**Mythic rights and conflict-related prisoner ‘re-integration’**

**Peter Shirlow**

**Abstract**

This paper argues that within Northern Ireland the processes of Disarmament, Demobilization and Re-integration (DDR) remain incomplete. Despite general disarmament and demobilisation and a very significant fall in paramilitary violence those imprisoned as a consequence of the conflict remain marginalised by vetting laws and other instruments of civic exclusion. This has significant consequences in terms of acknowledging that the conflict has ceased as a violent/military episode. This is due to rhetorical devices and positions that uphold variant readings of the past, especially those that impose a humiliated status upon conflict-related prisoners.

**Keywords**

Conflict-related prisoners, peace-building, criminalisation, Good Friday Agreement

**Introduction**

The re-integration of Conflict-Related Prisoners (CRP) remains frictional in Northern Ireland. That friction is not merely allied to the perpetuation of vetting legislation but sits at the heart of sectionalised readings and antagonisms that frame(d) the conflict. The capacity to vet CRPs as job applicants remains a contradiction within a process of peace-building that promised new political structures, approaches, enhanced citizenship and inclusion. Full citizenship for CRPs remains anchored in discursive ethics around exclusion, prohibition and the spectacle of ex-prisoner marginalisation. Readings concerning the rights of victims and CRPs fall largely between narratives of apologia and humiliation and the processes that concern stigmatisation and counter-stigmatisation (Shirlow, 2018).

Apologia revolves around the language of non-admission of guilt by non-state actors who argue that the legitimacy of violent acts was conditioned by state abuse, discrimination and erroneous governance. Humiliation proponents demand that re-integration must be allied to acts of repentance, regret and a rejection of the legitimacy of former acts of violence by CRPs. Neither has conceded to the “other’s” position and has maintained the performance of allegation, accusation and contention. The ability to achieve an equalisation of power, the supposed aim of peace-building, between competing moral discourses is negated by the ‘need’ to maintain adversarial approaches. Within that contest over rights, those who wish to stigmatically shame ex-prisoners assert that they ‘somehow have more human rights or [are] protected more from the Good Friday Agreement (GFA) than the very victims they created’ (Northern Ireland Assembly, 2013, p.147)[[1]](#endnote-1).

Such a position is an empowering fiction given that the GFA does not protect or even define the rights of CRPs. Knowledge of the implicit and explicit meaning of such claims is achieved when we consider that this statement does not actually define what CRP rights are, which is hardly surprising given that they do not in fact exist. Such claims are symbolic of the power and inherent persuasiveness of an ‘aura of factuality’ (Geertz, 1973: 9) through the desire to make unsubstantiated assertions that shape conflict-centred division. The GFA has no legal authority or capacity to protect CRPs from vetting laws or any other legally sanctioned modes of exclusion. That fact and the desire to ensure that vetting laws are maintained evidences such claims as misleading. That is not to argue that the harm caused to victims and their loved ones should not be investigated, remembered or considered as both violating and injurious.

We challenge the reductionist tendencies over terminology that undermines peace-building and reconciliation in Northern Ireland through two objectives. First, we map out the difference between ‘hard’ and ‘soft’ law. Hard law is understood as a legally binding obligation that is precise or given precision and which gives the state certain obligations. Soft laws, in contrast, are quasi-legal instruments that are not legally binding (such as the GFA), and which operate as non-binding agreements, communications or guidance. Secondly, we highlight how the maintenance of criminalisation has shifted from a security/moral concern to a purely moral call for shaming, the rejection of the value of ex-prisoner’s re-integration and, in some instances, a refutation of their peace-making efforts.

**Hard and Soft Law and CRP’s ‘Rights’**

Contested rights and the mobilisation of that term to argue that a certain group’s entitlements triumph over or tread upon those of another group remains a dominant feature of dispute and conflict assertion in Northern Ireland. That is only to be expected perhaps in a society that has been affected by civil strife and political violence. Re-integration programmes and policies have not removed modes of exclusion that were formed in the 1970s regarding employment and other vetting legislation. CRPs remain rooted in their classification as criminals and have not gained any rights post-GFA.[[2]](#endnote-2) Understanding that legal rights are hard-edged and definable can potentially bring a level of reasoning to highly emotive and at times traumatic and publicly endorsed sets of unjustified claims. It also permits an examination of the rights that CRPs do not have. As Jenkins (1997: 392) reminds us, when we examine the division between soft and hard law our ‘concepts must also be grounded in the observable realities.’ Arguing over whether ex-prisoners should enjoy normal rights and privileges is to be expected given that opinions are divided over re-integration, but to perform that dispute over rights that do not exist is discursive folly. It is not enough to merely dismiss faulty claims as oblique given that they define unempirically-led exchanges that reproduce wider cultural and political fracture. Moreover, presenting a flawed argument that CRPs have greater rights than victims is traumatic for those who sense that their being harmed is inconsequential and that the perpetrators of their suffering are advantaged in law. Such misrepresentation does not provide the ‘space for more thorough transformations of relations, ideals, and aims’ or ‘an unlocking of the deeply entrenched communal division’ (Todd, 2009: 350).

Disarmament, Demobilization and Re-integration (DDR) generally speaks to post-conflict stabilisation and peacebuilding. It aims to reduce violence and improve the security situation and promotes a process through which demobilised members of state and non-state forces are provided with alternative means of economic and social inclusion. Those processes can also be tied to dialogue and reconciliatory efforts that support interdependence and relational change between adversarial groups. DDR mechanisms can lay a firm basis for reconciliation through a process that ‘should be time bound with all previous punitive and related security mechanisms removed so as to shift into a post-conflict environment’ (Integrated Disarmament, Demobilization and Re-integration Training Group: 6). In Northern Ireland, 20 years after the GFA, such ‘punitive and related security mechanisms’ remain. These mechanisms of conflict-related law endure through labour market vetting which acts as a form of field through which habitus is framed by concepts and practices. It is influenced by actor-based applications, opinions and the overall divisions/replication regarding the legitimacy of violence (Bourdieu and Wacquant, 1992). Vetting is understood as a mechanism through which the language, rhetoric and emotions of violence are conveyed into the sphere of contestation over the practices of CRP re-integration.

As an exclusionary code, the hard laws of vetting maintain an impediment to opportunities for CRPs to engage as competent members of society. The status of conditional citizenship means that a permanent legal condition based upon the consequences of a criminal status remains. The formation of vetting laws was linked to removing access to work from those with convictions in order to reduce the capacity of infiltration into sites in which there was access to records and resources that would be of benefit to those involved in non-state violence. That was generally linked to cases where paramilitaries had been placed in organisations such as banks or human resource positions to secure employee and customer details that usually related to members of the security forces and the prison service or the layout of security sites. It was also part of the overall fabric of criminalising conflict-related offenders and reducing their capacity to be represented as holding a prisoner of war status (Shirlow and McEvoy, 2008). Such vetting laws first arose in 1976 and remain within the Fair Employment and Treatment (Northern Ireland) Order (1998) (FETO) – namely Section 2 (4) which states that:

‘In this Order any reference to a person’s political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.’

The wording of the last phrase is a direct link to the definition of ‘terrorism’ contained in a series of enactments relating to emergency provisions in Northern Ireland. The effect of that article is that no person holding a conflict-related conviction enjoys fair employment and equality of rights in relations to job applications and employment. This has been proven, post-GFA, in the courts, most notably in the judgment McConkey and another v The Simon Community (Northern Ireland) [2009] UKHL 24 [[3]](#endnote-3) and the court’s decision that Article 2(4) of the Fair Employment and Treatment Order 1998 specifically limits the protection against discrimination of fair employment that the Order provides.

The appellants John McConkey and Jervis Marks were sentenced for offences linked to murder and conspiracy to do so. Both had applied to the Simon Community, a charity for the homeless, and each was offered employment. This offer was revoked when their conflict-related convictions were disclosed during mandatory vetting. The appellants subsequently complained to the Fair Employment Tribunal that the refusal to employ them was discrimination as they no longer held a political opinion ‘approving of, or accepting, the use of violence for political ends connected with the affairs of Northern Ireland’. The Tribunal, Court of Appeal and the Lords of Appeal each rejected this claim but agreed that neither appellant held opinions supportive of violence. In each case it was asserted that under FETO legislation it was unlawful for an employer to discriminate against a person by refusing them employment for which they applied unless the conditions of articles 2(2), 2(4), 3(1) and 19(1)(a)(iii) applied. Therefore, having held a political opinion supportive of violence, evidenced by conviction, remained legally relevant whereas no long holding that opinion did not. Furthermore, the possession of convictions that related to violence means that under rehabilitation and offenders’ legislation an employer can discriminate on the basis that employment involves working with persons with a vulnerable status.

Ultimately, employers can vet applicants and use discretionary application to those with a conflict-related conviction. Similar provisions, although they are not required given the blanket coverage of FETO, are made under amendments to the Transport Act NI 1967, the Rehabilitation of Offenders Order (Northern Ireland) 1979 and its amendments and the Safeguarding and Vulnerable Groups (NI) Order 2007. There are also other vetting checks that can disbar those with conflict-related convictions. These include the Counter Terrorist Check which is mandatory for any person employed in posts involving proximity to public figures, who will have access to any information or material that would be sought by proscribed groups, or those who will have unaccompanied access to any sites such as military bases, police stations or other places such as civil, industrial or commercial premises that would be viewed as being at particular risk from infiltration or attack.

A Security Check (SC) is the most commonly used process through which to gain security clearance. It relates to those who will have access either as a direct employee or as an employee of a contractor to information classified as a state secret on a regular or occasional basis while unsupervised. A SC includes information regarding personal files, staff reports, sick leave returns and security records, the checking of spent and unspent convictions and a Security Service (MI5) records evaluation.

Developed Vetting (DV) is the most inclusive security clearance. It is required for ‘long term, frequent and uncontrolled access to top secret information or assets... or in order to satisfy requirements for access to material originating from other countries and international organisations’.[[4]](#endnote-4) As with each of these security clearance checks, information will be required for natural parents, adoptive parents, foster parents, step-parents, legal guardians, siblings and a partner’s father and mother. This has led to cases of intergenerational vetting where relatives, who do not have convictions, have been disbarred from employment especially in the police and army due to a relative’s conflict-related conviction even if that person such as nephew, niece or grandchild has no social interaction or even knowledge of that relative.

Part of the confusion, that is the claim that CRPs have gained rights, is the misreading of the GFA’s commitments to ex-prisoners as being legally binding. The GFA (1998: 25) states:

‘The Governments continue to recognise the importance of measures to facilitate the re-integration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.’

However, ‘assistance’ (soft law) was neither an obligation nor an entitlement and it remained paralleled by the maintenance of restrictions on CRPs regarding legal entitlements, contrary to the GFA’s wider commitment to principles of parity of esteem, equality and inclusion. The early release of prisoners (around 2% of those who hold conflict-related convictions), the funding of ex-prisoner groups and even arrangements such as the Guidance Principles (GP)[[5]](#endnote-5) do not in any way constitute convictions as being other than criminal. As Ni Aoláin opines, the lack of legal shift in the meaning of such convictions ‘substantially affects the resolution of issues in the post conflict setting - including but not limited to amnesty, truth recovery processes, accountability, reparations, security sector reform, and reconciliation’ (2012: 388). Northern Ireland is not some model of transitional justice and ‘extraordinary jus post bellum law’ as it remains a place tied to the ‘law of the land’ that existed during the conflict (Ni Aoláin, 2012: 341). There has also been an additional law, namely the Civil Service (Special Advisers) Act (SPAD Act), which means that a victim must be consulted and can veto the employment of those with convictions when they apply to be special advisers to government ministers.

In Northern Ireland, DDR has operated as a critical feature of conflict transformation and the delivery of peace-building. The process of disarmament was overseen by General John de Chastelain as chair of the Independent International Commission on Decommissioning (IICD). Demobilisation was supervised by the Independent Monitoring Commission (IMC), formed in 2004, which monitored activity by paramilitary groups and the commitment by the British Government to a package of security normalization measures. However, there was no equivalent to the IICD or IMC that monitored commitments to re-integration until the St. Andrews Agreement in 2006 and the formation of the Review Panel: Employers’ Guidance on Recruiting People with Conflict-Related Convictions (RP). The RP like the IICD and IMC is an oversight body and makes recommendations to government but does not have the same legal capacity as the other bodies to affect legal sanctions. The IMC, for example, held the capacity to investigate if/that:

‘a Minister, or another party in the Northern Ireland Assembly, is not committed to non-violence and exclusively peaceful and democratic means, or that a Minister has failed to observe any other terms of the pledge of office, or that a party is not committed to such of its members as are or might become Ministers observing the other terms of the pledge of office’ (Northern Ireland Act, 1998, p.1)

In 2004, the IMC recommended that under those terms funding should be withdrawn from Sinn Féin due to IRA activity. That recommendation was implemented by the Secretary of State for Northern Ireland and indicated how an oversight body could affect legally enforceable sanctions. The demobilisation and disarmament approaches created a significant improvement in the security situation, led to demobilisation and stimulated inter-community encounter around peace-building. However, despite some ability to affect change, the RP was not presented which the same strategic authority that was applied to the disarmament and demobilisation components. This unevenness in approach is symptomatic of a broad swathe of opinion that was supportive of ending conflict and achieving security but less enamoured by the desire to remove legal barriers to CRP re-integration.

The RP works to evaluate the impact of structural and legal barriers that impact upon those with conflict-related convictions and those affected by those convictions. It also monitors and promotes the GP to assist employers in following bespoke practice in recruiting people with conflict-related convictions. It endorses the basic code that any conviction for a conflict-related offence that pre-dates the Belfast Agreement (April 1998) should not be considered unless materially relevant to the post sought. It promotes the concept that the onus to demonstrate incompatibility of employment would rest with whoever was alleging it. But instead of merely rejecting applicants an employer would, if they wished to, permit the applicant to outline their perspective regarding the incompatibility of conviction to the post applied for. However, what was vitally important in the construction of the principles is that they sit within the overall framework of existing legislative obligations that include employment-related criminal record checks and the right of employers to vet CRPs. The GP operate alongside fair employment vetting legislation and do not replace it. However, humiliation proponents suggest that the RP promotes an amnesty ideology. This is an invalid conclusion as evidently outlined under the GP which state that no preferential treatment, in terms of vetting law, should be made as ‘that would run counter to fair employment and equality legislation’. Moreover, the soft law provisions of the GP were summed by Lord Rodger of Earlsferry in the McConkey summation:

‘Those in authority in Northern Ireland today hope that people will feel able to put the Troubles behind them. The First Minister and Deputy First Minister therefore urge employers not to refuse to employ people simply because of their involvement in criminal activities of a political nature during that period. But, even today, the Ministers can only issue Guidance, exhorting employers to follow that line. The employers are under no legal obligation to do so. If they choose to ignore the Ministers’ advice and prefer not to employ people with a history of violence, they are free to do so.’ (McConkey, 2008-209: 1)

The RP is tasked with overseeing the GP and monitoring the soft law provisions of the GFA and St. Andrew’s Agreement and their effect in upholding and delivering CRP re-integration. If there was no positive impact of these arrangements, then the RP was obliged to explain why and offer alternative measures. In their two reports,[[6]](#endnote-6) the RP has highlighted the failure of these arrangements to work and have posited the need for more effective arrangements. The second report of the RP has led to two relatively significant changes that were adopted through the *Fresh Start* for Northern Ireland agreement.[[7]](#endnote-7) The first, in 2017, was acceptance of the GP by the Northern Ireland Civil Service and agreement by the Executive Office to amend Section 2 (4) of FETO. Amendments to FETO will still not remove the capacity to vet ex-prisoners to excepted posts under rehabilitation and offenders’ legislation but its reform is important as FETO is the only purposeful conflict-related form of vetting legislation.

The RP has called for vetting to be better understood as having foreseeable effects and that if these laws undermine re-integration then, as is the case in transitional practice, adequate proposals must be considered that such laws must determine their necessity, in this case regarding the security situation, over time. The RP have questioned, through detailed analysis and case study presentation, the government’s failure to create the means to measure the impact of vetting laws and the commitment to do so. Where the RP posits an evaluation of the necessity of vetting law in a changing environment of demobilisation and disarmament, the proponents of vetting have re-labelled necessity away from the security framework to one in which necessity is morally dependent upon admission of guilt. The agency of stigmatic shaming is for the maintenance of a criminal status to prevent equal status under discrimination law.

**For and Against Re-integration**

The debate on CRP re-integration is no longer centred upon security concerns in terms of rhetoric and validation of enduring criminalisation. It is delivered through either a refusal to accept a humiliated status by CRPs, a desire for re-integration that is supportive of peace-building and processes of reproducing the humiliation process. The immovability of the debate is located within the arguments and conditions of victimhood, the refusal to atone and the demand for atonement (Benoit, 1997).

Evidently, for many CRPs repentance is understood as an unworthy demand as it delegitimises actions that are often deemed to have been legitimate in their original context. This is not to deny regret, fault and harm causing but to apologise, for some, would be an acceptance of overall wrong-doing. Stigmatic shaming in not accepting the context of non-state violence understands such acts as violation, transgression and abuse. As I have noted elsewhere (2018: 420):

‘Despite evident differences between those who uphold stigmatic shaming and apologia there are strategic similarities between them. Both operate a catalogue of approaches including denial, blame shifting, accusation, evasion of responsibility and provocation. Blame casting through stigmatic shaming and apologia is conditional for several reasons. Both perform public address, allegation and counter-allegation, forms of self-defence, posturing, symbolic violence, bolstering of constituency value, sentimentality and being above doubt. The difference lying in the selection of evidence advanced to either promote stigmatic shaming or its rejection’.

The inability of either to achieve authority over the ‘other’, means that the rhetoric of derision, vilification and criticism remains. The duality of perspective is tied to past conflict and allied to a desire to both persuade and not persuade, to offer agreement through disagreement and to present evidence and faulty evidence. Given that neither can complete the demands of the ‘other,’ the maintenance of vetting law indicates how those who wish to stigmatically shame can maintain hard laws and related processes that sustain the criminalisation and vetting nexus.

When examining the legal condition of ex-prisoners, we see a contradiction between political processes that have achieved equality mechanisms and power-sharing between adversarial groups and the remaining dynamics and structural realities of laws of labour market vetting. In terms of ontology, the belief that CRPs are achieving legally-defined rights or that their rights exceed those of victims is a belief that is out of step with legal authority and force. Those who adopt such a position have either been misled by shaming entrepreneurs or are reacting to their own voicelessness or the lack of recognition of their suffering. That is not to deny that the language of, and claim for, additional rights for CRPs and victims are not valid, but the term ‘rights’ is too often deployed without any legal basis. Even the notion of group rights is problematic. Ex-prisoners and victims, for example, are treated under law, not as groups but as individuals. The former is demarcated as persons who hold convictions and the latter defined as persons to whom the state has obligations about investigation and transparency within investigation.[[8]](#endnote-8)

The incongruity of a peace process that has delivered power-sharing, a broadening of equality legislation and the maintenance of vetting of conflict-related prisoners is centred upon the division between re-integrative and stigmatic shaming discourses and the perpetual outplaying of the meta-narrative of blame setting around the causes and consequences of conflict (McGarry and O’Leary, 2006). The friction between apologia and humiliation discourses is abstraction-laden regarding the meaning and interpretation of the past and how that frames attitudes to re-integration (Shirlow, 2014). However, what is generally omitted in analysis is a third approach allied to restorative practice and re-integration which does not position itself around the legitimacy or otherwise of violence and articulates solutions concerning the need to support DDR processes to embed transformation. Therefore, re-integration proponents encompass a varied group that includes ex-prisoners, social justice practitioners, church leaders, victims’ groups, transitional justice practitioners, business leaders and human rights proponents. They generally view the role of ex-prisoners’ groups post-GFA as one of supporting peace-building, challenging sectarianism, working across the sectarian divide, developing relationships with the Police Service of Northern Ireland and providing victims with recognition through working in association with them. Such a role for re-integration proponents is deemed to have sustained the need to either remove (amnesty) or amend (maintaining material relevance) vetting legislation as it is no longer contingent on security and that acts of transition should be complemented by recognition of a transitional status.

Those supportive of the humiliation-criminalisation perspective are similarly broad and are constructed around unionists, nationalists and victims’ groups. A common feature in such commentary is to protest about funding for ex-prisoner groups, challenge social economy schemes that they run or provide contradictory commentary concerning the work and intentions of the RP.[[9]](#endnote-9) Jim Allister, Traditional Unionist Voice MLA and a strident critic of the GP, does provide variant understandings of the RP’s capacity. On the one hand he argued that the GP, as endorsed in *Fresh Start*, amounts to an amnesty ideology, stating:

‘this [Guidance Principles] amounts to special status and sanitising of pre-1998 terrorist convictions to the point where they are written off and the terrorist is treated as if he had never murdered or bombed or maimed. Of course, this is how terrorists are treated in our perverse government in Stormont, but now as a product of that and the agreement which its operatives have reached, they wish to extend the amnesty ideology to every job.’ (*News Letter*, 21 November 2015)

On another occasion, in contrast, he opined that the GP are non-binding agreements:

‘whatever other plethora of human rights covenants and declarations there are, the statutory obligation for the Assembly relates only to compatibility with the European Convention on Human Rights…Soft law is all very interesting, but it does not actually apply apart from scene setting; it is not binding with regard to any of these matters.’ (Northern Ireland Assembly, 2013: 177).

What is interesting is that Jim Allister declares that the GP have the authority to grant a special status that sanitises criminal records but then correctly acknowledges that ‘guidance is exactly that guidance…guidance can never be a barrier to legislation’ (Northern Ireland Assembly, 2013: 180). That contradiction is also oddly related to the position that ‘I do not think that ex-prisoners should be jobless…’ (Northern Ireland Assembly, 2013: 176). But he and other proponents of vetting never record or state the relationship between joblessness and vetting or explain ways in which endemic rates of unemployment among ex-prisoners should be ameliorated. It is difficult to ascertain how the shaming narrative aims to challenge economic exclusion among CRPs given the agency of vetting as an instrument of criminalisation, as a ‘corrective’ against reconciliation projects and the capacity of these projects to ‘subvert’ victims’ rights.

Determining laws of fair employment and vetting entry for those with convictions is both the opportunity of full citizenship and its denial. Demobilisation of groups and their decommissioning have not been accompanied by the full integration of rights that facilitate equitable labour market entry. Thus, laws of vetting undermine re-integration and fail to develop a ‘long-term and continuous social and economic process of development’ (IDDRS, 2006). With reference to DDR approaches, we find that, despite the soft laws on re-integration, ‘the decision-making that frames the re-settlement, livelihoods and employment paths of ex-combatants tends to have serious long-term implications for development’ (Özerdem, 2015:1). Funding, most of which came from the European Union, was a political arrangement that had no legal basis in terms of state obligation. Although these may well be transitional agreements, they remain without the legal capacity to remove or amend vetting laws.

It is estimated that at least 25,000 people hold conflict-related convictions (Jamieson et al, 2010) and that conflict-related convictions and related fines and sentences equate to somewhere between 13.5% and 30.7% of males aged 50-59 and 5.4% and 12.2% of males aged 60-64 in Northern Ireland. A series of case studies, conducted between 1999 and 2016 by the author and the RP confirms the impact of vetting and the at times contradictory nature of vetting practices. Each of these cases underscore the idea that vetting remains an on-going process.[[10]](#endnote-10)

Such treatment is at times Kafkaesque. Ex-prisoners can openly work with government departments and agencies and even sit on development boards in statutory partnerships with them. Through such arrangements they can be offered and provided with very significant capital grant funding by government which would suggest they are deemed both to be of good standing and to have ability. However, they could be vetted as employees, by the government agencies they co-operate with, from working within the facilities over which they have direct responsibility. Vetting practices are, therefore, not only inconsistent with wider efforts to facilitate people with conflict-related convictions but undermine the capacity of and for community development.

Further evidence that the soft laws of re-integration have been largely unsuccessful is located in two surveys (conducted by the author in Shirlow et al (2005) and Shirlow and Hughes (2015)). During that 10-year period there was no improvement in terms of the proportion of CRPs in paid employment. The share of CRPs of working age who were in receipt of benefits had grown from 57% to 71% as had that among those who been informed that they had not been successful with a job application due to their conviction (53% to 74%). The numbers who had declared a conviction and found work remained static at around 18%. Conflict-related prisoners are now over three times more likely to be in receipt of working-age benefits and are three and half times more likely to be unemployed than others in the electoral ward in which they live. Within the same surveys the strongest correlation between ill-health, both physical and mental, was not the length of imprisonment but the duration of unemployment. Symptoms of trauma and the use of anti-depressants were nearly twice as high among unemployed CRPs compared to those ex-prisoners in work[[11]](#endnote-11). A significant body of evidence highlights that the exclusion of former prisoners from the labour market undermines their health and thereby creates a financial burden upon the state. It is a reality that is counter-intuitive with regard to building citizenship through employment and related tax contributions. It also means that many CRPs remain ‘imbued with a sense of their cultural unworthiness’ (Bourdieu 1984: 251).

It is generally assumed that the debate regarding re-integration is simply linked to blocking or supporting forms of amnesty through the removal of convictions. Similarly, the idea that those supportive of re-integration are ‘fellow-travellers’ of ex-prisoners and the arguments that they make regarding legitimacy is also flawed. Not all proponents of re-integration support the argument, made by some CRPs, that the nature of the symbolic violence that invoked the conflict, for example labour and housing market discrimination, means that a political and not criminal context needs to be considered. The RP, for example, does not accept the validity of violence and has not called for the withdrawal of convictions or for the introduction of amnesty provisions but has made arguments that relate to convictions being materially relevant to posts applied for. It has also been argued, by re-integration proponents, that vetting laws undermine employment opportunities as they have a deleterious effect upon those with convictions and that this places a burden upon the state in terms of welfare and other state resources. Those supportive of re-integration aim for a DDR process that supports and encourages transition that is reflective of peace-building and an improved security position that has been achieved through demobilisation and disarmament. As argued by the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), a proponent of re-integration, access to employment is undermined by on-going criminalisation that precludes long-term re-integration into civilian life:

‘…ex-prisoners and non-politically motivated people with criminal records are subject to the same legislation, namely the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. For more than 20 years…these two pieces of legislation need to be reviewed as they have acted as a barrier to resettlement, given that they are open to interpretation by employers, usually negatively, and that the list of excepted jobs has increased significantly’ (Northern Ireland Assembly, 2013: 83).

For those who support stigmatic shaming, in contrast, any process of rehabilitation must be framed by restitution for victims. As contended by Drs McGrattan and Braniff:

‘Rehabilitation is one thing, but there is a danger that we rehabilitate the conflict at the expense of restitution’ (Northern Ireland Assembly, 2013: 189).

The vetting of ex-prisoners, within the shaming narrative, is a morally designed instrument that regards entry into the labour market as requiring recognition of harm caused. From a stigmatic shaming perspective, victims are a static category that is homogenously fixed as those who have experienced violence at the hands of those who ‘broke the law’.[[12]](#endnote-12) Both proponents for and against vetting view labour market screening as tacit power arrangements of socio-cultural domination and a circular process though which ‘power contributes to the power that makes it possible’ (Bourdieu 1990: 139). Maintaining the vetting of ex-prisoners is viewed as either a justifiable or problematic maintenance of hierarchies of power not just in the normal sense of economic and cultural exclusion but via contested moral justification. Neither set of proponents disagree that vetting as discipline confirms an individual's placement in a hierarchy of inclusion that is both socially and morally constructed. Re-integration and shaming proponents also agree that vetting in social terms restricts access to employment and undermines social well-being. Nor do they differ regarding labour market screening as upholding both an injurious and perpetuated meaning. The difference between these discourses is whether it is correct to vet or otherwise.

The proponents of stigmatic shaming wish to maintain laws that impose classificatory principles between victims and perpetrators and which regulate the latter’s access to normal legal entitlements such as fair employment and labour market equality. For those who uphold re-integration, the motivations of stigmatic shaming are those of confinement and undermining the capacity to transform relationships between adversarial groups and a failure to recognise the prospective effects of re-integration. As noted by a former Commissioner for Victims and Survivors:

‘It is not about victims per se but seeking to deny political prisoners the rights to enjoy full citizenship (and access to employment)…This ought not to be a case of either/or – but more importantly there is no contradiction supporting the human rights and citizenship of political prisoners and advocating and supporting victims’ rights’ (Northern Ireland Assembly 2013: 182).

However, the proponents of vetting post-GFA no longer use a security threat as justification for the upholding of practice and have shifted the demand for criminalisation to that of reproducing a process of ‘justice-seeking’ for victims. Following the GFA, the discursive battle has involved those who want ex-prisoners to be covered/partially covered under fair employment legislation and those who believe that such inclusion must be balanced by remorse, acceptance of responsibility and victim input into vetting decisions. In terms of stigmatic shaming, its proponents understood increased vetting practices as required to challenge the idea that ex-prisoners’ involvement in conflict-transformation should permit them to have access to rights of full civic inclusion.

Recognising that conflict-transformation work provides value is construed, among those who stigmatically shame, as perilous in that a positive recognition of it undermines the harm caused to victims. Whereas those who uphold re-integration recognise the harm caused to victims but posit resolution around such maltreatment as requiring a transitional process not of rights giving per se but of inclusion within pre-existing rights (Brewer and Hayes, 2011).

**The SPAD Act**

Each Minister in the Northern Ireland Assembly had the opportunity to appoint a Special Political Advisor (SPAD). In 2011, the then Arts and Cultural minister, herself an ex-IRA prisoner, appointed Mary McArdle who had been imprisoned for 14 years for a gun attack on a magistrate, Tom Travers, and his family when leaving church in 1984. The death of Mary Travers and the serious injury caused to her father has had a strong resonance throughout the years. McArdle’s appointment led to outcry largely defined by her sister Mary and the ‘traditional unionist’ MLA Jim Allister who set in motion a successful private member’s Bill (commonly known as the SPAD Act) that brought in vetting measures against any person becoming a SPAD who held a serious conviction (Shirlow, 2018). The debates and committee stages of that Bill captured the variant forms of shaming and re-integration including the following forms of humiliation and social justice inclusion approaches. As laid out, both forms display compassion for victims but view the processes of victim recognition to be defined by greater legislative rigour, on the one hand, or balanced by reconciliation processes on the other. At first Cillian MCGrattan asserts that conflict transformation does not equate with reintegration tied to reconciliation while Sinn Féin MLA Mitchell McLaughlin argues that such an approach is central to peace-building:

‘For us, the idea of that narrative is that peace is a privilege not a right, and, if we start to enshrine the idea that we should be thankful to paramilitaries for calling off their war or to self-appointed community spokespersons for shouldering the responsibility for peace and we refuse to tackle that narrative in legislation, we will say something very dangerous about the types of values that we see our society following’ (Northern Ireland Assembly 2013: 190).

and:

‘We have great sympathy with and sensitivity for the individuals who have been hurt as a result of the actions of others, but we also have an absolute duty to try to move beyond post-conflict into reconciliation processes such as truth recovery to deal with the fact that there are many victims in our community who have never had redress’. (Northern Ireland Assembly 2013: 172).

As robustly claimed by the proponent of extended vetting practice, legislation should be used as an instrument to prevent the emergence of a narrative that ex-prisoners are viewed as part of a constructive transitional process. Danger is no longer cast as a security issue but one of moral value and the need to represent ex-prisoners and their pro-active support of peace-building as a dangerous challenge to societal ethics. Such a perspective is ‘required’ as an ‘increased necessity’ (Northern Ireland Assembly, 2013, p.182).

Through the SPAD Act,[[13]](#endnote-13) proponents of stigmatic shaming achieved greater statutory power through which ex-prisoners had to show contrition and be judged by their victim(s) before proceeding to employment. Around the debates that concerned this Act, those who advanced stigmatic shaming did not deny that peace-building interventions led by ex-prisoners occur but the acceptance of this contribution and the achievement of interdependence between adversarial groups was hazardous if it was not accompanied by remorse, acceptance of wrong-doing and repentance. Therefore, any acceptance of ex-prisoner leadership around peace was dangerous if vetting arrangements were not maintained or in this case advanced as a moral corrective to past violence. The SPAD Act was attached to CRPs showing contrition when applying for special adviser positions. The term ‘contrition’ has no legal definition or agreed meaning.

A proponent of the SPAD Act, the academic Cillian McGrattan, indicated that ex-prisoners holding publicly funded posts had to be more deeply vetted to avoid a ‘moral crisis’. The Act was also required to counter ‘state or state forces…being held to one version of morality that does not necessarily apply to ex-paramilitaries’ (Northern Ireland Assembly 2013: 183). Herein vetting was deemed important as a counter to claims for truth regarding state violence and state collusion with paramilitaries. Factually, such state violence has not been investigated with the same rigour as non-state violence (Lundy 2011). What is interesting here is that the demand for truth about the state that aims for equivalence in terms of prosecution and investigation and which is covered by legislation as an obligation upon the state ‘must’ be challenged by more vetting of those who ask for such obligations to be met. A further example of negating demand for truth which is reasonable and legally defined and which highlights the complex tussle between those who are both seekers and deniers of truth. Variant perspectives, regarding truth demands and truth censure sum up the cul-de-sac politics of humiliation seeking in that the ‘moral crisis’ means that ex-prisoners must submit to moral demands through exhibiting remorsefulness. Such a process of ‘rehabilitation’, in which the individual must be contrite, will not lead to them being legally rehabilitated. They may be permitted access to a post, but their criminal status ‘must’ endure.

**Conclusion**

Disputes concerning the tropes of conflict and its varied and disputed legitimacies remain a defining feature of political agency post-GFA. The idea that there has been the design and delivery of a legally compliant process of prisoner re-integration, that they have been accorded rights or that prisoners are somehow protected by the GFA is a quantitatively inaccurate operative fiction. Such soft law arrangements and their international context have not been a station post that achieved legal change. If anything, the commitments of the Agreement are hollow signifiers ‘in the sense that it initiates a process and a discourse that may involve learning and other changes over time’ (Abbott and Snidal, 2000: 423) but is effectively powerless when set against hard law. The GFA commitment to prisoners allowed the British and Irish states to present a commitment to re-integration within a context of public outrage that was prompted by the release, under licence, of CRPs. The commitments therein provided for some flexibility in implementation and helped respond to a complex domestic situation but the capacity of that political litheness, to balance prisoner release and wider hostility to that, did not extend into legislative change. Softness as a process of accommodation was never a state of preparedness for legislative change. It was recognition of the need to carry republicans and loyalists along a peace-building process continuum but that process was cognisant that de-criminalisation was too close to amnesty conditions. Even Sinn Féin has not called for amnesty provisions given their desire to place members of the security forces before the courts.

Any process of peace-building should encourage the assertion of harm endured and provide the space required to speak of grief, impairment and the misery caused by conflict-related violence. The re-writing of a violent past that obscures harm caused due to ideological inconvenience or purposeful and faulty narrative setting must be challenged as should the power of ethno-sectarian ‘worth’ and ‘value’ that is resistant to fact. The failure or, more importantly, refusal to remove vetting laws means that contestations over a fractured and destabilising past remain a site within which present emotional and physical health problems are highly related. There is no agreed societal or statutory response to the past and its effects upon diverse communities. The issues of harm and loss are not being re-defined and the problems of this for individuals and/or communities are not being factored into shared thinking and problem-solving. This is the case despite long-standing commitments to joined-up and community-led solutions to sensitive and complex issues. The landscape of assistance is fractured, at times ad hoc and also poorly funded or funded only in the short-term. Soft law has not been a station post that achieved any legal change as the commitments of the Agreement are in fact hollow signifiers. Soft law has not been dynamic as they are in effect powerless when set against hard law. Of fundamental importance is that no commitments in the GFA or St. Andrew’s Agreement were included in the subsequent Northern Ireland Act or St Andrew’s Agreement Act, a fact which undermines the gaining of rights thesis.

Professor Shirlow is Chair of the Review Panel.

Notes

References

Abbott KW and Snidal D (2000) Hard and Soft Law in International Governance. *International Organization* 54(3): 421-456.

Belfast Agreement (1998). Available at: <https://www.gov.uk/government/publications/the-belfast-agreement> (accessed 22 May 2018).

Benoit W (1997) Image Repair Discourse and Crisis Communication. *Public Relations Review* 23(2): 177–186.

Bourdieu P (1977) *Outline of a Theory of Practice.* Cambridge: Cambridge University Press.

Bourdieu P and Wacquant LJD (1992) *An Invitation to Reflexive Sociology*. Chicago: University of Chicago Press.

Brewer JD and Hayes BC (2011) Victims as moral beacons: victims and perpetrators in Northern Ireland *Contemporary Social Science* 6(1): 73–88.

Civil Service (Special Advisers) Act (Northern Ireland) 2013. Available at <http://www.legislation.gov.uk/nia/2013/8/contents> (accessed 12 July 2018).

Downey SD (1993) The evolution of the rhetorical genre of apologia *Western Journal of Communication* 57(1): 42–64.

Ellwanger A (2012) Apology as *Metanoic* Performance: Punitive Rhetoric and Public Speech *Rhetoric Society Quarterly* 42(4): 307–329.

Foucault M (1979) Discipline and Punish: The Birth of the Prison. New York: Vintage.

Geertz C (1973) The Interpretation of Cultures. New York: Basic Books.

Habermas J (1990) Moral Consciousness and Communicative Action. Cambridge: The MIT Press.

Heffer C (2013) Revelation and Rhetoric: A Critical Model of Forensic Discourse *International Journal for the Semiotics of Law* 26(2): 459–485.

Integrated Disarmament, Demobilization and Re-integration Training Group http://www.iddrtg.org/wp-content/uploads/2013/05/IDDRS-2.20-Post-conflict-Stabilization-and-Peace-building.pdf (accessed 24 April 2018).

Jamieson R, Shirlow P and Grounds A (2010) Ageing and social exclusion among former politically motivated prisoners in Northern Ireland. Available at <https://www.researchgate.net/profile/Peter_Shirlow/publication/265108320_Ageing_and_social_exclusion_among_former_politically_motivated_prisoners_in_Northern_Ireland/links/545b8e3b0cf249070a7a73fd.pdf> (accessed 12 July 2018).

Jenkins R (1997) *Rethinking Ethnicity*. London: Sage.

Koesten J and Rowland RC (2004) The rhetoric of atonement *Communication Studies* 55(1): 68–87.

Lundy P (2011) Paradoxes and challenges of transitional justice at the ‘local’ level: historical enquiries in Northern Ireland *Contemporary Social Science* 6(1): 89–105.

McConkey and another (Appellants) v The Simon Community (Respondents) (Northern Ireland) [2009] UKHL 24. Available at <https://publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-1.htm> (accessed 27 April 2018).

McGarry J and O’Leary B (2006) Consociational Theory, Northern Ireland's Conflict, and its Agreement. Part 1: What Consociationalists Can Learn from Northern Ireland *Government and Opposition* 41(1): 43-63.

*News Letter* (2015) ‘Fresh Start agreement an insult to victims’ - Allister, 21 November. Available at <http://www.newsletter.co.uk/news/crime/fresh-start-agreement-an-insult-to-victims-allister-1-7078073> (accessed 2 July 2018).

Ní Aoláin F (2012) Remarks by Fionnuala Ní Aoláin *Proceedings of the Annual Meeting (American Society of International Law)* 106 Confronting Complexity: 337-341.

Northern Ireland Act (1998) <https://www.legislation.gov.uk/ukpga/1998/47/part/V> (accessed 14 February 2018).

Northern Ireland Assembly (2013) Civil Service (Special Advisers) Act (Northern Ireland) 2013, accessed at http://www.legislation.gov.uk/nia/2013/8/contents (accessed 14 February 2018).

Miers D (1989) Positivist Victimology: A Critique *The International Review of Victimology*, 1(1): 3–22.

Özerdem A (2016) Post-conflict Reconstruction: Concepts, Issues and Challenges. In: Eadie P and Rees W (eds) *The Evolution of Military Power in the West and Asia: Security Policy in the Post-Cold War Era* Abingdon: Routledge.

Shirlow P (2012) *The End of Ulster Loyalism?* Manchester: Manchester University Press.

Shirlow P (2014) Rejection, Shaming, Enclosure, and Moving On: Variant Experiences and Meaning Among Loyalist Former Prisoners. *Studies in Conflict & Terrorism* 37(9): 733–746.

Shirlow P (2018) Truth Friction in Northern Ireland: Caught between Apologia and Humiliation. *Parliamentary Affairs* 71(2) 417–437.

Shirlow P and Hughes, C (2015) A Survey of Conflict-Related Prisoner's Needs. *Tar Isteach: Belfast.*

Shirlow P and McEvoy K (2008) *Beyond the Wire: Former Prisoners and Conflict Transformation in Northern Ireland*. London: Pluto Press.

Shirlow P, Graham B, McEvoy K et al. (2005) *Politically Motivated Former Prisoner Groups: Community Activism and Conflict Transformation*. Report submitted to the Northern Ireland Community Relations Council.

Stormont House Agreement (2014) Available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf> (accessed on 24 April 2018).

The Fair Employment and Treatment (Northern Ireland) Order (1998). Available at: <http://www.legislation.gov.uk/nisi/1998/3162/contents/made> (accessed 24 April 2018).

Todd J (2009) Northern Ireland: From Multiphased Conflict to Multilevelled Settlement. *Nationalism and Ethnic Politics* 15(3-4): 336-354.

1. This comment was made by Ann Travers whose sister was killed by the Irish Republican Army. [↑](#endnote-ref-1)
2. The rights prisoners have on release are limited. They can withhold a vetting check and cannot have unlawful checks on their background undertaken without their consent. The UK as signatory to United Nations Standard Minimum Rules for the Treatment of Prisoners is committed to Article 90 which states that: ‘The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility’. Moreover, the European Prison Rules, first adopted in 1987 (amended in 2006) provide, like Article 90, a set of recommendations emanating from the Committee of Ministers of the Council of Europe. Neither is legally binding. These and other soft laws are in fact a rejection of any alteration in the criminal status of conflict-related prisoners. [↑](#endnote-ref-2)
3. For details of this case see: <https://publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-3.htm> Accessed 2 May 2018. [↑](#endnote-ref-3)
4. For more details see: <http://www.reviewpanel.org/what-is-ddr/laws-of-vetting-accessni/> Accessed 2 May 2018 [↑](#endnote-ref-4)
5. The Guidance Principles encourage employers to only exclude those with conflict-related convictions when those convictions are materially relevant to the post applied for. [↑](#endnote-ref-5)
6. See <http://www.reviewpanel.org/>. Accessed 1 July 2018. [↑](#endnote-ref-6)
7. See [https://www.gov.uk/government/news/fresh-start-agreement-one-year-on. Accessed 1 July 2018](https://www.gov.uk/government/news/fresh-start-agreement-one-year-on.%20Accessed%201%20July%202018). [↑](#endnote-ref-7)
8. For victims, those rights are linked to the EU Charter of Fundamental Rights Article 2 which states that ‘everyone has the right to life.’ Under this and under prevention of terrorism legislation, the taking of life renders conflict-related prisoners as criminals. [↑](#endnote-ref-8)
9. See for example <https://www.belfasttelegraph.co.uk/news/northern-ireland/tuv-leader-challenges-dup-over-republican-prison-tours-29220641.htm>. Accessed 2 July 2018. [↑](#endnote-ref-9)
10. For case studies that affect CRPs see <http://www.reviewpanel.org/support/case-studies/> [↑](#endnote-ref-10)
11. It was found that mental ill-health had worsened due to long-term unemployment. In some cases, mental ill-health had precluded seeking work early post-imprisonment. [↑](#endnote-ref-11)
12. This being contrary to the Victim and Survivor’s Order (see https://www.legislation.gov.uk/nisi/2006/2953/contents) that considers anyone harmed in the conflict as a victim. Shaming proponents reject the law which considers an ex-prisoner who has lost a family members killed in the conflict and who may uphold the perspective that paramilitary violence was legitimate as a victim. [↑](#endnote-ref-12)
13. The Civil Service (Special Advisers) Act (Northern Ireland) 2013 (SPAD Act) as passed in the Northern Ireland Assembly ensures that any person with a serious criminal conviction of 5 years or more may be legally excluded as a Special Adviser. [↑](#endnote-ref-13)