

BOOK REVIEW ESSAY

AN INTIMATE YET ANGLO-CENTRIC ACCOUNT OF A RENAISSANCE HUMAN RIGHTS MAN

Review essay of Mike Chinoy, *Are You With Me? Kevin Boyle and the Rise of the Human Rights Movement* (Lilliput Press 2020)

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First published online on 14 January 2021

In his well-researched biography, Mike Chinoy chronicles Kevin Boyle's life and career as a scholar, activist and lawyer, bringing to light his under-appreciated role in the civil rights movement in Northern Ireland and the efforts to find a peaceful solution to the conflict, as well as his contributions to human rights movements in the United Kingdom, Europe and the world. Are You With Me? is an important contribution to the literature on the actors who have shaped the norms, institutions and operations of human rights. In its efforts to shed light on one man, the book offers a fresh alternative to state-centric accounts of the origins of human rights. The book offers a portrait of a social movement actor turned legal scholar who used the law to contest the social inequalities against the minority community to which he belonged and to push for a solution to the underlying political conflict, as well as revelations of the complex power dynamics between human rights lawyers and the social movements they represent. In these respects Are You With Me? also provides valuable insights for socio-legal scholars, especially those focusing on legal mobilisation. At the same time the book could have provided a fuller and more complex biographical account had Chinoy been geographically and linguistically comprehensive in selecting his interviewees. The exclusion of Kurdish lawyers and human rights advocates is noticeable, particularly in light of the inclusion of Boyle's local partners in other contexts, such as South Africa.

Keywords: human rights biography, legal mobilisation, Northern Ireland conflict, social movements, ECtHR litigation

1. INTRODUCTION

In his well-researched and beautifully written biography Mike Chinoy walks us through the transformation of the son of a Catholic taxi driver in a small town in Northern Ireland into a leading figure of the twentieth century human rights movement. Making use of his journalistic skills, Chinoy chronicles Kevin Boyle's life and career as a scholar, activist and lawyer against the backdrop of political developments at the local, national and international scales. In pursuit of his goal in writing this book, Chinoy brings to light Boyle's little known and under-appreciated role in the Northern Ireland civil rights movement and the efforts to find a peaceful solution to the

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conflict. Beyond that, the book also depicts Boyle's contributions to the broader human rights movements in the United Kingdom, Europe and, indeed, the world.

Are You With Me? is a tribute written to a friend. The two men met in 1972 during Chinoy's first visit to Belfast to accompany his father for his lecture at Queen's University, where Boyle was a faculty member. Chinoy was a student at Yale University, where he had developed an interest in the civil rights movement in Northern Ireland. Boyle happened to be on the eve of a postgraduate stay at Yale and volunteered to supervise Chinoy in his independent research on Irish history. After his studies Chinoy became a freelance journalist in Northern Ireland and stayed at Boyle's flat for extended periods over the next several years. They stayed in touch after Chinoy moved on to East Asia, until Boyle's death in 2010. Over the course of four decades the two men had extensive conversations about Northern Ireland and Chinoy got to know well Boyle's thinking about the origins of and solutions for the conflict.

Taking this personal history as his starting point, Chinoy combined investigative journalism with archival research. He conducted over 100 interviews, including with Boyle's friends, family and colleagues, who also shared with him their personal records. Chinoy also made extensive use of the archive at the National University of Ireland library, consisting of Boyle's letters, diaries, writings, emails, recordings and press clippings, as well as two long interviews conducted with Boyle in the 1970s and 2000s on his professional life and the Northern Ireland conflict. The result is a detailed, contextualised and intimate, though not necessarily impartial, portrait of a man who, as the former Irish president Mary Robinson had put it, 'deserves to be remembered' (p vii).

2. A SOCIO-LEGAL SCHOLAR/ACTIVIST FROM NORTHERN IRELAND

In many ways Kevin Boyle was the quintessential Renaissance man of the twentieth century civil rights movement. In his self-reflection, his career had all the three 'A's: academy, advocacy and activism (p xv). What seems to have made this possible was a combination of the times he lived in, his personality and his roots. Born during the final years of the Second World War, Boyle came of age at a time when a global human rights movement was emerging at an unforeseen speed, breadth and density. For those who wanted to change the world for the better, the post-war legal and political order offered a blank slate. The world lacked global norms, instruments and institutions to protect individuals against governments, and non-governmental actors (NGOs) to give voice to victims of discrimination, oppression and state violence. All of that came into being with the collective efforts of idealists, who codified human rights and lobbied governments to adopt them, formed NGOs to engage in advocacy and the naming and shaming of non-conforming states, took to the streets to protest against governments' human rights violations, represented human rights victims in courts, and engaged in human rights education.

Boyle was one of those rare individuals who did a bit – indeed quite a bit – of all of that. He started at home, in Northern Ireland. Born and raised in an overwhelmingly Catholic town right off the border with the Irish Republic, Boyle decided to study law 'for no obvious reason' (p 15). For him what mattered was to escape the highly sectarian, religious and segregated society in which he grew up, and education was the way out. He chose Queen's University Belfast, mainly

because of the non-sectarian quality of its education, where he had his first ever interactions with Protestants. From then on, inter-sectarian relationships defined Boyle's life and career: many of his close friends and colleagues and his future wife, Joan, would be Protestant.

Of the 24 chapters in *Are You With Me?*, each dedicated to turning points in Boyle's life and career, the most capturing are the early ones about his political awakening and role in the Northern Ireland civil rights movement. We witness the transformation of an utterly bored university student, who would rather do theatre than practise law, into a dedicated legal scholar and practitioner. What raised Boyle's interest in law was politics. Living in Belfast on the eve of the Troubles, he became increasingly aware of the structural discrimination and social inequality against Catholics and of the enabling role of law in this. With the benefit of physical distance provided by the year spent at Cambridge University for a graduate diploma in criminology, he saw clearly how the Unionist Protestants used the law, particularly criminal law, to perpetuate their political, economic and social power over the Catholic minority.

Chinoy points out that critical legal studies, in particular critical criminology, were influential in Boyle's rethinking about the law and its function. Another source of inspiration might very well be the interdisciplinary field of law and society which had been in the making across the ocean. When Boyle was at Cambridge the year was 1965. The role played by the Northern Ireland conflict in Boyle's political awakening was not that different from the ways in which institutionalised racism in the southern United States made progressive American lawyers realise the law's 'double-edged'¹ function as an instrument of both oppression and resistance. Just as African-American activists were mobilising the law to contest segregationist laws,² Boyle understood that the Irish Catholics should 'use the law as a mechanism to promote change and create a more just and equitable society' (p 23). He started on the streets, exposing the discriminatory and unjust nature of the law through peaceful demonstrations. After several years, realising the limitations of this strategy in bringing about social change, he turned to academia and legal practice to push for legal reform through research and litigation.

3. BOYLE THE ACTIVIST: A LIFETIME ENGAGEMENT WITH THE NORTHERN IRELAND CONFLICT

There must be hardly anything untold about the origins, development and outcome of the Northern Ireland conflict, many written by journalists.³ Chinoy's contribution to this literature

¹ Michael McCann, 'Law and Social Movements: Contemporary Perspectives' (2006) 2 *Annual Review of Law and Social Science* 17, 19.

² Taylor Branch, *Parting the Waters: America in the King Years 1954–63* (Simon & Schuster Paperbacks 1988); Robert Jerome Glennon, 'The Role of Law in the Civil Rights Movement: The Montgomery Bus Boycott, 1955–1957' (1991) 9 *Law and History Review* 59.

³ Patrick Radden Keefe, *Say Nothing: A True Story of Murder and Memory in Northern Ireland* (Doubleday 2019); Malachi O'Doherty, *Fifty Years On: The Troubles and the Struggle for Change in Northern Ireland* (Atlantic Books 2019); Tim Pat Coogan, *The Troubles: Ireland's Ordeal 1966–1996 and the Search for Peace* (St Martin's Griffin 2002); David McKittrick and David McVea, *Making Sense of the Troubles: The Story of the Conflict in Northern Ireland* (New Amsterdam Books 2002).

is the light he sheds on Boyle's un/under-acknowledged role in the civil rights movement and the peace process in his home country. The portrayal of Boyle's motives for embracing political action and eventually disengaging with street activism is a compelling account of the limitations of non-violent resistance in conflicts characterised by extreme politicisation, polarisation and distrust.

The reasons behind Boyle's turn to legal activism is the quintessential story of why minorities across the world turn to law to contest the law. Unlike many who become lawyers because their parents were, or for idealism, status or money, what draws ethnic, sexual, religious and other minorities to the practice of law is very often the urge 'to do something'. At the end of his year at Cambridge, it was that urge which prompted Boyle to drop the idea of pursuing a PhD in the United States and to go back to Belfast 'to do something ... to get involved' (p 25).

What brought Boyle back to Belfast was a teaching job at Queen's University Faculty of Law. Almost immediately after starting his academic career he became involved in politics. Joining an umbrella group in forming the Northern Ireland Civil Rights Association (NICRA), Boyle started his lifelong struggle for the equal protection of Catholics in the exercise of their fundamental rights as British citizens. The focus on 'British rights for British citizens' rather than on the question of partition or the constitutional status of Northern Ireland (p 28) reflected Boyle's approach to the conflict: mobilising British law and its legal system to seek the equal and effective protection of Catholics' individual rights to vote, housing and employment, on the one hand, and to seek police reform, on the other.

NICRA was established in 1967. Martin Luther King had not yet been assassinated and the civil rights movement was in full force in the United States – on the streets and in the courts.⁴ Like many other civil/human rights activists around the world, Boyle and his comrades had an eye on the legal and political strategies of their American counterparts, cognisant of the similarities as well as the differences. As Boyle noted in a press interview, unlike the United States, the United Kingdom lacked a Bill of Rights at the time, ruling out litigation before British courts as an option and leaving peaceful street demonstrations as the only way to seek social change (p 30). However, from the very first protest march they organised in Derry, NICRA activists would come face-to-face with a harsh reality: police violence. In response, they formed a new organisation called the People's Democracy (PD), elected Boyle to lead it, and started to organise weekly street marches across Northern Ireland. What followed is the sad familiar story of non-violent protest movements seeking justice amidst an entrenched political conflict: counter-demonstrations, almost always turning violent, the inaction and tolerance of law enforcement towards physical assaults against protestors, differences of opinion among activists over the appropriate response to this backlash, a growing sense of militancy within the movement and, as a consequence, diminishing public sympathy and support for the cause.

Two particular marches organised by the PD would have lasting consequences – for Boyle and the movement. The first was in January 1969. Inspired by King's legendary march from

⁴ Branch (n 2).

Selma to Montgomery which led to the enactment of the Voting Rights Act in the United States, the PD decided to hold a long march to Derry to force the British government to engage with the situation directly rather than through its proxies in Northern Ireland. The outcome was unexpected, although, with the benefit of hindsight, predictable. The march was ambushed by Unionist Protestant extremists, who repeatedly assaulted the demonstrators as the police stood by and watched. The immediate outcome involved clashes between the two sides, riots, a random police assault on local Catholics and their properties, and the resort of some protestors to violence against the police. When the dust settled, hardliners on both sides had gained the upper hand, initiating 'a cycle of violence and bloodshed' that would last for decades (p 55). The Derry march also marked a turning point for the Northern Ireland conflict: split within the Unionist power structure, the strengthening of hardliners on the Protestant side, the rise of the provisional IRA as the defender of Catholics, the sidelining of the civil rights movement, and the arrival of British troops.

The militarisation of the conflict expedited the impending civil war and resulted in the second critical march, which marked yet another, and seemingly the real, turning point. In August 1971, when British forces rounded up around 350 Catholic men, interned them without trial and tortured them in custody, Boyle advocated mobilising the ordinary population to engage in a non-violent civil disobedience campaign until the detainees were released. When the civil strike proved to be ineffective, he urged NICRA to take the struggle back to the streets. The result was the notorious 'Bloody Sunday' when, on 30 January 1972, 14 people died at the hands of the British army in Derry. The political outcome was the end of the Unionist's decades-long one-party rule and the initiation of direct British rule from London, which triggered a new cycle of violence. 1972 would become the deadliest year of the Troubles.

It had become clear that the era of mass street organising was over. NICRA was effectively dead. The incident also had lasting consequences for Boyle, leaving him with a sense of guilt for the rest of his life. Severing his active ties with the civil rights movement, he turned his attention to academia.

4. AN ACADEMIC-ADVOCATE ON THE NATIONAL AND INTERNATIONAL STAGE

What facilitated this transition for Boyle was, once again, physical distance. The year he spent as a postdoctoral fellow at Yale University enabled him to distance himself from street politics and focus on academic research and writing. Upon his return to Belfast, he started to engage in empirical research on the role of criminal law in the Northern Ireland conflict, particularly on emergency laws governing the powers of security forces and the use of internment as a counter-insurgency strategy against Catholics. Boyle's motivation for conducting research, then and afterwards, was to push for legal reform and political change. In view of his non-sectarian approach to the conflict, Boyle started his lifelong collaboration with his Protestant colleague, Tom Hadden. Presenting their research findings and policy proposals to various reform commissions established by the British government would become a characteristic feature of the academic collaboration between Boyle and Hadden. Through his comparative readings of

Boyle's individual and collaborative contributions and the final reports adopted by various commissions, committees and initiatives, Chinoy documents in painstaking detail, at times at the cost of repetition, Boyle's lasting legacy on the efforts to find a political solution to the conflict.

Boyle decided to remain in academia, but not in Northern Ireland. The loss of the optimism of the civil rights era and the deterioration of the security situation in Belfast made life increasingly depressing and dangerous for Boyle and his new wife, Joan. When offered an academic post in a remote town in rural Ireland, he left Northern Ireland – never to return. As the only full-time law professor at University College Galway, Boyle saw the immense challenge of building a law department from scratch as an opportunity to realise his ideals for practice-oriented legal education. Taking over a law department with no library and virtually no financial resources, he introduced undergraduate and graduate degrees in law and, in 1980, created the first university human rights centre in Ireland. Having started to petition the European Commission on Human Rights (EComHR/Commission) on behalf of human rights victims in Northern Ireland, Boyle held the Irish Centre for the Study of Human Rights' inaugural conference on the European Convention on Human Rights (ECHR).

All the time Boyle had an eye on developments at home. The 1983 general elections in the United Kingdom established the IRA as a formidable political actor in Northern Ireland: Sinn Féin won 100,000 votes and Gerry Adams was elected to the Westminster Parliament. When all Irish political parties and actors of non-violent Irish nationalism, north and south, formed a civil initiative to counter the IRA's growing weight on the political landscape, Boyle and Hadden wanted to be involved. They presented a paper with the unique argument that no solution would be viable without the consent of Northern Protestants which, in turn, was contingent on the Republic's formal recognition of the constitutional status of Northern Ireland as part of the United Kingdom. As unpopular as their opinion was with Irish nationalists, it seems to have caught the attention of Margaret Thatcher. Chinoy's book reveals for the first time that Boyle's and Hadden's ideas played a key role, albeit unacknowledged, in the Anglo-Irish Agreement signed between the British and Irish governments in 1985, the precursor to the Good Friday Agreement reached under Tony Blair over a decade later. Under the latter accord, the Irish Republic would drop its constitutional claim to Northern Ireland, the future of Northern Ireland would be made contingent on the consent of the majority of its people, the British and Irish governments would agree to incorporate the ECHR into their domestic legal systems and establish national human rights commissions – ideas long advocated by Boyle and Hadden.

Meanwhile, after seven years in Galway, Boyle 'was becoming increasingly frustrated by the lack of resources in what remained an academic backwater' (p 230). In light of his growing national and international profile as a legal scholar and practitioner, his eagerness to move on seems evident. At the national level, Boyle and Hadden were becoming increasingly influential in decision-making processes. Internationally, in addition to filing new cases in Strasbourg, Boyle had become involved with Amnesty International, undertaking fact-finding and trial-monitoring missions in South Africa and Gambia. The report he wrote on the pass laws of the apartheid regime in South Africa became the centrepiece of Amnesty's global campaign and, in the opinion of local activists with whom Boyle worked in South Africa, played a critical

role in the apartheid government's decision to repeal these laws. For the restless and ambitious Boyle it was time to get out of Galway.

Once again, Boyle made a life-changing decision during a sabbatical break, this time in Australia. When offered to be the founding director of Article 19, a London-based NGO established for the global fight against censorship and the promotion of freedom of expression, Boyle 'leapt at the opportunity' to work on free speech, a cause which had been close to his heart since his undergraduate studies (p 235). During his short tenure, which started in December 1986, Boyle oversaw the writing of the *Article 19 World Report*, the first ever documentation of the state of censorship on a global scale.⁵ Another first was the submission to the United Nations Human Rights Committee of Commentaries concerning freedom of speech violations in several countries around the world, starting what would become standard NGO practice since then. Article 19 was envisioned as the Amnesty International equivalent of freedom of speech, an organisation to speak up on behalf of individuals censored and imprisoned for speaking their mind.

The ability of the organisation to do that would be dramatically tested on 14 February 1989 when the Khomeini-led new Islamist regime in Iran put a multimillion dollar reward (boosted with a ticket to paradise) for the killing of Salman Rushdie for engaging in 'blasphemy' in his novel *Satanic Verses*. Muslims around the world had already mobilised, including in the United Kingdom, through street demonstrations and public book-burning sessions (bombing bookstores and killing the book's international editors and translators were yet to come). It was clear that Khomeini's *fatwa* would only add fuel to the fire. Yet, moved by a deep personal conviction in the value of free speech, Boyle displayed remarkable courage by organising an emergency meeting only six days after Khomeini's *fatwa*, spearheading the formation of an international civic campaign for Rushdie's defence and taking the lead in drafting a letter in support of Rushdie. The letter was signed by a thousand writers and intellectuals, including Nobel Laureates, and published in 62 newspapers and magazines around the world. Four months later, the number of signatories would reach 12,000.⁶

The notion of a 'revolving door' seems to have been created to describe Boyle's career, during which he moved back and forth between academia, civil society and international institutions. When offered the position of law professor and director of the human rights centre at the University of Essex, Boyle left Article 19 after less than two years in the job. He was burnt out by the day-to-day pressures of running a high-profile and ambitious international NGO, having to multi-task between fundraising, management and advocacy. Still, he was rejuvenated by the opportunities provided by his new job – the relentless, ambitious and hard-working Boyle was back at work. He developed a new interdisciplinary graduate degree on human rights and teamed up with Françoise Hampson, a professor of constitutional law at Essex who would become a leading international scholar of international humanitarian law, with whom he developed a very close personal and professional relationship. He convinced Nigel Rodley, Amnesty's

⁵ Kevin Boyle, *Article 19 World Report 1988: Information, Freedom and Censorship* (Times Books 1988).

⁶ For a deeply personal and disturbing account of the whole affair from the perspective of its protagonist, see Salman Rushdie, *Joseph Anton: A Memoir* (Vintage 2012).

chief international lawyer and soon-to-be UN Special Rapporteur on torture, to join them at Essex. The three would turn Essex into one of the most influential centres of human rights education in the world. The timing was also ripe. The Cold War had abruptly ended; the Berlin Wall fell; international law was expanding normatively, institutionally and geographically; and governments of post-communist European nations were frantically trying to align their domestic legal systems with ECHR norms in order to qualify for accession to the European Union. The unprecedented global and regional demand for human rights professionals would enable Boyle and his colleagues to help in shaping the next generation of human rights advocates. Boyle had found his home.

Yet, when Mary Robinson, former Irish president and UN High Commissioner for Human Rights, offered her long-time friend the position of her chief adviser and speechwriter in Geneva, Boyle was once again tempted and took up a new post amidst a global political crisis. His first day in office, when Robinson was on holiday and beyond reach, was to be 11 September 2001. Chinoy's account opens a rare window into the workings of the United Nations and the challenges of human rights advocacy at times of global security crises. Robinson and Boyle advocated a human rights approach to the terrorist attacks; this did not go well with the Bush administration, which had launched a 'war on terror' and was increasingly perceiving Robinson as a nuisance. Caught in the middle, UN Secretary General Kofi Annan gave in to intense pressure from the United States administration and did not support Robinson for a full second term. Meanwhile, Boyle also failed in his efforts to be appointed UN Special Rapporteur on freedom of religion and belief.

Though disillusioned to have to leave the exciting professional life in Geneva, the multi-faceted legal scholar he was, Boyle spent the remaining years of his life focusing on new human rights issues and building bridges with new regions of the world. He focused on economic and social rights and engaged with human rights communities in Brazil and China, constantly travelling, speaking and writing. He continued to revolve the door, joining the board of Minority Rights Group (MRG) International, an NGO advocating the individual rights of minorities. Boyle helped to develop the strategic litigation work of the MRG, advising the team which successfully argued a landmark European Court of Human Rights (ECtHR) Grand Chamber judgment on behalf of the Roma and Jewish minority in Bosnia.⁷

By 2010 Boyle was far from done. He was planning to start writing 'his magnum opus: a definitive study of freedom of expression' as soon as he retired from Essex University that summer (p 324). When he collapsed at his wife's feet in April, he was five days away from delivering the opening remarks of a conference he was organising on the United Nations and freedom of expression. He was diagnosed with lung cancer and went through lung removal surgery, but still mustered the physical strength to attend his students' graduation ceremony, which also marked his formal retirement. In an 'unprecedented' decision (p 329), the University of Essex awarded Boyle an Honorary Master's in the Theory and Practice of Human Rights – the degree

⁷ ECtHR, *Sejdić and Finci v Bosnia and Herzegovina*, App nos 27996/06 and 34836/06, 22 December 2009.

that he had created two decades earlier. He received his degree to a standing ovation. The last person who had received that honour during a graduation ceremony was Nelson Mandela.

5. A STAPLE IN STRASBOURG: BOYLE BEFORE THE ECHR INSTITUTIONS

One of the constants in Boyle's career, starting as early as 1972, was his litigation work before the EComHR and ECtHR. During these decades when he was multi-tasking and constantly travelling, he managed to keep focused on ECtHR litigation in contesting injustice, discrimination and government repression in the United Kingdom and across Europe. The international transfer of knowledge that shaped Boyle's professional life was instrumental in his introduction to the ECHR system – except, this time he was on the receiving end.

Ironically, what gave rise to Boyle's first case in Strasbourg (*Donnelly and Six Others v UK*) were the unintended consequences of his street activism in Northern Ireland. The events of Bloody Sunday had triggered a new vicious cycle of IRA violence, sectarian attacks by unionist extremists, and repressive measures by the police and the British army. Security forces were applying to detainees in Northern Ireland the 'five techniques' of sensory deprivation that the British army had developed to deal with counter-insurgency in its colonies. At around this time, in 1972, a young American lawyer named Hurst Hannum showed up in Belfast. He was exploring the possibility of applying the nascent ECHR regime to the conflict in Northern Ireland, and was referred to Kevin Boyle, who himself was looking for a way to expose the mistreatment of detainees. The two men decided to take a case to Strasbourg on behalf of seven men they strategically identified across Northern Ireland. At the end of a long process that Chinoy chronicles in detail, they lost and won at the same time. The Commission found the case inadmissible because it was not convinced by the argument that domestic remedies were ineffective or inadequate, thus meriting intervention by Strasbourg. At the same time the Commission accepted, in principle, the argument of Hannum and Boyle that an individual may raise a complaint of an alleged administrative practice in violation of the ECHR, extending to individual complaints a principle it had established in an interstate complaint (the *Greek case*). The finding of an administrative practice, concluded the Commission, would render domestic remedies ineffective and exempt individual applicants from the obligation to exhaust them.⁸ The Commission was just not convinced that the United Kingdom engaged in such a practice in Northern Ireland.⁹

When Boyle next appeared in Strasbourg it was on behalf of gay rights. The story behind this case was also a chance encounter. One evening in 1974, Boyle ran into Jeffrey Dudgeon, a gay activist. The two men chatted about yet another discriminatory piece of legislation in the United Kingdom; while the government had in 1967 lifted the ban on homosexuality in the rest of the country, gay sex remained a criminal offence in Northern Ireland, punishable by life

⁸ EComHR, *Donnelly and Six Others v United Kingdom*, App nos 5577/72 and 5583/72 (Second Decision, 15 December 1975) part IX.

⁹ *ibid* 77. See also Hurst Hannum and Kevin Boyle, 'The Donnelly Case, Administrative Practice and Domestic Remedies under the European Convention: One Step Forward and Two Steps Back' (1977) 71 *American Journal of International Law* 316.

imprisonment. When Dudgeon mentioned that he wanted to put pressure on the government to extend the new law to Northern Ireland, Boyle advised him to go to Strasbourg. A year later, Dudgeon and his comrades at the Northern Ireland Gay Rights Association (NIGRA) gave Boyle the power of attorney. This time, Boyle's 'partner in crime' in the ECtHR litigation was long-time friend and colleague Francis Keenan. Ironically, the Northern Irish police unknowingly resolved the greatest admissibility hurdle by raiding Dudgeon's flat, searching and seizing his personal records and arresting him for engaging in 'homosexual activities'. The detention and interrogation of 20 other gay men followed over the following several months. Dudgeon and his comrades were now 'victims' in Strasbourg-speak. Chinoy's detailed account of the parties' written and oral submissions in the case provide fascinating insights. Nicolas Bratza, a future renowned human rights advocate and ECtHR President, was then the lead government lawyer. The mere filing of the case (and the Commission's admissibility decision) was so influential that, four days before the July 1979 hearing, the UK government announced that it would lift the ban in Northern Ireland. The Commission's report was a (partial) victory for gay rights, finding that the prohibition of private consensual homosexual acts between adults violated privacy rights, but not addressing the applicants' discrimination claims under Article 14. The most important gain was, no doubt, the Commission's referral of the case to the ECtHR.

At this point the disputes over strategy resurfaced between Boyle and Keenan, on the one hand, and Dudgeon and NIGRA activists, on the other. The latter felt that the lawyers did not give sufficient attention to their Article 14 claims and decided to continue with a London-based left wing lawyer (p 165). Yet the result did not change: the ECtHR reached the same conclusion as the EComHR.¹⁰ Although Boyle did not receive the credit for it, the ECtHR judgment not only resulted in a change in the law in Northern Ireland but also had an indirect impact on the decriminalisation of homosexuality in Cyprus, the legalisation of homosexuality in Ireland, and the repeal of sodomy laws in post-communist European countries. It was even cited in the 2003 ruling of the United States Supreme Court in striking down an anti-sodomy law in Texas.¹¹

Legal history is too often written on the basis of cases that result in a court ruling. One of the important contributions of *Are You With Me?* is the light it sheds on applications that one would expect to have resulted in at least a Commission report, but were found inadmissible. Walking the reader through the story of one such case, Chinoy shines a spotlight on the determinative role of politics in high-profile legal cases. The British government's 1976 decision to strip IRA prisoners of their Special Category Status and to treat them as ordinary criminals had led to the 'blanket protest' (IRA prisoners refusing to wear prison uniforms and remaining naked under a blanket) which by 1978 had mutated into the 'dirty protest' (IRA prisoners smearing the walls of their cells with their excrement).¹² The prison authorities escalated the crisis by withdrawing from

¹⁰ ECtHR, *Dudgeon v United Kingdom*, App no 7525/76, 22 October 1981, para 70.

¹¹ *Lawrence v Texas*, 539 U.S. 558 (2003), para 46.

¹² The protests would culminate in the 1980–81 hunger strikes, which would become a showdown between the prisoners and the Thatcher government. By the end of the second strike, ten IRA prisoners had starved themselves

the detainees ‘privileges’ such as physical exercise, reading materials and access to television, and by restricting their letters and visits to one per month. In their petition to the Commission, Boyle and Keenan argued that what prisoners were deprived of were not privileges but their fundamental rights, invoking nine articles of the Convention. Already a hot potato for the Commission, the case became all the more sensitive when the IRA assassinated Queen Elizabeth’s uncle and killed 18 British soldiers in a single attack – all in one day. Thatcher ruled out any compromise with the IRA prisoners and the Commission rejected the application (with the exception of two grounds, over which it postponed its admissibility decision) (p 173). When the prisoners started a hunger strike and following the death of Bobby Sands, who had meanwhile been elected to the British Parliament, the Commission wanted to become involved, finding the remaining two elements to be admissible. It was too late; Thatcher refused to engage with the Commission and the case was dead.

Following a discussion of Boyle’s pioneering ECtHR litigation in defence of free speech, culminating in the precedent-setting *Bladet Tromsø* judgment on press freedom,¹³ Chinoy turns his lens on the Kurdish cases. In 1992 Boyle visited Diyarbakır in the Kurdish region of Turkey to give a talk to local human rights lawyers about the ECHR system. This would be a turning point – for him, the Kurdish lawyers, Turkey, the ECtHR and, indeed, international human rights law. In many ways what Boyle found in Diyarbakır was familiar territory: a local population ruled by an entrenched emergency regime, a state security apparatus oppressing civilians under the disguise of counter-terrorism, an armed group perceived as liberators by the population and terrorists by the authorities and, underlying it all, a deeply rooted ethno-political conflict. Yet, as he wrote in a letter to Mary Robinson, the repression and violence in the Kurdish region was ‘on such a horrendous scale compared with Northern Ireland that it is difficult to credit how little attention it gets compared to our own problems’ (p 275).

What brought Boyle to the Kurdish region was one of his students, Kerim Yıldız. By now, Boyle was at Essex and this time his litigation partner was Françoise Hampson. The large folder that Yıldız had put together for them revealed the scale and nature of state violence in the Kurdish region, prompting Boyle and Hampson to decide to engage in strategic litigation. For initial submission to Strasbourg they picked three cases, each representing one type of gross violation (such as extra-judicial execution, torture, forced displacement/property destruction). From then on, collaborating with Kurdish lawyers in Diyarbakır, they submitted on average two to three cases per week.

The outcome was significant. Following initial hearings, in light of Turkey’s dispute with regard to the factual allegations and its categorical denial of responsibility, the Commission decided to hold a fact-finding mission to establish the facts itself – the first such decision since the *Donnelly* case in the mid-1970s (p 279). Among the three commissioners in the mission was Nicolas Bratza, the British government’s lead lawyer who had argued opposite Boyle in

to death. The incidents turned Bobby Sands, the first to die, into a popular culture figure. For examples of films dedicated to Sands, see Terry George’s *Some Mother’s Son* and Steve McQueen’s *Hunger*.

¹³ ECtHR, *Bladet Tromsø and Stensaas v Norway*, App no 21980/93, 20 May 1999.

Dudgeon. The substantive outcomes were also groundbreaking. In *Akdivar and Others v Turkey*, Boyle won the argument he had lost in *Donnelly*, convincing the Commission of the inadequacy and ineffectiveness of legal remedies in Turkey's emergency region (though, again, losing the administrative practice argument).¹⁴ Although the judgment made clear that this was not a blanket exemption from the obligation to exhaust domestic remedies, the ECtHR effectively opened its doors to Kurdish victims of state violence. *Aksoy v Turkey* was the first ECtHR judgment to confirm state-sanctioned torture by a signatory to the ECHR.¹⁵ In *Aydin v Turkey*, the ECtHR not only established that a 17-year old Kurdish woman was raped in detention, but also ruled that rape by state officials under detention constituted torture.¹⁶ As Chinoy points out, this judgment would set an example for the international criminal tribunals for the former Yugoslavia and Rwanda in their prosecutions of rape as a war weapon. More generally, Boyle and Hampson helped to shape ECtHR jurisprudence on state violence in armed conflicts, which would be a major pull factor in the legal mobilisation of Chechen victims of Russia's gross violations in the Caucasus.¹⁷

6. FILLING IN THE BLANKS, BUT NOT ALL OF THEM

Certainly, *Are You With Me?* is not a scholarly work; nor does it claim to be. Nonetheless, it is an important contribution to the growing literature on human rights and the actors who have shaped its norms, institutions and operations.¹⁸ In its efforts to shed light on and celebrate the under-appreciated contributions of one man, the book offers a fresh alternative to state-centric accounts of the origins of human rights.¹⁹ In this sense it echoes Ann Marie Clark's well-known work on Amnesty International,²⁰ Michael Goldhaber's moving portrayal of applicants that helped in shaping the bedrock of ECtHR jurisprudence,²¹ and Paul Johnson's oral history of sexual orientation discrimination litigation in Strasbourg,²² all of which provide bottom-up accounts of the

¹⁴ ECtHR, *Akdivar and Others v Turkey*, App no 21893/93, 16 September 1996, paras 70–77.

¹⁵ ECtHR, *Aksoy v Turkey*, App no 21987/93, 18 December 1996, paras 58–64.

¹⁶ ECtHR, *Aydin v Turkey*, App no 57/1996/676/866, 25 September 1997, paras 80–86.

¹⁷ Ole Solvang, 'Chechnya and the European Court of Human Rights: The Merits of Strategic Litigation' (2008) 3 *Security and Human Rights* 208; Freek van der Vet, 'Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances before the European Court of Human Rights' (2012) 13 *Human Rights Review* 303; Dia Anagnostou, 'From Belfast to Diyarbakir and Grozny via Strasbourg: Transnational Legal Mobilisation against State Violations in Contexts of Armed Conflict' in Dia Anagnostou (ed), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System* (Hart 2014) 157.

¹⁸ Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press 1998).

¹⁹ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 1999); Ed Bates, *The Evolution of the European Convention on Human Rights: From Its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press 2010).

²⁰ Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton University Press 2001).

²¹ Michael D Goldhaber, *A People's History of the European Court of Human Rights* (Rutgers University Press 2007).

²² Paul Johnson, *Going to Strasbourg: An Oral History of Sexual Orientation Discrimination and the European Convention on Human Rights* (Oxford University Press 2016).

human rights movement. It also complements Clark's book by shedding light on one of thousands of advocates who contributed considerably to Amnesty's acclaimed work.

Are You With Me? is also a valuable read for law and society scholarship. First, in its portrayal of a social movement actor turned legal scholar, who used the law not only to contest the social inequalities against the minority community to which he belonged but also to push for a solution to the underlying political conflict, it contributes to studies on the use of law as part of broader political mobilisation²³ and on the role of legal professionals in democratisation processes.²⁴ Its detailed account of Boyle's victories and failures in this struggle supports the emphasis of socio-legal scholars on the 'the promise and the limits of legal mobilization' in achieving social justice.²⁵

Second, and here I find the book to be most fascinating, it reveals the complex power dynamics between human rights lawyers and the social movements they represent. In *Dudgeon*, Boyle and Keenan ended up being fired by their clients, although, and precisely because, they had won before the Commission. Once a favourable ECtHR ruling was a real possibility, gay rights activists wanted to use the opportunity to press their political agenda rather than pursue a risk-free legal strategy. It turns out that Mr Dudgeon had told his ECtHR story to at least two more writers before speaking to Chinoy. Goldhaber's 2009 book, which Chinoy cites, does not give any hints about the fallout between Dudgeon and his lawyers.²⁶ Johnson's 2016 work, which Chinoy does not cite, provides a fuller picture. Initially, Dudgeon's account is similar to the one he would give to Chinoy a few years later: 'being a radical', he wanted to pursue Article 14 in his application, to which Boyle and Keenan agreed '[w]ith some reluctance' and after 'some tension', and after the Commission report he parted ways with them because they 'weren't willing to pursue Article 14 hard enough'.²⁷ However, Dudgeon then went further and said he 'also had a bit of a fight [with his lawyers because they] were doing deals, or having conversations, with Strasbourg about what was and wasn't possible'²⁸ and keeping him in the dark. Another detail revealed in Johnson's book is that the new lawyer hired by Dudgeon and NIGRA was not only radical, but also gay. The choice of 'one of them' as their lawyer might be telling of the barriers of mistrust that separate human rights lawyers from social movements to which they do not belong.

This brings me to Chinoy's chapter on Boyle's ECtHR litigation for the Kurds. The first time I heard about Boyle was in Diyarbakır in 1998, six years after his visit to this city. I was there as a Master's student, assisting an academic fact-finding delegation from the United States. In

²³ Stuart A Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Yale University Press 1974); Paul Burstein, 'Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity' (1991) 96 *American Journal of Sociology* 1201; Chris Hilson, 'New Social Movements: The Role of Legal Opportunity' (2002) 9 *Journal of European Public Policy* 238.

²⁴ Jane Kaufman Winn and Tang-chi Yeh, 'Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation' (1995) 20 *Law & Social Inquiry* 561.

²⁵ Ellen Ann Andersen, *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (The University of Michigan Press 2005) 216.

²⁶ The only time Dudgeon mentions Boyle is to credit him for the idea to go to Strasbourg ('It was all Kevin's idea'): Goldhaber (n 21) 34.

²⁷ Johnson (n 22) 79.

²⁸ *Ibid.*

translating the interviews with Kurdish lawyers engaged in criminal defence and ECtHR litigation, I kept hearing Boyle's name. Many of the Kurdish lawyers were introduced to the ECHR system by Boyle and Hampson, for whose contributions to the Kurdish cause they felt grateful. Almost two decades later, I started the research I had been contemplating ever since my trip to Diyarbakır, culminating in a book project.²⁹ Sadly, I was too late to interview Boyle. In that sense, I was very happy to find out about Chinoy's book and to write this review. I do hope that my thoughts on Chinoy's chapter on the Kurdish cases will help him and the readers to obtain a fuller picture of Boyle's involvement with them, just as Chinoy's book has helped me to get to know Boyle better.

During my fieldwork I found out that the lawyers I had met in Diyarbakır were not the pioneers of ECtHR litigation in Turkey. The first, very first, Kurdish lawyers who established and ran the Diyarbakır Human Rights Association (HRA) and partnered with Boyle and Hampson in ECtHR litigation had long left Diyarbakır and, in some cases, left human rights practice altogether. I found Fevzi Veznedaroğlu in Istanbul and Sedat Aslantaş in Ankara, both engaged in private law, and Mahmut Şakar (to whom Chinoy mistakenly refers as Mahmut Sarkar) as a refugee in Cologne, engaged in human rights advocacy. They were forgotten not only by the British lawyers with whom they had once collaborated but also by the Kurdish social movement.

I also found out that the first ever ECtHR case on state violence in the Kurdish region was filed on 10 May 1989 – three years before Boyle's visit – by a Kurdish lawyer named Hasip Kaplan from the small town of Cizre.³⁰ The case was settled in 1993,³¹ several years before the first Kurdish case that Boyle and Hampson reluctantly settled with the Turkish government. Thus, Chinoy's claim that the latter 'was the first judgment on a Kurdish case from Strasbourg' (p 284) is inaccurate – not only because a friendly settlement is not a judgment but also, and more importantly, the first case to be settled in Strasbourg was filed by Hasip Kaplan. Another revelation was that when Boyle and Hampson became involved in the Kurdish cases, Diyarbakır HRA lawyers had already started preparatory work for ECtHR litigation. The person who introduced Veznedaroğlu to the individual petition mechanism of the ECHR was his wife Sevtap Yokuş, then a PhD student at Istanbul Law Faculty and now a prominent legal scholar in Turkey, whom I also interviewed.

So the real story is that when Boyle and Hampson were informed about state violence in the Kurdish region and became interested in litigation before the ECtHR, a handful Kurdish lawyers in Diyarbakır had already been mobilised. The learning process worked both ways: while Boyle and Hampson shared their expertise on international human rights law and the ECHR process, their Kurdish counterparts not only did all the fact gathering on the ground but also provided invaluable expertise on the domestic legal system. Boyle was rightly concerned about the

²⁹ Dilek Kurban, *Limits of Supranational Justice: The European Court of Human Rights and Turkey's Kurdish Conflict* (Cambridge University Press 2020).

³⁰ For a personal account of the case and the litigation process, see Hasip Kaplan, *Bir Onur Kavgası: Cizre'den Strasbourg'a Yeşilyurt Dışkı Yedirme Davası* (Belge Uluslararası Yayıncılık 1996).

³¹ EComHR, *Gürdoğan, Müştak, Müştak and Müştak v Turkey*, App nos 15202/89, 15203/89, 15204/89 and 15205/89, Decision (Friendly Settlement), 12 January 1993.

requirement of exhausting domestic remedies in a country whose legal system he did not know – a worry further justified after his experience in *Donnelly*. Yokuş prepared a memo setting out the inadequacy and ineffectiveness of domestic remedies in the Kurdish region, which formed the basis of their argument before the ECtHR. Thus, Yokuş and Boyle effectively replicated, in reverse, the roles that Boyle and Hurst Hannum had performed in their collaboration for *Donnelly*.

What connected Boyle and Hampson with the Diyarbakır HRA lawyers was a Kurdish refugee in the United Kingdom named Kerim Yıldız. As Chinoy writes, Yıldız arranged Boyle's visit to Diyarbakır, set up the London-based Kurdish Human Rights Project (KHRP) with Boyle's encouragement, and informed and advised Boyle and Hampson on the nature and scale of gross violations in the Kurdish region. However, the significance of Yıldız for Kurdish strategic litigation before the ECtHR went well above and beyond this, a reality Chinoy must be well aware of. It is notable, therefore, that Chinoy did not interview Yıldız, who was once a student, a close friend and collaborator with Boyle, and is still living in England where I met him for an interview. For an investigative journalist who conducted over 100 interviews, including with Boyle's former students and colleagues, this neglect is curious. Certainly, the personal and professional fallout between Yıldız and Boyle and Hampson is not a secret, and it might well be that Chinoy did not interview Yıldız out of his loyalty to Boyle; or perhaps it was just an oversight.

Chinoy's material inaccuracies and omissions with regard to the Kurdish cases do not diminish the value of his work. To the contrary, they make *Are You With Me?* all the more interesting for socio-legal scholars, particularly for those working on legal mobilisation and transnational legal networks. Many of the omissions stem from the disconnect between the western intellectual, legal and academic community and the rest of the world, and are also common in scholarship. Too much of world history continues to be accounted for from a western point of view for a variety of reasons, including linguistic and cultural barriers, although, of course, the responsibility also lies on the shoulders of journalists, academics and intellectuals of the non-western world who have the requisite skills to shed light on the unknown and un/under-acknowledged heroes of their own societies.