom'.

This notion - that violent actions (unofficially inspired ones, of course) in and of themselves constitute the problem of Northern Ireland - has been at the core of government thinking for more than two decades. As such, the policy debate - when there has been one at all - ranges from those who argue that the IRA can be defeated once and for all, to those who set their sights on the pragmatic goal of maximum containment, having one eye on the human rights lobby and international (US) opinion.

The most tragic and visible demonstration of this paradigm in action is the period since the IRA's ceasefire of September 1994. British and Unionist concern has not been on coming to terms with the central clashes of political concerns of the Irish and British parties to the conflict, but on seeking to strip the republican forces of the capacity to strike again. And a few commentators have argued that the British government should simply ignore Sinn Fein altogether because engagement with that party will eventually lead to civil war throughout Ireland. While there have been moments

of serious tension between the British and Irish governments over when and how to move the 'peace process' forward, there has not been a scrap of difference between the Conservatives and Labour. For the British parties, the IRA ceasefire appears to have been an end in itself.

Another way

It might have been, and still could be otherwise. Well before 1994, human rights and other groups had developed coherent arguments for reforming swathes of the security apparatus including the police, prisons, courts, intelligence and military agencies. In particular, there was a growing argument for a bill of rights to replace the 'exceptional' and 'temporary' powers of the Prevention of Terrorism and Emergency Provisions Acts. Given developments in Police and Criminal Evidence legislation, coupled with the increasingly intelligence-based nature of counter-terrorist work, the case for separate emergency law was at best weak. Arguably, its main result was the development of forms of policing which fostered political alienation and manufactured what Hillyard calls 'suspect communities'.

The continuing stream of cases against the British Government at the European Court of Human Rights tackling specific emergency powers, as well as the Committee on the Administration of Justice's lobbying of United Nation's human rights committees have both highlighted particular problems which should not have been difficult for the Labour opposition at Westminster to forge into a coherent and different policy. Instead, Labour has dropped its opposition to the PTA, has not objected to the extension of the removal of the right of silence from Northern Ireland to Britain, has no record of sustained opposition to the Diplock Court System and shows little or no concern over prisoners' issues, especially Howard's

recent campaign against republican prisoners held in Britain. Nor is there a clear alternative view on policing, the use of plastic bullets and the conditions of seven-day interrogation.

This may seem uncharitable. Labour would prefer it if current detention practice was brought in line with the European Court's ruling limiting interrogations to 4 days - and Lloyd agrees. And, of course, Labour is now committed to a bill of rights incorporating the European Convention on Human Rights into British law. Progress indeed, but very limited progress and of little value in settling the Northern Ireland conflict itself. This is for the simple reason that the Convention is a limited statement on human rights. The most important example from the Irish nationalist perspective is that the Convention, unlike UN provisions, has nothing to say about the right to national self-determination. In fact it was Britain which, at the time the Convention was agreed, negotiated an 'opt out' permitting derogation from certain clauses if 'the life of the nation' was under threat. In other words if anyone expressed too forcefully the notion that existing nation-state boundaries were not a proper reflection of nationalities in Europe, then it would be legitimate for states to abuse human rights to defend the constitutional status quo.

A new framework

This is the real core of bi-partisanship on 'criminal justice' policies in Northern Ireland. The main British parties agree that the human rights framework is quite compatible with strong counter-terrorist measures and should not include the consideration of national self-determination - although the formal position is one of 'regional self-determination' subject to what the majority in Northern Ireland want. This agreement results in a serious curtailment of the agenda of the 'peace process' as far as the British parties are concerned. The stance of the Framework Document with regard to law and order is very similar to the British position during the Treaty negotiations in 1921: it will remain a British responsibility in

all circumstances. There is no acknowledgement of any problems with the RUC even though sensitivities are so great that the Police Authority can't even agree how many days a year the Union flag should fly over police barracks. 'There are no political prisoners' says security minister Sir John Wheeler on one of his rare visits to Northern Ireland, so that deals with the prisons. To admit otherwise might mean to begin to tackle the largely Protestant male and unionist vested interests which comprise the 'security forces'. The resistance to 'downsizing' threatened by eighteen months of IRA inaction was palpable. Drumcree raised £40m in police overtime.

A political settlement for the future governance of Northern Ireland cannot be satisfactorily concluded without tackling the criminal justice system. The clear reluctance of the British parties to confront Unionist interests, whether for short-term political gain or because of a deeper political affinity, means both that criminal justice remains unreconstructed and that 'political talks' amount to word games. This is why criminal justice matters and why we can safely predict that the next government will do little to transfer 'ownership' of the system to the peace process itself, let alone to the communities most affected by its perversities.

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Crime in Northern Ireland, (CJM 13) may be obtained from ISTD price £2.50. Tel: 0171 873 2822.

CRIMINOLOGY AND CONFLICT RESOLUTION

The British Society of Criminology's Biennial Conference takes place at

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