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## Regulating Rights and Managing Public Order: Parade Disputes and the Peace Process, 1995-1998

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# Regulating Rights and Managing Public Order: Parade Disputes and the Peace Process, 1995-1998

Neil Jarman

## **Abstract**

This Essay explores the problems that have emerged over the right to parade since 1994. It begins with a brief review of the historical significance of parades in Ireland before summarizing the background to the current disputes. This Essay considers the causes of the problem, the arguments of the various parties, and the development of legal controls on parades. The Essay then moves on to review the attempts that have been made to resolve the issue. In particular, the Essay focuses on the formal measures that have been taken by the British Government to resolve the disputes rather than the practical measures taken to mediate, negotiate, and police the problems at a local level. Such measures include the consideration given to the problem in the report of the Independent Review of Parades and Marches, changes that have been made to the legislation governing parading, and the formation of the Parades Commission with powers to issue legal determinations over disputes.

## REGULATING RIGHTS AND MANAGING PUBLIC ORDER: PARADE DISPUTES AND THE PEACE PROCESS, 1995-1998

*Neil Jarman\**

The Good Friday Agreement contains no references to parades, marches, processions, or demonstrations. The section of the Agreement on human rights mentions neither the importance of the right to freedom of assembly in a democratic society nor the social responsibilities that accompany human rights. The section on economic, social, and cultural issues barely extends its interest beyond the significance of language as a cultural marker, although it does acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need, in particular, for creating the new institutions to ensure that such symbols and emblems are used in a manner that promotes mutual respect rather than division.

Over the past four years, however, disputes over the right to march, the expression of cultural traditions, and the displaying of symbols, emblems, and regalia have grown in significance and have often dominated the political agenda. The annual marching season has hung over the peace process like a brooding summer storm. Each year the growing number of protests by members of the Nationalist community against parades by the Protestant loyal orders have threatened to disrupt and destroy the fragile bonds of trust that have begun to be built between the two communities. The first year of the agreement has been marked by continuing, and often violent, protests in Portadown over the demand by Orangemen to be allowed to walk past and through the predominately Nationalist community on the Garvaghy Road. Drumcree V, which is due in July 1999, already looms large as a threat to a permanent peace.

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This Essay explores the problems that have emerged over the right to parade since 1994. It begins with a brief review of the historical significance of parades in Ireland before summarizing the background to the current disputes. This Essay considers the causes of the problem, the arguments of the various parties, and the development of legal controls on parades. The Essay then moves on to review the attempts that have been made to resolve the issue. In particular, the Essay focuses on the formal measures that have been taken by the British Government to resolve the disputes rather than the practical measures taken to mediate, negotiate, and police the problems at a local level. Such measures include the consideration given to the problem in the report of the Independent Review of Parades and Marches, changes that have been made to the legislation governing parading, and the formation of the Parades Commission with powers to issue legal determinations over disputes.

### I. *HISTORICAL BACKGROUND*

Holding a parade to commemorate significant historical events, as an adjunct to religious worship, as a political display, as a show of strength, or simply as a social occasion has been a feature of Irish life since the fifteenth century. Following the formation of the Orange Order in 1795, parades have also become increasingly instrumental as markers of collective identity and as a means of claiming territory.<sup>1</sup> There is also a long history of violence at parades. A man was killed following a dispute at the first Orange parade in 1796, and trouble continued to erupt with regularity at parades through the early nineteenth century. In 1832, the government introduced the Party Processions Act, which prohibited all such parades in Ireland. The act was renewed on an annual basis until 1845 when it was allowed to lapse, but an almost immediate recurrence of violent clashes led to its re-introduction in 1850. It remained in force until 1872 when it was repealed.

Parades continued to provoke persistent but relatively minor trouble in many areas of Northern Ireland, but such problems were largely contained or dealt with by the local constabulary under the common law. Partition of the island in 1921

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1. NEIL JARMAN, *MATERIAL CONFLICTS: PARADES AND VISUAL DISPLAYS IN NORTHERN IRELAND* (1997).

altered the balance of political power in the North. The Unionist community now dominated the political environment and the vast majority of Unionist political representatives belonged to one or more of the Protestant loyal orders. As a result, their annual parades became almost state events, they were supported and encouraged by the government, and cabinet ministers regularly utilized the meeting at the field for political rhetoric. Orange parades became an overt celebration of the Protestant community and of the Stormont state. In contrast, Nationalist parades and commemorations were heavily constrained and were restricted by the police to those areas of Northern Ireland that had an overwhelming Catholic population.<sup>2</sup> Republican public displays were further constrained under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, which permitted the Minister for Home Affairs to prohibit any meetings, assemblies, or processions. This option was regularly taken up by the minister and enforced with some thoroughness by the RUC.

The emergence of the Northern Ireland Civil Rights Association in the 1960s once again saw parades and demonstrations emerge as a significant and contentious issue. Loyalists opposed civil rights parades in many areas, and in response nationalists began to mobilize against loyal order parades in certain areas.<sup>3</sup> Derry became the primary flashpoint location and in August 1969 violence erupted following the annual Apprentice Boys parade. The subsequent deployment of British troops, as rioting and sectarian clashes spread to Belfast, is generally acknowledged to mark the start of the Troubles.

Parades have been a recurrent, if irregular, source of disorder and violence in Ireland over the past two hundred years. Such public displays of collective identity and strength have often become particularly problematic at times of public debate on larger political concerns over the constitutional status of Ireland or the position of the Catholic community within the wider body politic. The years of the United Irishmen and the unification of Ireland and Britain, O'Connell's campaign for Catholic emancipation, the duration of the Home Rule campaign, Parti-

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2. NEIL JARMAN & DOMINIC BRYAN, UNIVERSITY OF ULSTER, FROM RIOTS TO RIGHTS: NATIONALIST PARADES IN THE NORTH OF IRELAND (1998).

3. EAMON McCANN, WAR IN AN IRISH TOWN (1980); BOB PURDIE, POLITICS ON THE STREETS: THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT IN NORTHERN IRELAND (1990).

tion, and the Civil Rights era have all been marked by controversy and clashes over parading rights. On each occasion, one or both parties have utilized parades to propagate their demands, to mobilize support, to display their numerical strength, and to claim or affirm territorial rights. From this perspective, it is not surprising therefore that parades should have become a contentious issue once the main paramilitary groups declared their cease-fires and the emphasis shifted towards a negotiated end to the conflict and a permanent political solution for Northern Ireland.

## II. *CURRENT PARADE DISPUTES*

The present cycle of disputes came to public attention in the spring of 1995 when the Lower Ormeau Concerned Community group intensified their protests against loyal order parades along part of the Ormeau Road in Belfast. However, it is important to recognize that this action was an intensification of the protests rather than the beginning of the campaign. In fact, there had been public objections to parades by members of the Nationalist community in a number of towns since the early 1980s, and annual protests had been maintained against parades on the Garvaghy Road in Portadown since 1985.<sup>4</sup> The Ormeau Road protest had begun in 1992 after an attack by the Loyalist Ulster Freedom Fighters led to the death of five local people; nevertheless, there was a sea change in the scale and significance of the protests in 1995. The first protest was mounted on the Ormeau Road on Easter Monday, April 17, and further protests were made against eleven other parades over the next six months. Furthermore, through the spring and summer similar protests were made at towns and villages across Northern Ireland. Residents groups were formed in Bellaghy, Castlederg, Derry, Dunloy, Portadown, Roslea, and elsewhere to demand that local parades be re-routed. In some cases, the loyal orders voluntarily re-routed their parade, in some cases they were re-routed by the police, in some cases the protesting residents were forced aside, and in a number of cases there was violence during or after the parade.

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4. Dominic Bryan, *The Right to March: Parading a Loyal Protestant Identity in Northern Ireland*, 4 INT'L J. ON MINORITY & GROUP RTS. (1997); DOMINIC BRYAN ET AL., UNIVERSITY OF ULSTER, POLITICAL RITUALS: LOYALIST PARADES IN PORTADOWN (1995).

Members of the various residents groups stated that their objections were longstanding and genuine. They insisted that it was the removal of the threat of paramilitary violence that gave them a sense of security, which they had not felt before, to mount public protests that they had not felt before. They insisted that they were not opposed to loyal order parades *per se*, but merely those that went through or near nationalist areas. They demanded that the loyal orders recognize that the changing demographic profile in many areas meant that the parades were no longer welcomed. They objected to the disruption to daily life and to the increased security that was imposed for the duration of the parade, and they resented being subjected to triumphalist visual displays and sectarian music. The residents said that they did not want the parades banned, but rather offered two options. Either the parades should be re-routed away from the nationalist areas or the loyal orders should be willing to engage in discussion with the local people in order to find an acceptable compromise to the problem.

Members of the loyal orders, and the Unionist community more generally, were not convinced by these arguments. They saw the manipulative hand of Sinn Féin behind the protests, which, they insisted, were no more than a change of tactics by republicans to undermine the Unionist community. They felt that the protests were an attack on their culture and on their civil and religious liberties, rather than based on any genuine objections. Members of the loyal orders claimed that most people did not oppose the parade, most parades caused minimal disruption, many had been following traditional routes for many years, and, they were both peaceful and legal events. As a result, they did not see any reason why they should negotiate with self-appointed community representatives. Furthermore, they noted that the spokespersons for many of the residents groups were former republican prisoners, and they insisted that they would refuse on principle to meet face-to-face with such people.

This refusal to engage in any face-to-face meetings with members of the residents groups has remained a persistent argument by the loyal orders, even if the principle has been set aside on occasion. As stated earlier, this objection was based partly on a feeling that there was a fundamental right to parade and that they did not need to negotiate the terms in which they exercised their liberties. But they also followed the principles and prac-

tices that had been set down by the political leadership of the Unionist community who stated that they would refuse to engage in face-to-face discussions with members of Sinn Féin while the IRA retained their military capabilities. The loyal orders insisted that the campaign against their parades was an integral part of the wider republican political strategy, and they refused to give any legitimacy to local republican activists by meeting with them. The parade disputes were therefore widely seen from the beginning as the localized expression of the wider political process. Tactics adopted at the higher level of political negotiation were mirrored at the lower level. It was clear that these two domains of politics—negotiation and street activism—were interconnected and that the nature of the parade disputes would, to some extent, unfold in parallel to the wider peace process.

### III. *LEGAL CONTROLS*

In the initial stages, the problem of disputes over parades was regarded as a relatively minor matter, and an issue that should be resolved by dialogue and compromise at a local level. If local dispute resolution failed, then the police were expected to deal with the issue on the ground and on the day of the proposed parade. Although regular attempts were made to encourage the two principal opposing parties to engage in some form of mediation process, and the official line has been to continue to encourage such approaches, a satisfactory compromise was rarely achieved. On the few occasions that an agreement was brokered, mistrust, rumor, and political manipulation served to undermine local confidence in the deal.<sup>5</sup> It was increasingly left to the RUC to deal with the competing claims and demands. However, leaving it up to the RUC to deal with this issue was also increasingly seen as an unsatisfactory solution because it was accepted that it should not be within the remit of a police force to attempt to adjudicate on what was essentially a political matter.

Police powers to deal with problems over parades were defined within the terms of the Public Order (Northern Ireland) Order 1987; such terms were the product of a gradual development of public order legislation. Public order and parades had

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5. NEIL JARMAN & DOMINIC BRYAN, *PARADE AND PROTEST: A DISCUSSION OF PARADE DISPUTES IN NORTHERN IRELAND* (1996); GRAINNE KELLY, *MEDIATION IN PRACTICE: A REPORT ON THE ART OF MEDIATION PROJECT* (1998).



initially been controlled under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, but the relevant clause had been repealed in 1949. New powers were introduced under the Public Order Act (Northern Ireland) in 1951, which was part of a wider process of creating legislative parity with Britain.<sup>6</sup> The new act was based largely on the Public Order Act 1936, which had been introduced as a result of the rise of fascist anti-semitic violence and public opposition by communists in east London.<sup>7</sup> The act gave the police the power to impose conditions on parades and/or to re-route them and gave the Home Secretary the power to ban parades on the grounds of a serious threat to public order. The act also required organizers of parades to give forty-eight hours notification to the police, although it exempted parades "customarily held along a particular route" from this requirement. This exemption effectively meant that the loyal orders did not have to provide any notification of their parades. This was an era of relatively few parade disputes and the act worked relatively effectively and proved uncontroversial until the late 1960s when it was used to ban a number of civil rights parades. Then, in the early years of the Troubles, the widespread public protests and disorder led to the act being revised in 1970 and again in 1971. The Public Order (Amendment) Act (Northern Ireland) 1970 increased the notification period for parades from forty-eight to seventy-two hours and gave the Minister flexibility to ban specific marches rather than simply imposing a general ban on all parades in a given area. The Public Order (Amendment) Act (Northern Ireland) 1971 extended the notification period to five days, although once again "traditional parades" were excluded. The amendment also allowed for parades to be banned if they imposed "undue hardship to persons working or carrying on business in the area" or made "undue demand on the police or military forces." These various changes and extensions were later consolidated in the 1981 Public Order (Northern Ireland) Order.<sup>8</sup>

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6. TOM HADDEN & ANNE DONNELLY, BELFAST COMMUNITY RELATIONS COUNCIL, *THE LEGAL CONTROL OF MARCHES IN NORTHERN IRELAND* (1997).

7. Richard Thurlow, *Blaming the Blackshirts: The Authorities and the Anti-Jewish Disturbances in the 1930s*, in *RACIAL VIOLENCE IN BRITAIN IN THE NINETEENTH AND TWENTIETH CENTURIES* (P. Panayi ed., 1996); CHARLES TOWNSEND, *MAKING THE PEACE: PUBLIC ORDER AND PUBLIC SECURITY IN MODERN BRITAIN* (1993).

8. Hadden & Donnelly, *supra* note 6; PETER NORTH ET AL., BELFAST STATIONARY OFFICE, *REPORT OF THE INDEPENDENT REVIEW OF PARADES AND MARCHES* (1997).

The widespread inner city riots in London, Liverpool, Bristol, and elsewhere in the early 1980s, and the violence of the Miner's Strike of 1984-1985 raised the issue of public order to greater political significance in Britain.<sup>9</sup> In response to the Scarman Report on the Brixton riots in 1981 and the Law Commission report on public order in 1983, the government introduced the Public Order Act in 1986.<sup>10</sup> Extensive violence across Northern Ireland in the wake of the signing of the Anglo-Irish Agreement in 1985 ensured that a revised and extended Public Order (Northern Ireland) Order was adopted in 1987. Although much of the new order was a re-enactment and extension of earlier provisions, there were a number of significant changes. The most important of these were that the required notification period was extended from five to seven days and that the exemption for customary or "traditional" parades was removed. From now on, all parades were to be treated equally. Other refinements were made with regard to the power of senior police officers to impose conditions on a parade. If the officer fears serious public disorder, serious damage to property, or serious disruption to the life of the community, or has a reasonable belief that the purpose of the organizers is the intimidation of others, then conditions could be imposed on the route taken, on the number of participants, on the music played, or on the banners that were displayed. The power to ban a parade rested with the Secretary of State. The legislation proved an adequate instrument for managing disputes and protests over parades until the scale of the problem increased during 1995.

#### IV. *POLICING PARADE DISPUTES*

Throughout 1995, the police tended to take a pragmatic approach to disputes over parades. Appeals were regularly made for the parties involved to negotiate a compromise or to take part in mediation but, as noted above, this rarely proved successful and it was then left to the police to adjudicate between the opposing claims. Most often, the decision whether to allow the parade to take place or to re-route it was left to the last minute and was determined by which side had mobilized the largest

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9. JOHN BENYAN & JOHN SOLOMOS, *THE ROOTS OF URBAN UNREST* (1987); BOB FINE & ROBERT MILLAR, *POLICING THE MINER'S STRIKE* (1985).

10. RICHARD CARD, *PUBLIC ORDER: THE NEW LAW* (1987).

crowd of supporters. If the protesters had gathered a large enough crowd of people to oppose a parade, then the parade was most likely to be re-routed. If, on the other hand, the loyal orders posed a greater threat to public order, then the parade would be pushed through. This simple equation was most explicitly demonstrated on the Ormeau Road in Belfast. Between April and October, ten loyal order parades were re-routed from the lower section of the Ormeau Road. Each of these was a relatively small affair and the LOCC were able to mobilize a significant opposition. However, two parades were allowed along the disputed section of the road. The first was on the morning of July 12 when thousands of Orangemen were on parade in Belfast and they could therefore threaten a greater disruption if the parade was not allowed through. The second parade was on August 12 when members of the local Apprentice Boys club were allowed to march on their way to the main Relief of Derry parade. In July, the police had moved into the area early in the morning to ensure that no protest was mobilized, but in August protesters were physically, and in some cases violently, removed from the road to allow the parade to pass by.

While the police always cited the appropriate sections of the Public Order (Northern Ireland) Order, it was clear to everybody that the ability to exercise the right to march was contingent on the ability to mobilize a significant threat of force rather than a moral or legal claim to notions of human rights. By waiting until the last minute to make a decision, and often literally to the last minute, the police made it clear that whoever had the biggest crowd or could threaten the most disruption and violence would have their way. There were regular complaints about this process. It was clear that responding to force of numbers was not an appropriate means of deciding issues of civil rights. It was also suggested that leaving the decision to the last minute served to exacerbate this problem as people felt the need to mobilize to ensure their interests were addressed. There was also concern that the decisions made by the police were inconsistent. In some areas, the police seemed to favor the marchers, while in others, they appeared to favor the protesters, and as noted above, in some locations, decisions varied from parade to parade. There was therefore a concern about consistency, about the criteria used, and about the transparency of decision-making over an issue that was accepted by all parties as a fundamental

democratic right. By the end of the year, a number of voices had been raised calling for a more just and equitable system of deciding on competing demands, and a number of ideas had been made of alternative means of dealing with the disputes.<sup>11</sup> However, when the marching season ended it was assumed, or hoped, that the disputes would somehow be resolved by the next year, and no action was taken to implement any changes or to explore alternative means of dealing with the problem.

The issue came to a head the following summer. In July 1996, the RUC decided that the Orange Order parade to Drumcree Church should not follow the Garvaghy Road, but rather should return to the center of Portadown along the outward route. In 1995, protests against the parade by residents of the Garvaghy Road had led to an impasse from mid-day on Sunday, July 9, until a compromise was agreed and the parade took place on Tuesday morning, July 11. When the RUC announced to the Orangemen as they came out of the church that they would not be allowed to complete their traditional route, they again determined to stay where they were until the police relented. In 1995 there had been a number of protests in solidarity with the Portadown Orangemen, but when it became clear that the police did not intend to allow the 1996 parade along the Garvaghy Road, protests erupted across Northern Ireland. Over the next three days there was widespread rioting, violence, and destruction of property. A Catholic taxi driver was murdered by loyalists. The tension increased as the Twelfth of July, the most important day in the Loyalist marching calendar, approached and, on July 11, the Chief Constable, Hugh Annesley, reversed his initial decision.<sup>12</sup> The Nationalist residents were cleared from the road and the parade was allowed to complete its original route. There then followed several days of rioting, violence, and destruction of property in Nationalist areas of the north. One man was killed when he was crushed by a police vehicle.<sup>13</sup>

There was widespread condemnation of the violence, and there was concern that the police had been clearly seen to give in to the threat of escalating violence. The rule of law had been

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11. JARMAN & BRYAN, *supra* note 5.

12. Keith Bryett, *Does Drumcree '96 Tell Us Anything About the RUC?*, 1997 *CRITICAL CRIMINOLOGY* 8.

13. COMMITTEE ON THE ADMIN. OF JUSTICE, *THE MISRULE OF LAW: A REPORT ON THE POLICING OF EVENTS DURING THE SUMMER OF 1996 IN NORTHERN IRELAND* (1996).

all too visibly undermined, and the RUC had lost much of its credibility among the majority of the Nationalist community and among a large proportion of the Protestant community. The parade disputes again rose to the top of the political agenda and assumed a greater significance than the continuing absence of an IRA cease-fire. It was also finally clear that the current means of adjudicating over contested parades would need to be reviewed. On July 15, the Secretary of State Sir Patrick Mayhew announced that he was instigating an Independent Review of Parades and Marches to review the legal controls and management of public assemblies. The review body would be expected to report by January 1997. Furthermore, when it was clear that no local agreement was forthcoming over the Relief of Derry parade on August 10, the Secretary of State announced that he was banning all parades over the contested section of the route between August 7-31.<sup>14</sup> This announcement was the first time that parades had been formally prohibited (rather than re-routed) since a general six month ban had been imposed by Prime Minister James Chichester-Clark in late July 1970.

#### V. THE INDEPENDENT REVIEW

The Independent Review of Parades and Marches was chaired by Dr. Peter North, Vice-Chancellor of Oxford University. He was assisted by Father Oliver Crilly, a parish priest from County Tyrone and the Very Reverend John Dunlop, a former moderator of the Presbyterian Church. The work of the review body began in August 1996 and the final report was published at the end of January 1997. There were three principle means of gathering evidence, information, and opinion. First, key individuals and organizations were asked to make written submissions suggesting how the problem might be addressed, and the review body also announced that it would welcome submissions from any other interested party. Some three hundred submissions were eventually received. The review body did not publish these submissions, but a number were publicly available. These indicated a range of opinions as to how the issue should be addressed. Most interested parties recognized the need for some form of change. There was some consensus around the idea of

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14. NEIL JARMAN ET AL., BELFAST DEMOCRATIC DIALOGUE, POLITICS IN PUBLIC: FREEDOM OF ASSEMBLY AND THE RIGHT TO PROTEST – A COMPARATIVE ANALYSIS (1998).

an independent body to oversee the issue among the middle ground and those not directly involved in the disputes, but there were wide differences of opinion among those with a stronger interest in the matter. Those submissions by the SDLP, the Alliance Party, the Women's Coalition, the Standing Advisory Commission on Human Rights ("SACHR"), and the Committee on the Administration of Justice ("CAJ") favored some form of independent body to adjudicate over the disputes. Sinn Féin and the Ulster Democratic Party placed the emphasis on the need for local accommodation, with each party acknowledging the need to balance rights and responsibilities. In contrast, the Ulster Unionist Party recommended creating different categories of parade, which would ensure that the traditional parades of the marching orders would be guaranteed secure free passage by the police.

The second stage of the review was to follow up the written submissions by holding a number of meetings with key parties and actors to clarify the points made and to tease out the more complicated issues. As part of this follow up, the review team visited many of the areas that had been subjected to disputes. The third form of opinion was gathered by carrying out a major public survey of attitudes to the problem of parades and protests. A general poll of attitudes was carried out across Northern Ireland, and eleven detailed local surveys were made in Belfast, Derry, Portadown, and a number of smaller centers. The survey results were each published as separate volumes of the final report.

The report of the Independent Review<sup>15</sup> made a total of forty-three recommendations. It began by setting out a series of fundamental principles, which it considered formed the basis for addressing the disputes. These principles stated that the right to peaceful assembly should (subject to certain qualifications) be protected, but that the exercise of such rights brings with it certain responsibilities, and in particular people should take account of the likely effect of their actions on their relationships with other parts of the community. The principles also stated that parties should work towards the resolution of problems through local accommodation and should not commit or condone criminal acts or offensive behavior. They also argued that

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15. NORTH ET AL., *supra* note 8.

any process of adjudication should be clear and consistent and applied with as much openness as possible.

Having set out the general principles, the main recommendation was that a body, to be known as the Parades Commission, should be set up to have overall responsibility for dealing with disputes over parades. The report suggested that the Commission should have educational, conflict resolution, and adjudicatory roles: it should promote a greater understanding of the significance and meaning of parades at a local level; it should encourage local dialogue and facilitate mediation to address any disputes and concerns; and only if these processes fail, it should step in to impose legally binding determinations. To encourage time for dialogue, the report recommended that the notification period for all parades be increased from seven to twenty-one days. The report noted that as a result of these recommendations, the police would no longer have power to impose conditions or to re-route contested parades. However, it recommended that the Chief Constable should have the right to appeal a decision to the Secretary of State and that the police should retain the power to intervene on grounds of concern for public order.

The report was given a mixed reception. Nationalists tended to favor the recommendations, while Unionists were generally negative, seeing the concept of a commission as a "charter for grievances" and little more than a loosely-disguised strategy to stop their parades. The Government gave the report a warm welcome and Sir Patrick Mayhew announced that the Parades Commission (or "Commission") would be set up in the immediate future. However, he also stated that as in the first instance the Commission would not have a statutory basis, but it would therefore have a restricted range of responsibilities, principally to promote and to facilitate dialogue and mediation. At the same time, Sir Patrick announced that he would undertake a further round of consultation before acting on the key proposals in the report. The Government did agree to minor changes to the existing legislation. It accepted the recommendation that the notification period be extended to twenty-one days and that the powers of the police be increased to control alcohol at public processions. These changes were enacted as the Public Order (Amendment) (Northern Ireland) Order 1997. The increase in

notification came into effect in time for the 1997 marching season, but the powers to control alcohol were never utilized.

The response of the Government was seen to be a result of their weak position in the House of Commons and their reliance on the support of the Ulster Unionist Party, who did not favor the formation of a Commission with legal powers to oversee parades. In contrast, the shadow Secretary for Northern Ireland, Mo Mowlam, announced that if the Labour Party formed the next government after the forthcoming General Election, then she would implement the recommendations in full. Nevertheless, it was clear that the Commission would not have the power to issue legal rulings over parades for the foreseeable future and that for the forthcoming marching season, the RUC would retain the power and responsibility to deal with the problems.

Once again, the main concern was over the Drumcree Church parade in Portadown. Intensive efforts were made by the new Secretary of State, Mo Mowlam, and others to find an acceptable compromise over the issue of the parade along the Garvaghy Road. However, when none were forthcoming the new Chief Constable, Ronnie Flanagan, decided that the issue should be dealt with as swiftly as possible. Rather than face a third stand-off and the likelihood of extensive protests, the RUC and British Army moved on to the Garvaghy Road in the early hours of the morning of July 6, clearing the residents from the road and securing the area until the parade passed along in the early afternoon. Although this action was widely condemned by the Nationalist community, strong pressure was brought to bear on the Orange Order to make a reciprocal gesture. As a result, they announced that they would voluntarily re-route parades on the Ormeau Road and in Armagh, Derry, and Newry on the Twelfth of July. The most tense week of the summer therefore passed relatively quietly in the end.

In a number of the other locations where disputes were ongoing, the police imposed what they regarded as an appropriate compromise. In Bellaghy, the loyal orders were permitted to walk as far as the Orange Hall but no further. In Dunloy, where the loyal orders had rejected the residents' offer of a limited number of parades, the police stopped all the parades at the Orange Hall on the edge of the village. No parades were allowed to pass along the lower Ormeau Road. In Newtownbutler, the protesters were restricted to the edge of the town and the pa-



rades were allowed to follow their desired route. Overall, there was a small increase in the number of disputed parades and objections were raised for the first time in a few areas, but the problem seemed to have reached a certain balanced impasse. In general, the loyal orders refused to talk with members of the residents' groups, while the residents' groups insisted that face-to-face dialogue could resolve the problem. In some areas, notably Derry, Dromore, and Castlewella, local dialogue and mediation did produce an agreement that was acceptable to most parties, but these also always remained both short-term and fragile exercises in crisis management, rather than providing a permanent resolution to the problems.

#### VI. PUBLIC PROCESSIONS ACT

The Government had promised a full implementation of the recommendation contained in the report of the Independent Review, and in October 1997, it published the Public Processions Etc. (Northern Ireland) Bill,<sup>16</sup> which was designed to fulfill that promise. The original bill received a small number of amendments before it was enacted as the Public Processions (Northern Ireland) Act<sup>17</sup> (or "Act") in February 1998. There were two principal changes: one clause was deleted and one added. Clause 3 of the bill was removed. These changes had extended the responsibilities of the Commission to keeping under review other expressions of cultural identity that occurred in public (except sporting events) and that might have an adverse impact on community relations. It was believed that this clause was introduced to try to placate Unionist opposition to the bill by widening its focus beyond parades. However, it was not clear what might be included under this remit except perhaps other expressions of Loyalist political culture such as street paintings, Orange arches, and bonfires. The clause was eventually removed with few objections. The main addition was a clause that provided a requirement for advance notice of protests. This new clause was seen to impose some degree of balance by extending controls to both parties to the disputes. Subsidiary documents issued by the Parades Commission were also extended to include protests within their framework.

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16. Public Processions Etc. (Northern Ireland) Bill (1997).

17. Public Processions (Northern Ireland) Act. 1998, ch. 2 (Eng.).

The main provision of the Act is to give a statutory basis to the Parades Commission, to set out its powers and responsibilities, and to define the limits to its powers. The Act also incorporates provisions regarding the control and management of parades that were formerly included within the 1987 Public Order (Northern Ireland) Order. The main features of the legislation are set forth below.

Clause 1 provides for establishing a body "to be known as the Parades Commission for Northern Ireland."<sup>18</sup> Schedule 1 limits the membership of the Commission to a chairman and not more than six other members. Members are to be appointed for a term not exceeding three years, but the Act allows for their re-appointment.

Clause 2 sets out the general duties and powers of the Commission. Clause 2(1) describes the general duties thus: to promote greater understanding of the issues relating to public processions; to promote and facilitate mediation as a means of resolving disputes; and to keep generally informed about both the conduct of public assemblies and the legislation under review.<sup>19</sup> Clause 2(2)(a) states that the Commission should facilitate mediation and "take such other steps as appear . . . to be appropriate for resolving . . . disputes."<sup>20</sup> Failing to take such action, the Commission should "issue determinations in respect of particular proposed public processions."<sup>21</sup> Although the Commission has a responsibility to monitor all parades, it is only expected to issue determinations as a last resort and when attempts to reach local accommodation had been exhausted.

Clauses 3, 4, and 5 command the Commission to draw up and to keep under review three documents, a Code of Conduct, Procedural Rules, and Guidelines, respectively. The draft documents were produced by the Commission in December 1997, and following consultation with interested parties the final documents were published in February 1998. The Code of Conduct defines the responsibilities and the acceptable levels of behavior expected from parade organizers and protesters. The Procedural Rules set out the steps that the Commission will take in

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18. *Id.* cl. 1.

19. *Id.* cl. 2(1).

20. *Id.* cl. 2(2)(a).

21. *Id.* cl. 2(2)(b).

gathering evidence and making legal determinations. The Guidelines set out the factors that the Commission will take into account in issuing its determination. This document is basically an elaboration of the criteria set down in Clause 8(6).<sup>22</sup>

Clause 6 extends the notification period for all public processions to twenty-eight days.<sup>23</sup> Clause 6(5)(a) excluded funeral processions from this requirement and the subsequent introduction of the Public Processions (Northern Ireland) Act 1998 (Notice of Processions) (Exceptions) Order 1998 similarly excluded Salvation Army processions held along a customary route from providing advance notification. Clause 7 provides that organizers of protest meetings related to public processions must provide fourteen days notification to the police.<sup>24</sup> Such notification is to be supplied by the organizers to the police on the appropriate form,<sup>25</sup> and the police must then supply a copy of the form to the Parades Commission.<sup>26</sup> Failure to provide the information is an offense, the penalty being a term of imprisonment not exceeding six months, a fine not exceeding level five on the standard scale, or both.<sup>27</sup>

Clause 8 defines the powers of the Commission to impose conditions on public processions.<sup>28</sup> In particular, Clause 8(6) sets out the following five factors that should be taken into account:

- (a) any public disorder or damage which may result from the procession;
- (b) any disruption to the life of the community which the procession may cause;
- (c) any impact which the procession may have on relationships within the community;
- (d) any failure . . . to comply with the Code of Conduct;
- (e) the desirability of allowing a procession customarily held along a particular route to be held along that route.<sup>29</sup>

Failure to comply with conditions imposed under this section is an offense with similar level of punishment to those set out in Clause 6(10).<sup>30</sup> Clause 9 allows for the Chief Constable to ap-

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22. *Id.* cl. 8(6).

23. *Id.* cl. 6.

24. *Id.* cl. 7.

25. *Id.* cls. 6(3), 7(3).

26. *Id.* cls. 6(6), 7(5).

27. *Id.* cls. 6(10), 7(9).

28. *Id.* cl. 8.

29. *Id.* cl. 8(6).

30. *Id.* cl. 6(10).

peal to the Secretary of State for a review of any determination.<sup>31</sup> However, Clause 10 confirms “the common law powers of a constable to take action to deal with or prevent a breach of the peace.”<sup>32</sup> Clause 1 defines the powers of the Secretary of State to prohibit a public procession.<sup>33</sup> Any decision to prohibit a procession must be based on factors (a), (b), and (c) set out in Clause 8(6) above, but the Secretary should also have regard for “any undue demands which the procession may cause to be made on the police or military forces.”<sup>34</sup>

Clause 12 allows for a system of registration for bands.<sup>35</sup> This clause has been in all public order legislation since 1971, but has never been implemented. Clause 13 allows for the control of alcohol at public processions, a provision carried over from the Public Order (Amendment) (Northern Ireland) 1997, which was repealed under the Public Processions Act.<sup>36</sup> Finally, Clause 14 makes it an offense to prevent, hinder, or break up a public procession.<sup>37</sup>

Reaction to the new legislation was, perhaps unsurprisingly, mixed. Unionist politicians and members of the loyal orders saw the Act as a specific attack on their cultural practices and one that was concerned with providing a legal basis for stopping parades. Each of the loyal orders announced that they would not recognize the authority of the Parades Commission and would not meet with it or engage with its process. The legislation received a more cautious welcome from the Nationalist community, although many people were concerned about how effectively the law would be implemented. There were also two particular areas of the Act that gave more widespread cause for concern. One was that the five criteria that the Commission should base all their determinations gave too great a prominence to concerns for public order and too much significance to traditional parades (“processions customarily held along a particular route”). It was feared that the emphasis on public order might limit the space in which the Commission could work to

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31. *Id.* cl. 9.

32. *Id.* cl. 10.

33. *Id.* cl. 11.

34. *Id.* cl. 11(1)(c).

35. *Id.* cl. 12.

36. *Id.* cl. 13.

37. *Id.* cl. 14.

that already defined by the police and would also give too much status to the evidence that the police gave based on their confidential intelligence, rather than allowing the Commission to focus on the significance of utilizing concepts of human rights and social responsibilities to frame their determination. Similarly, giving special status to traditional parades seemed to replicate past practices, which had largely excluded traditional parades from legal controls. Nevertheless, it was hoped that the inclusion of the other three categories, especially those relating to effects on community relations, would mitigate the overall significance of these two factors.

The other area of concern was over the powers that the police retained to intervene in a dispute. There were two areas where this was clearly applicable. The Chief Constable alone had the right to appeal against a determination to the Secretary of State, and the police could still invoke a fear for public order on the day of a parade and reverse, or override, a determination made by the Commission. Given that the Chief Constable had expressed some concern about the appropriateness of empowering the Commission to deal with problems over parades and that many sections of the Unionist community had reiterated a preference to the police retaining their existing powers, there was a worry that exercise of these powers by the police might serve to undermine the Commission. In fact, over the first year of the operation of the Public Processions (Northern Ireland) Act, the police have been content to implement the determinations of the Commission. They have neither sought an appeal to the Secretary of State nor invoked concerns over public order to override a determination. Instead, having the Parades Commission take the formal decisions over disputes has reduced the pressure on the police; they are no longer seen as making politically-motivated decisions and they have therefore been able to concentrate on policing the events on the ground.

## VII. *PARADES COMMISSION*

The Parades Commission was set up in March 1997, but lacking any legal powers, its initial remit was restricted to learning about the problems, making local contacts, and facilitating dialogue. It remained a marginal player during the 1997 marching season, and it was only with the enactment of the Public

Processions (Northern Ireland) Act in February 1998 that the Commission had full responsibility for dealing with parade disputes. However, by this time the Commission had already been subject to a number of crises, and it was attempting to exercise its legal authority at a time of widespread skepticism over its credibility and its capacity to act as an independent body.

The first crisis occurred when a confidential NIO document suggesting that Alistair Graham, the chair of the Commission, was party to the planning of a political strategy to deal with the Drumcree parade in June 1997 was leaked shortly after the parade was forced through. The document cast doubts on the veracity of those who claimed to be attempting to reach an acceptable compromise. Although attempts were made to dismiss the document as nothing more than a perfectly normal elaboration of one possible approach, Nationalists became more wary of the Commission and suspicious of its claimed independence and neutrality.

A series of problems also bedevilled the Commission over its membership. Initially, there were five commissioners. Alistair Graham, an English trade unionist and Director of the Industrial Society, was appointed as the chair. He was to be assisted by five local people. Some attempt was made to follow the recommendations of the Independent Review that the commission should have a cross-community and geographical balance, although less effort was made to achieve a gender balance. The members were David Hewitt, a solicitor and founder of the evangelical organization ECONI and Roy Magee, a Presbyterian minister, both of whom were from the Belfast area; Berna McIvor, a former election agent of SDLP leader John Hume; and Frank Guckian, Director of the Derry Chamber of Commerce. There was some initial complaining about the composition of the body, particularly from the loyal orders who saw Hewitt as opposed to the loyal orders and McIvor as too partisan. However, these objections were not strongly raised possibly partly because the Commission had no legal powers to intervene at this time.

Problems began in December 1997, when Roy Magee resigned because he felt that he would be better employed as a mediator outside of the framework of the Commission, and then in February 1998 Berna McIvor also resigned for personal reasons. These two members were swiftly replaced by four new Commissioners because the Public Processions Act allowed for a

seven-person body. There was some degree of controversy over all four members. Glen Barr and Tommy Cheevers were both from a working-class Protestant background and brought on to counter complaints that the Commission was too remote from the key actors to the dispute and not sensitive enough to the significance of the events. However, objections were made that Barr had a background in Loyalist politics and had been a key figure in the 1974 Ulster Worker's Strike, while Cheevers was a member of the Apprentice Boys and his own branch club was party to a parade dispute. They were seen to be too close to one side. Furthermore, Nationalists felt that the two new members from a Catholic background, Aidan Canavan and Rose-Anne McCormick, both with legal backgrounds, were too middle-class and closely aligned to the state. McCormick had also been a member of the Police Authority. Two middle-class Catholics were not felt to balance two working-class Loyalists. The Commission had barely weathered the opposition to the new members when in April both Barr and Cheevers resigned, citing "intolerable" pressures and personal reasons. Having tried to create a more widely-balanced membership, the Commission now settled for a lower profile. The two commissioners who were appointed to replace Barr and Cheevers, in June 1998, were William Martin, a former president of the Ulster Farmer's Union and member of the Police Authority, and Dr. Barbara Erwin, who has a background in education. This chain of events illustrates some of the continuing problems involved in trying to create an independent body that is perceived to be both sufficiently informed and non-partisan. While Nationalists objected to a bias in a Commission comprising middle-class Nationalists and working-class Loyalists, it was also clear that there was a reluctance on the part of working-class Nationalists to sit on such a body. In the end, the Commission settled for a membership with a lower public profile and attempted to create a less-personalized corporate image.

Although the exact chain of events was not publicly revealed, the resignation of Barr and Cheevers occurred at the same time as the Commission suffered another crisis. Under the Procedural Rules, it was stated that the Commission would issue a preliminary view of the forthcoming marching season. This rule was to be an attempt to provide an overview of how each of the parades might be dealt with in each of the contested areas.

Although it was to be only a guide to the Commission's thinking, not legally binding and therefore open to revision, it would nevertheless indicate how the Commission viewed each of the most contentious areas. Crucially, it would provide the first real indication of whether the Drumcree parade was likely to be re-routed or allowed down the Garvaghy Road. The Commission had intended to issue the preliminary view prior to the first contentious parade on Easter Monday, but as a result of the changes in the Commissioners the issuance was delayed and publication was planned for late April. However, there was concern in political circles on the effect that the publication of such a potentially controversial document would have on the wider peace process and in particular on the voting on the referendum on the Good Friday Agreement. When Prime Minister Tony Blair personally intervened and asked the Commission to rethink their strategy, the publication of a preliminary view was abandoned. The intervention by Tony Blair was further seen to undermine the already questioned independence of the Commission. It also raised concerns about how ready the Government might be to intervene in the future and how far the issue of parades would therefore be subjected to political expediency rather than addressed according to the principles and guidelines set down in the legislation.

The Parades Commission therefore embarked on its work from a position considerably weaker than was desirable. Unionists had opposed its formation from the start. They saw it as an undemocratic and unrepresentative quango and continued to demand a reversion to the old system whereby the police had authority over parades. The loyal orders refused to acknowledge its authority or to engage with it in any way. Nationalists questioned the degree of its independence and had little faith that it would deal with the issues on their terms. In the end, the Commission weathered the storm of uncertainty surrounding its inaugural weeks. As it began to issue determinations, it became clear that these would broadly follow the pattern established by the RUC over the previous two years. Without any local dialogue or attempt to address local concerns, the Commission was reluctant to authorize a parade through an area that did not welcome it. There were therefore few surprises among the determinations. Furthermore, it also became clear that the Commission was reluctant to intervene without good reason or to react to what it considered spurious or inflated concerns. It ignored re-



quests by local traders in Holywood, County Down, by the police in Derry, and by nationalists in Portadown, to issue constraints on parades because it felt that in each of these cases this was not justified.

One change in practice that was introduced, as a result of the Procedural Rules, was that the Commission announced its determinations five working days before the parade was due. This change aimed to counter a criticism made of the police that the decisions were left too late and this only encouraged a mobilization of crowds on the streets. The police had countered by saying that they were concerned that announcing a decision too far in advance would allow the disappointed party more time to mobilize and to organize a challenge to the ruling. In the end, the decision to announce determinations in advance worked in the favor of the Commission and if anything, allowed people to prepare a peaceful, considered response rather than make a knee-jerk reaction.

#### VIII. *MARCHING THROUGH 1998*

The main concern, as in previous years, focused on the Drumcree Church parade on July 5. When the Commission announced that the parade would be re-routed, the police and the army moved in to secure the area, the loyal orders announced that they would walk their desired route regardless of the determination, and the Garvaghy Road Residents Group expressed concern that the state would still give in to the threat of force and push the parade through as they had in 1996. As the stand-off continued, the Orange Order mobilized at the church and loyalists protested across the North. Violence continued through the week, but the reaction did not seem as strong as two years previously. The death of the three Quinn brothers as a result of a petrol bomb attack on their home on Sunday, July 12, undermined much of the support for the Orange protests. Although the protests have continued at the church since July, and support has remained strong in the Portadown area, wider support has ebbed and flowed. The Orange Order has divided on the issue of how far they should oppose the law over the right to parade, and the protesters at Drumcree are clearly seen as part of the Unionist opposition to the Good Friday Agreement. Many Orangemen are divided between wanting to retain their

right to march, but also supporting the moves toward a constitutional and political settlement. Many have been horrified at the scale of the violence that the issue has generated and are confused about the next step to take. However, such is the confusion, uncertainty, and disunity within the Unionist community that no political figure has been willing or able to offer a lead. David Trimble has epitomized the quandary faced by Unionist politicians. He achieved his position as leader of the Ulster Unionists on the back of his prominent support for the Orangemen at Drumcree in 1995 and 1996. He has opposed and challenged the status of the Parades Commission and once again called for it to be disbanded in his New Year statement. But his only solution to the problem seems to be that the Orangemen should be allowed to complete their walk along the Garvaghy Road. In spite of his status as MP for Portadown, he refuses to speak with his constituents on the Garvaghy Road, and in spite of his new status as First Minister, he refuses to take a non-partisan line and to attempt to find a compromise. The failure of David Trimble, and other local politicians, to move away from a sectarian position on this issue illustrates why it seems likely that the Parades Commission will be required for the foreseeable future.

In spite of its uncertain status at the start of the 1998 marching season, the Parades Commission slowly established a degree of credibility, authority, and independence. Most determinations were accepted as having a full legal authority even when they were inevitably opposed by one side. The decision to allow the Orangemen to parade along the Ormeau Road on the morning of the Twelfth was subjected to a judicial review, but the judge supported the Commission's arguments that it was justified in taking into account the wider-political picture on this occasion. In many respects, the Commission's work was made easier as a result of the refusal of the loyal orders to engage in the process. But it is clear that ignoring the Commission will not result in disputed parades being allowed to take place. The police have also made it clear that having the Commission empowered to rule on parades has made their work easier and there has been no suggestion that they might seek to challenge any determination. The Orange card does not appear to have the same power it once had, and the loyal orders will need to rethink their strategy if they wish to walk along many of the contested routes.

Nevertheless, the approach of Drumcree V in July 1999 remains one of the major threats to the peace process. One should not underestimate the symbolic significance of the parade for many members of the Unionist community. The fact that no parade took place along the Garvaghy Road in 1998 remains an unresolved problem for Orangemen. The fact that no wider compromise was achieved remains an unresolved problem for Nationalists. The fact that the stand-off continues remains an unresolved problem for the Parades Commission, the police, the British Government, the Irish Government, and all parties that want to see the peace process consolidated.