

BOOK REVIEW

Andy Aitchison, *Making the Transition: International Intervention, State-building and Criminal Justice Reform in Bosnia and Herzegovina*, Cambridge: Intersentia, 2011.

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In the spring of 2011, a political crisis emerged in Bosnia and Herzegovina (BiH) after several years of simmering political stalemate. The President of one of BiH's two entities, Milorad Dodik of the Republika Srpska (RS), threatened to organize a referendum in that entity on the question of whether it would recognize decisions imposed by the High Representative, including those related to the state court (Court of BiH) and state prosecutors. In essence, such a referendum was seen by many as a dangerous first step towards not only reversing the reforms achieved in the years since the end of the war, but also towards a future referendum on the secession of the RS from BiH. Since 2006, the BiH government had been deadlocked on a number of issues related to the country, its structure and both past and future reforms needed to move forward in the EU membership process. Political rhetoric among the country's divided nationalist ruling parties has grown increasingly commonplace, grounded in diametrically opposite views of the vision of and for BiH. For a number of reasons, these issues came to a boiling point in May 2011, with the threatened referendum being postponed only after the direct intervention of the European Union foreign policy chief Catherine Ashton, and the agreement that the EU would begin a process of 'structured dialogue' with BiH authorities at the state and entity level on issues related to the justice sector. Some observers saw this as an effective response by the EU to a political crisis with potential implications, while others saw this as EU appeasement in the face of domestic political obstruction, and a potential sign that reversals of past state-strengthening reforms might be tolerated.

Regardless of how one views these developments throughout 2011, the issue of justice sector reform in BiH has been and clearly continues to be an issue on the agendas of international and domestic officials alike. Andy Aitchison's book, *Making the Transition: International Intervention, State-building and Criminal Justice Reform in Bosnia and Herzegovina*, is a timely reminder of efforts to reform the criminal justice sector in post-war BiH and looks back at past reforms that -- particularly in light of the reform stagnation of the past five years -- can at times be easy to forget.

Aitchison's book looks at the three key elements of the criminal justice framework in BiH -- the police, courts and prisons -- in order to better understand the approaches to reform in a state undergoing multiple transitions. Four questions shape his analysis: 1) what role does criminal justice sector reform play in a post-war, state-building exercise; 2) to what extent do the demands of state-building shape criminal justice reforms; 3) how do different agencies approach criminal justice reform; and 4) to what extent is international intervention in BiH conducive to the transfer or transplant of other models and practices (p. 5). While his book is aimed at addressing issues of interest to criminal justice scholars and practitioners, his selection of BiH as a case study renders the book useful to students of post-war BiH more generally as well.

Following the establishment of the framework for the study, including a review of transitional and international approaches in post-war states, methods of policy transfer, an interesting discussion on lustration in transition countries, and a short chapter summarizing BiH's war and aftermath, Aitchison's book is divided into three main sections as he explores reform efforts related to the police, criminal courts and penal system. In each he reviews the sector's Yugoslav inheritance to provide a basis for understanding the starting point for post-war reform efforts. He further touches on the impact of the war in each sector, including the potential impact of personnel with questionable wartime records, on the credibility of these institutions.

His review of police reforms begin with the Dayton Agreement's Annex 11 mandate to establish a UN International Police Task Force (IPTF), and the limitations and challenges of reforming a policing structure that was highly decentralized and fragmented as a result of the war and of the peace agreement that placed

policing at the entity or canton level (in the Federation) with no state-wide coordination or competencies. The highly visible role of the police, and the fact that the police are the element of a criminal justice system that is the most familiar and directly relevant to citizens, clearly led to a sense that reform in this sector was critical. 'The police services needed 'cleansing' in some way to distance and distinguish themselves from those which had engaged in or supported programmes or persecution during the war' (p. 80). However, the ability to achieve reform in such a divided environment was circumscribed by the political reality. His discussion of the IPTF focused on the process of certifying all police offices in the country (and the related issues of bans on appointment), and then on the transition to the EU Police Mission, the establishment of the State Border Service and SIPA, and some targeted efforts by the United Kingdom's Department for International Development (DFID) to support reform in two municipalities (Prijeedor and Zepce.) His discussion of the Police Restructuring Commission, started during the High Representative Paddy Ashdown's tenure, provides a good overview of an ambitious reform at a time when it was still possible to think about ambitious state-strengthening reforms. However, this reform ultimately failed to be implemented in the ways its sponsors originally intended, and policing remains a highly devolved competency. Further, there have been signs of a potential reversal of reforms aimed at depoliticizing and professionalizing the police forces.

Aitchison's review of BiH's criminal courts is equally interesting, reviewing three main elements of reform: court restructuring, the removal of unsuitable judges and prosecutors, and procedural reform. The establishment of the Court of BiH is explained, including its role in war crimes and corruption prosecutions with the involvement of international prosecutors, and the 2001 challenge from the RS which claimed that the Court was unconstitutional -- a case the RS lost before the BiH Constitutional Court. The development of the state-level Criminal Code and Criminal Procedure Code are reviewed (and the imposition of these reforms by the High Representative after the failure of the government to adopt the reforms), as well as the introduction of adversarial forms of jurisprudence (first in Brcko, and then later throughout BiH) and the introduction of plea bargaining as a 'legal transplant.' He notes the broad perception among international officials of pervasive political interference in the court systems driving many reforms, together with an interest in incremental state-building/strengthening.

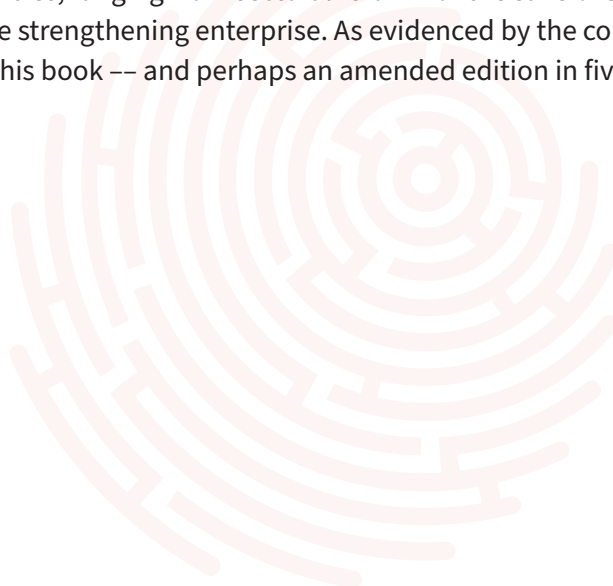
The review of the country's penal system is the slimmest, reflecting the relative lack of attention this area of reform has received. Aitchison looks at the labour and rehabilitation elements of the pre-war Yugoslav system, and the impact of the contemporary economy on the maintenance of such an approach. He wisely points out the lack of a vetting or lustration process in the penal system -- a surprising omission in light of the role of some prisons and some prison officials in questionable wartime activities. Further, he explains the impact of decentralization, fragmentation and a paucity of resources on some basic elements of the system -- for example, the lack of a secure psychiatric facility in the Federation, or the lack of a state prison in which the accused could serve sentences from the Court of BiH. In spite of the importance of this element of the criminal justice sector, relatively few actors sought to engage in reform, and Aitchison reviews the few examples available including the Council of Europe's provision of technical assistance on matters relevant to CoE member states, and a limited DFID policy study programme.


This book provides a good survey of these reform issues, and includes a good balance of the technical and procedural reforms tried or implemented within the constraints of the political dynamics shaping the reform environment. Aitchison's combination of fieldwork, document review and theoretical grounding helps him to bring together a wealth of information, and to present it within a clear structure. While his fieldwork ended in late 2005, he does include some more recent information. In terms of the presentation of content, while there

are a few notations of the amount of money spent on elements of reform, the inclusion of such financial data (quite often very difficult to obtain) in a more structured way would provide the reader with more context in terms of the investment in these micro- and macro-reform efforts.

Further, readers may find themselves coming to the end of each section eager to read Aitchison's analysis of whether or not the reforms have worked. Were reforms in each of these sectors an absolute success, an abject failure, or something in between? The lack of evaluative assessments of this kind can be understood in light of the timeframe of fieldwork and the long-term nature of these reforms, as well as his interest in process and the lessons of transfer of expertise. The reader is left wanting a bit more, and will perhaps be prompted to investigate a bit further.

However, Aitchison has written a well-researched and readable book that will be a useful resource for scholars of BiH and criminal justice reform more broadly. He is correct in concluding that the terminology of 'lesson drawing' is more appropriate than 'transfer' or 'transplant.' And he judiciously describes the different motivations of reforming agencies, ranging from sectoral reform for the sake of sectoral reform, or reforms as an element of a bigger state strengthening enterprise. As evidenced by the continuing central role of the justice sector in BiH politics, this book -- and perhaps an amended edition in five years time -- is highly relevant.





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Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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