

BOOK REVIEWS

R-M Crossan, *Criminal Justice in Guernsey, 1680–1929*, 1st edn, Mòr Media Ltd, 2021, ISBN 978-1-0196371-3-6

1 In *Law Officers of the Crown v Harvey* (2000–02 GLR 189), Sir de Vic Carey (then Bailiff) stated (at para. 10):

“It appears that for some time prior to that [1848] the criminal law had developed in an unstructured way and the need was to have a clear criminal law with offences defined and categorized and the various glosses on such offences developed over the centuries in the English courts imported into Guernsey jurisprudence. Consequently, since 1848 one has witnessed the development of common law offences on parallel lines to those offences in England . . .”

2 What Guernsey historian Rose-Marie Crossan achieves in this fascinating and exhaustively researched book is to explain fully the basis of that statement. She charts the pre-1848 status of the criminal law in Guernsey, relying on numerous resources, most notably the *Livres en Crime* (the Royal Court crime registers), which began in 1563, and covers all procedural aspects of a criminal case, not just the outcome.

3 She covers how it was English barrister Peter Stafford Carey (appointed Bailiff in 1845) who was the chief architect of this seismic change in the direction of the criminal law in Guernsey. As Dr Crossan writes, when he met the Home Secretary it was impressed upon Carey that the criminal law “was in a very defective state, and . . . required great alteration”. Many are aware that this led to a Royal Commission being initiated in 1846 to enquire into the state of the criminal law in Guernsey, and the report published in 1848¹ revealed the concerns at that time, recommending that Guernsey’s criminal justice system should conform to the English model.

4 It is this analysis that is likely to be of most interest to the criminal law practitioner. Dr Crossan explores why the Royal Commission was initiated, tracing it back to appointment of the Lieutenant Governor Major General William Napier in 1842. As Dr Crossan notes, he had forged a reputation as a reformer and was on a “collision course” with

¹ *Second report of the Commissioners appointed to inquire into the state of the criminal law in the Channel Islands—Guernsey* (London, 1848 HMSO)

the Royal Court, which he identified as the “inept and callous rulers” of the “suffering people”. It was his correspondence with the Home Secretary, detailing the abuses he had identified, that led to the Royal Commission.

5 There are two other aspects to this book that should be of particular interest to practitioners. The first is the treatment of woman and children. Dr Crossan’s conclusions of the period covering between 1845 and 1929, are of particular note. Using a number of examples, she concludes that there was “a persistent downplaying of crimes such as child molestation and wife beating, as well as victim blaming in cases of rape.” She then identifies a wholesale cultural change was “another 50 years in coming.” However, some may not consider this change has yet fully arrived, particularly those deputies who said as much in the recent States of Deliberation debate that led to the introduction of Sexual Offences (Bailiwick of Guernsey) Law, 2020. “Victim blaming” was a phrase that was used by some opposing efforts to delay a provision in the new law dealing with consent and intoxication.

6 The other topic of interest is where Dr Crossan identifies when people were prosecuted without any clear basis in law. Reference is made to several instances where people were prosecuted pursuant to the “Court’s general criminal jurisdiction.” This jurisdiction was cited by the Procureur during his questioning before the Commissioners in 1847 when he said, “the Royal Court have an authority to punish every crime, though we may not have a positive law or statute on the point”. This would of course now fall foul of art 7 of the European Convention on Human Rights which requires certainty in the law. Dr Crossan gives examples related to bigamy and also of three prosecutions of male on male sexual assaults in 1898, 1907 and 1908. Alarmingly those prosecuted were imprisoned, and one was also sentenced to twenty-four lashes of the cat o’ nine tails. This particular lacuna was filled by the passage of the *Loi Relative à la Sodomie* in 1911, which incidentally (like a number of statutes referred to by Dr Crossan) is only repealed by the aforementioned Sexual Offences Law. She devotes a number of pages to covering what she calls “Novel Crimes” which included “white collar” offences like false accounting. These were prosecuted on multiple occasions but, at least initially, with no precedent. She concedes that the number of novel offences prosecuted on a one-off basis are “too numerous to detail individually” so it is little wonder the Home Secretary initiated a Royal Commission.

7 The book will not just appeal to practitioners because, as set out in the introduction, “Guernsey’s legal history is not readily separable from its social history” and so this book addresses “both aspects in tandem”. This sets the scene for a book which, as stated on the blurb, makes the

BOOK REVIEW

core focus of the book the “lived experience of both offenders and victims.”

8 The book spans a period of 250 years and is divided into three sections, these being 1680 to the mid-1760s, from then to the mid-1840s and then to 1929. As Dr Crossan writes, these sections “each comprise a period of continuity followed by a period of transition”. Each period is then broken down into three further parts; first, covering the background, giving a general overview of the state of Guernsey society at the time; secondly, covering court procedure, personnel and infrastructure; and, finally, a section on crime, which covers the different offences committed within the period examined. There are numerous illustrations and plates, often from court records, to supplement the text, some of which will be familiar to many but others which will not, such as the old courthouse on *La Plaiderie* (which was described by the Governor in 1664 as looking more like a barn than court of justice).

9 There are also informative appendices covering topics such as the language of the court and inquests but it is the summary of the principal recommendations of the 1846 Royal Commission and the dates of fulfilment which are of most interest. It took over a hundred years to institute a criminal appeal court, and the recommendation to align Guernsey law with English law is described as “in progress” (as can be seen from the new Sexual Offences Law and the offences it replaces). There is also a full record of all key figures in the administration of justice during the period, including the hangmen sworn in after 1680.

10 The conclusion reached by Dr Crossan is that Guernsey’s criminal law has failed to sustain “a distinctive insular identity” and that may be true for the substantive law. However, the criminal law in Guernsey still does have an insular identity. For example, and as fully documented, all advocates must still obtain the *Certificat d’Etudes Juridiques Françaises et Normandes* to qualify as a Guernsey advocate, and this includes studying Norman law, no matter in what area the advocate intends to practise. Interestingly, Dr Crossan notes it was only in 1908 that aspirants were required to attend a French university, usually selecting Caen. Secondly, the Jurat system is alien to English law, and is far removed from the jury system in place in England. Jurats, whose history is also covered by Dr Crossan, still sit on all criminal cases that are committed to the Royal Court and not only decide guilt or innocence but will also proceed to determine sentence where a person is found guilty. This is a unique aspect of Guernsey’s criminal law. Further, an accused person who faces trial in the Royal Court has, unlike in Jersey, no option to choose a jury trial.

11 The one thing that this book may well do is dispel the long-cherished belief of some that Guernsey has always been a low crime

jurisdiction. Compared with England and Wales that may be the case, but the vast array of crimes documented in this important work show that Guernsey has a long history of criminal offending.

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