

Fordham International Law Journal

Volume 22, Issue 4

1998

Article 20

Policing and Change in Northern Ireland: The Centrality of Human Rights

Linda Moore*

*

Copyright ©1998 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

Policing and Change in Northern Ireland: The Centrality of Human Rights

Linda Moore

Abstract

It is the contention of this Essay that the international principles of human rights must form the foundations of any future policing service in Northern Ireland. Leaving behind the sterile communalism that has characterized past approaches to policing in favor of a rights-based approach, would benefit all in Northern Ireland. A human rights policing framework would particularly relieve those living in working class communities, both catholic and protestant, who have borne the brunt of heavy policing policies and tactics. While acknowledging that no approach to policing reform can appease all shades of Northern Ireland's political and cultural opinion, the current political climate provides considerable opportunities for bringing about positive change. Furthermore, unless policing becomes more representative, accountable, and respectful of human rights, the continuation of negative contact between the police and the policed will create tension and conflict and ultimately threaten the peace.

POLICING AND CHANGE IN NORTHERN IRELAND: THE CENTRALITY OF HUMAN RIGHTS

*Linda Moore**

For those who ask the question 'how can policing return to normal?' are perhaps asking the wrong question. We should be asking 'how can we make policing applicable to the society we hope to create and develop here for the first time?'¹

INTRODUCTION

It is the contention of this Essay that the international principles of human rights must form the foundations of any future policing service in Northern Ireland. Leaving behind the sterile communalism that has characterized past approaches to policing in favor of a rights-based approach, would benefit all in Northern Ireland. A human rights policing framework would particularly relieve those living in working class communities, both catholic and protestant, who have borne the brunt of heavy policing policies and tactics. While acknowledging that no approach to policing reform can appease all shades of Northern Ireland's political and cultural opinion, the current political climate provides considerable opportunities for bringing about positive change. Furthermore, unless policing becomes more representative, accountable, and respectful of human rights, the continuation of negative contact between the police and the policed will create tension and conflict and ultimately threaten the peace.

* Dr. Linda Moore works in the Youth Justice Unit of the Northern Ireland Association for the Care and Resettlement of Offenders ("NIACRO"). She is co-author of several publications on policing in Northern Ireland including HUMAN RIGHTS ON DUTY: PRINCIPLES FOR BETTER POLICING - INTERNATIONAL LESSONS FOR NORTHERN IRELAND, with Mary O'Rawe, published by the Committee on the Administration of Justice, 1997. The author would like to thank the staff and volunteers of the Committee on the Administration of Justice for their help and access to the wealth of material collected by observers during the work of the Commission on Policing. Thanks particularly to Kevin Keenan, Committee on the Administration of Justice, who collected much of the material contained within this Essay, including political party submissions to the Commission on Policing and reports of Commission on Policing public meetings. As always, a special thanks also goes to Maggie Beirne.

1. PROGRESSIVE UNIONIST PARTY, RUC: THE NEED TO CHANGE, SUBMISSION TO THE POLICE COMMISSION (Nov. 18, 1998).

We are in a constantly evolving situation in Northern Ireland. Things that once appeared impossible are taking shape. The signing of and support for the Belfast Agreement (or "Agreement") are testimony to that. This historic opportunity to transform the policing process and the criminal justice system should not be missed.

I. *POLICING A DIVIDED SOCIETY*

Policing and the rule of law have, from the outset, been core issues in the conflict in Northern Ireland. From the formation of the Northern Ireland state in 1921 until the ending of a unionist-controlled regime in 1972, the police force, the Royal Ulster Constabulary ("RUC"), was closely identified with the unionist/protestant cause and was anathema to a large section of the catholic/nationalist minority within the state. Even when the British government took direct responsibility for running Northern Ireland in 1972, the police continued to be perceived as a partisan body by many catholics. This response stemmed not only from the RUC's overwhelmingly protestant composition but also from the increasingly central role that the police played in the government's "counter-terrorist" policy. This role brought the RUC into regular conflict with large sections of the catholic population, but particularly with the catholic working class.

Ironically, far from eliminating political violence, the attitude and behavior of the security forces have served to inflame tensions. The sense of grievance in catholic working class communities was exacerbated through repeated negative experience of policing: day-to-day harassment; use of plastic bullets; accusations of police collusion with loyalist paramilitaries; and alleged "shoot to kill" policies.

While the challenge to the RUC has come mainly from nationalists, the relationship between unionists and the RUC has not been unproblematic. Indeed, the first police officer to be killed during the Troubles was shot by loyalists.² There has been increased hostility between some unionists and the RUC since the signing of the Anglo-Irish Agreement in 1985. In imple-

2. See CHRIS RYDER, *THE RUC 1922-1997: A FORCE UNDER FIRE* 116 (1997) (explaining that Constable Victor Arbuckle was shot during gun battle with loyalists on Shankill Road).

menting British government policies, the force has come into conflict with sections of the loyalist community, for example during loyalist protests against the Anglo-Irish Agreement and more recently over the force's upholding of the Parades Commission's ban on Orange marches at Drumcree.

The communally-divided nature of this society has put pressure on the police, and the way in which the force has responded to these divisions has had a negative impact on policing. Policing in Northern Ireland has operated in an abnormal situation. RUC officers have been subject to the threat of violence. Three hundred and two members of the RUC have been killed during the past thirty years and many thousands were injured through this time.³ In recent months, the Commission on Policing (or "Commission" or "Patten Commission") has heard moving accounts from police officers, their wives, widows, and families of loss and bereavement, of the struggle of living with disability caused by serious injuries, and of lives distorted by fear and a preoccupation with personal security.

The RUC has never operated as a "normal" police force. Since partition, the force has relied on draconian special powers.⁴ Police stations in Northern Ireland are highly fortified and have the appearance of military installations. During the worst years of the conflict, RUC officers walked the beat in many areas, accompanied by large patrols of soldiers. Officers were routinely armed and dressed in bulky flak jackets for their protection.

Despite its protestations to the contrary, the RUC is not a neutral arbiter between warring sides in the conflict. It has been a key player. The following problems have been identified in relation to policing.

- Policing has been over-militarized with an emphasis on force rather than service.⁵
- Policing of "ordinary" crime has been subordinate to se-

3. See POLICE AUTHORITY NORTHERN ISLAND, POLICING – A NEW BEGINNING: A SUBMISSION BY THE POLICE AUTHORITY NORTHERN IRELAND TO THE INDEPENDENT COMMISSION ON POLICING 3 (Dec. 1998) (giving figure of police deaths from Police Authority of Northern Ireland).

4. These powers have included the Special Powers Act 1922, the Emergency Provisions Act 1996, and the Prevention of Terrorism Act 1996.

5. See generally KATHLEEN MAGEE & JOHN BREWER, INSIDE THE RUC (1991) (describing in detail ethnographic study that describes tension between RUC's role in carrying out "normal" policing functions and paramilitary policing).

curity policing.⁶

- The RUC is unrepresentative of the communities served—only 10.5% regular officers are female and 7.5% of officers are catholic although catholics comprise over 45% of the population. Only a handful of officers are from ethnic minority backgrounds.⁷
- Accountability structures are weak at both a local and regional level.⁸
- The system for dealing with complaints against the police has been weak and ineffectual.⁹
- The security forces, which includes both police and army forces, have been responsible for approximately 360 deaths during the course of the conflict. The RUC has been responsible for at least fifty deaths, yet no officers have been convicted of murder. The security services, including the police, appear to have immunity from successful prosecution for their alleged wrongdoing.¹⁰
- The culture of the force has been predominantly protestant, British, and unionist.¹¹
- There are persistent allegations of sexual and sectarian harassment both directed at civilians by RUC officers and within the organizational culture of the force.¹²

Human rights concerns have persisted about the RUC through the conflict. These have included:

- allegations of a “shoot to kill” policy in the 1980s;¹³

6. *Id.* at 6.

7. HER MAJESTY'S INSPECTORATE OF CONSTABULARY, PRIMARY INSPECTION: ROYAL ULSTER CONSTABULARY (1996).

8. MARY O'RAWE & DR. LINDA MOORE, COMMITTEE ON THE ADMINISTRATION OF JUSTICE, HUMAN RIGHTS ON DUTY - PRINCIPLES FOR BETTER POLICING: INTERNATIONAL LESSONS FOR NORTHERN IRELAND ch. 4 (1997).

9. *Id.* ch. 3; COMMITTEE ON THE ADMINISTRATION OF JUSTICE, A FRESH LOOK AT COMPLAINTS AGAINST THE POLICE (1993).

10. O'RAWE & MOORE, *supra* note 8, ch. 3; HUMAN RIGHTS WATCH/HELSINKI, TO SERVE WITHOUT FAVOR: POLICING, HUMAN RIGHTS AND ACCOUNTABILITY IN NORTHERN IRELAND (1997).

11. O'RAWE & MOORE, *supra* note 8, chs. 1, 2; Graham Ellison, Professionalism in the Royal Ulster Constabulary: An Examination of the Institutional Discourse (1997) (unpublished Ph.D. dissertation, University of Ulster) (on file with author).

12. O'RAWE & MOORE, *supra* note 8; Ellison, *supra* note 11; DR. ROBBIE McVEIGH, COMMITTEE ON THE ADMINISTRATION OF JUSTICE, IT'S PART OF LIFE HERE: THE SECURITY FORCES AND HARASSMENT IN NORTHERN IRELAND (1994).

13. See JOHN STALKER, STALKER: SHOOT TO KILL AND THE AFFAIR (1988) (describing

- allegations of collusion between the police and loyalist paramilitary groupings;¹⁴
- the use of plastic bullets by the security forces, including the police;¹⁵
- mistreatment of detainees in police holding centers;¹⁶ and
- the use of stop and search powers, which have led to widespread complaints of harassment—largely from the working class nationalist/catholic communities but also from loyalist/protestant areas.¹⁷

The absence of consensual policing within some loyalist and nationalist communities has contributed to the phenomenon of paramilitary policing, or “informal justice” systems. This phenomenon has often taken the form of shootings and brutal physical attacks on alleged offenders and those who have fallen foul of the paramilitary organizations.

II. POLICING THE POST-AGREEMENT NORTHERN IRELAND

As long as the various paramilitary campaigns continued any talk of policing reform, their suggestions were automatically rejected by the state and by most unionists. The new situation created by the Irish Republican Army (“IRA”) and loyalist cease-fires, however, has placed the issue of policing high on the political agenda.

For many, the future of the RUC remains a distillation of the Northern Ireland question, reflecting the obvious centrality of the issue to a society where the state itself has been at the center of political contention. Given the deep sectarian divisions in Northern Ireland, the policing issue continues to produce a predictable set of essentially communalist recipes for the future of the RUC. At first sight, the division appears stark, with

details of controversy and obstruction that surrounded Stalker investigation). The report of the official investigation into these allegations was never published. *Id.*

14. HUMAN RIGHTS WATCH/HELENSKI, *supra* note 10.

15. COMMITTEE ON THE ADMINISTRATION OF JUSTICE, PLASTIC BULLETS: A BRIEFING PAPER (June 1998). Plastic and rubber bullets have resulted in the deaths of seventeen people, eight of them children, and thousands of injuries.

16. REPORT OF THE BENNETT COMMITTEE, 1979, Cmnd, 7497; PETER TAYLOR, BEATING THE TERRORISTS? INTERROGATION AT OMAGH, GOUGH AND CASTLEREAGH (1980).

17. McVEIGH, *supra* note 12; ANDREW HAMILTON ET AL., POLICING A DIVIDED SOCIETY: ISSUES AND PERCEPTIONS IN NORTHERN IRELAND (1995).

unionists attempting to preserve "their" police force with as little change as possible and with nationalists seeking the development of a policing organization whose composition, culture, ethos, and structures reflects the reality of divided society. These simple, polar stances, however, mask more complex attitudes to the policing question from within both the unionist and nationalist communities.¹⁸

The fact that a majority of protestants voted for the Belfast Agreement indicates a desire for peace and a willingness to accept some degree of police reform in order to achieve this peace. Some of the smaller and more radical protestant parties, for example the Progressive Unionist Party ("PUP"), have developed thoughtful submissions to the Commission on Policing. These submissions are based upon the sometimes contradictory views and experiences of their constituents who are politically supportive of the RUC, even as working class communities have had some negative experiences of heavy-handed policing tactics.

Nationalists, from the constitutional nationalists of the Social Democratic and Labour Party ("SDLP"), to the more radical republican Sinn Féin, have long asserted that any settlement will have to include a new policing dispensation. Mainstream republicans have signed up for a deal that falls substantially short of their aspirations for a thirty-two county republic. Having settled for a radical reform of Northern Ireland, it becomes all the more important for the republican movement to demonstrate that their constitutional compromise has been offset by genuine, practical gains. The transformation of policing structures falls into this category—representing perhaps their principal advance in the way the new Northern Ireland state will operate. Both parties, however, have accepted that in the short to medium term at least, policing will be organized on a six-county basis.

The Commission on Policing has been tasked with shaping the profound changes needed to create a police service capable of serving this new post-Agreement Northern Ireland. The Patten Commission faces the pitfall of those working within Northern Ireland's traditional polarities—how to create opportunities for positive change without provoking such a hostile reaction from Unionists that it becomes impossible for the government to

18. See *POLICE AUTHORITY FOR NORTHERN IRELAND*, *supra* note 3 (including surveys of catholic and protestant opinions that are factored by social and economic status).

implement its recommendations. The Commission can take hope, however, from the complexities of opinion and the desire for an end to conflict shared by most within Northern Ireland society. The level of support for the Belfast Agreement is evidence of a hunger for peace, which can produce the momentum and broad political will necessary to transform both policing and the justice system as a whole.

In developing proposals, the Commission should also note that concerns about human rights violations have been raised by a wide range of individuals and groups, both locally and internationally. While community activists, political parties, and non-governmental organizations have been at the forefront of lobbying on human rights in the North, some of their concerns have also been articulated by official, high-level bodies.

A number of international human rights bodies set up by governments have condemned the United Kingdom's record in policing in Northern Ireland. In 1995, the United Nations Human Rights Committee was critical of the government's failure to address issues of police accountability by, for example, considering the necessity for emergency legislation; resolving outstanding cases; publishing the reports of Stalker/Sampson, which had allegations of "shoot to kill," and Stevens, which alleged police collusion with loyalists; and instituting an independent inquiry into the allegations of police/loyalist collusion in the murder of solicitor Pat Finucane.¹⁹

Last year, the U.N. Special Rapporteur on the Independence of Lawyers and the Judiciary, Datam Param Cumaraswamy, reported following his mission to Northern Ireland, where he had found evidence of allegations of intimidation of defense solicitors by members of the RUC.²⁰ More recently, the United Nations Committee Against Torture recommended the closure of detention centers in the North, particularly Castlereagh, at the earliest opportunity, and the abolition of the use of plastic bullet rounds. The committee also recommended that

19. See AMNESTY INTERNATIONAL, UNITED KINGDOM: SUBMISSION BY AMNESTY INTERNATIONAL TO THE INDEPENDENT COMMISSION ON POLICING FOR NORTHERN IRELAND 14-16 (Nov. 1998) (discussing inquiry by John Stevens, Deputy Constable of Cambridgeshire, into allegations of collusion between members of RUC and Loyalist Paramilitaries).

20. *Report on the Mission of the Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland*, submitted pursuant to Commission on Human Rights, 54th Sess., Agenda Item 8, U.N. Doc. E/CN.4/1998/39/Add.4 (Mar. 5, 1998).

the RUC be reconstructed "so that it more closely represents the cultural realities of Northern Ireland" and that officers be re-educated with a program "directed at the objectives of the Peace Accord and the best methods of modern police practice."²¹

Children and young people have particularly suffered during the years of conflict. They have not been immune from human rights abuse at the hands of the police and the army. The United Nations Committee on the Rights of the Child has expressed concerns about the lack of protection afforded to children by the state. It has recommended that government gives consideration to excluding children from the provisions of emergency legislation and has also expressed concern at the restrictions on the right to silence.²²

The case for change is strong. The U.K. Government has ratified many international instruments of human rights, although of these only the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention") has actually been incorporated into domestic legislation. Recommendations produced by the Commission on Policing must be sellable to the people and parties of the North. They must also, and just as important, meet the international minimum standards of human rights protection that the government has a duty to uphold.

III. *THE BELFAST AGREEMENT: A MANDATE FOR CHANGE*

The Agreement gives the British Government a clear mandate to bring about change in policing. The Agreement states that while policing has been a highly divisive and emotive issue, the political settlement creates an opportunity to bring about a "new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole."²³ The Agreement gives no guidance on how policing might be structured in the future, but states that the police service should be:

21. *Conclusions and Recommendations of the United Nations Committee Against Torture*, U.N. Doc. A/53/44 (1998).

22. *Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention*, CRC/C/15/Add.34 (Jan. 1997).

23. Agreement Reached in the Multi-Party Negotiations, Apr. 10, 1998, Policing and Justice ¶ 1 [hereinafter *Belfast Agreement*].

- representative in terms of the community as a whole;
- routinely unarmed, and in a peaceful environment;
- professional, effective, and efficient;
- fair, impartial, and free from partisan political control;
- accountable, both under the law for its actions and to the community; and
- working in partnership with the community.

The structure and arrangements put in place must be capable of maintaining law and order and respond effectively to crime; “[a] police service which cannot do so will fail to win public confidence and acceptance.”²⁴

An independent Commission on Policing was established through the Agreement with a remit to make recommendations for future policing arrangements. The Commission is also tasked with finding “means of encouraging widespread community support for these arrangements.”²⁵ It is due to publish its final report by Summer 1999.

Acknowledging the impact of other parts of the justice system on the policing process, the Agreement states that the police service must operate “within a coherent and co-operative criminal justice system, which conforms with human rights norms.”²⁶ To this end, it established a government-led review of the criminal justice system. The remit of the review is to bring forward proposals for future criminal justice arrangements “other than policing and those aspects of the system relating to emergency legislation.”²⁷ The Agreement suggests that the review address issues such as:

- arrangements for making judicial appointments;
- mechanisms for addressing law reform;
- the scope for cross-border co-operation between criminal justice agencies north and south; and
- possibilities of devolving criminal justice functions to a local Assembly.

The review of the criminal justice system runs parallel to the work of the Commission on Policing but is scheduled to report

24. *Id.*, Policing and Justice ¶ 2.

25. *Id.*, Policing and Justice ¶ 3.

26. *Id.*, Policing and Justice ¶ 2.

27. *Id.*, Policing and Justice ¶ 5.

in Autumn 1999. The timing deliberately allows the review to take up issues that are left to it or not addressed by the Commission on Policing. The Agreement also establishes a Human Rights Commission, for which a Chief Commissioner has recently been appointed. Issues concerned with policing will inevitably constitute a large part of the Human Rights Commission's work.

Changes in legislation will also have an impact on the policing process. In particular, the incorporation of the European Convention into U.K. law will provide citizens with recourse to the courts when there is an alleged breach of human rights.²⁸ The RUC has in the past been the subject of such complaints through the European Commission and the Court of Human Rights.²⁹

IV. *THE AGREEMENT AND POLICING: IDENTIFYING THE GAPS*

The Agreement constitutes an important tool for the promotion and protection of human rights in Northern Ireland. The verdict of a locally-based civil liberties organization, the Committee on the Administration of Justice, was that "we were pleased to see so many references to human rights in the Good Friday Agreement. It was reassuring to see the frequent references to the centrality of rights, equality, and justice for all, in the final text."³⁰

While the human rights and equality commitments within the Agreement are important advances, there remains cause for concern over some issues. Some of these are directly relevant to the task of the Commission on Policing. How the Commission addresses these gaps will be an important factor in determining the extent to which policing in Northern Ireland is transformed.

A. Policing and Criminal Justice: An Artificial Division

While the Agreement recognizes the impact of the entire

28. *Id.*, Rights, Safeguards and Equality of Opportunity, Comparable Steps by the Irish Government ¶ 9.

29. *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) at 5 (1978); *Brogan v. United Kingdom*, 145 Eur. Ct. H.R. (ser. B) at 12 (1989); *Murray v. United Kingdom*, 300 Eur. Ct. H.R. at 29 (1995).

30. *The Agreement*, JUST NEWS (Bulletin of the Committee on the Administration of Justice, Belfast, Northern Ireland), Apr. 1998. vol. 13, no. 4.

criminal justice system on policing, it creates an artificial division by establishing separate processes for reviewing the criminal justice system and policing. There are many issues of overlap in concern between the Commission on Policing and the review of the Criminal Justice System. Examples of issues potentially falling within the remit of both bodies are the role of the police in the prosecution process, accountability of the intelligence services, and crime prevention. The time-gap between the two reports is designed to allow the Criminal Justice review to pick up on issues left to it by the Commission on Policing. The Agreement does not, however, establish any formal mechanism for cooperation between the two bodies. The indications are that, to date, contact between the Commission on Policing and the Criminal Justice review has been limited. This artificial division mitigates against the holistic approach for which human rights organizations have been pressing.³¹

B. *Emergency Legislation*

One of the most worrying aspects of the Agreement, from a human rights perspective, is the exclusion of emergency powers from the specific remit of either the Commission on Policing or the review of the Criminal Justice System. The Agreement directly states that emergency legislation lies outside the remit of the Criminal Justice review. The Commission on Policing is not explicitly tasked with reviewing emergency legislation, and it is open to interpretation whether the Agreement permits the Commission to include it within its deliberations. It is crucial that the Commission considers the impact of emergency powers on policing. Indeed, the social environment and legislative context within which policing takes place is as central to achieving justice as the policies and operation of policing institutions.³² The implementation of special powers legislation by the RUC has been the focus of discontent since the inception of the state. The ending of special powers was one of the key demands of the civil rights movement of the 1960s.³³ Robbie McVeigh's research on police harassment graphically illustrates the impact of the use of emergency powers by the RUC on young people. In his North-

31. O'RAWE & MOORE, *supra* note 8.

32. *Id.*

33. MICHAEL FARRELL, *NORTHERN IRELAND: THE ORANGE STATE* (1976).

ern Ireland-wide survey of a random sample of young people, McVeigh found that over a quarter of all young people feel that they have been harassed in some way by the security forces.³⁴ A staggering forty-eight percent of catholic respondents reported some experience of harassment from the security forces.³⁵ As one man concluded, "in this state, harassment has become part of everyday life."³⁶ Community groups stated that the most common sites of alleged harassment by the security forces were vehicle checkpoints, stop and searches, and house searches—all legitimated through emergency powers.³⁷ Police powers in relation to the holding of people in police custody have also been the source of concern and complaint. The absence of an effective, independent complaints process and the apparent impunity of the security forces from prosecution have exacerbated the problem. McVeigh concludes that emergency legislation:

vastly increases the capacity for harassment and other civil liberties abuses by the security forces. . . . Furthermore, in Northern Ireland this emergency legislation is coupled with the "operational independence" of the security forces which renders them effectively accountable to nothing apart from the law in Northern Ireland. When one examines the way in which the judiciary have dealt with members of the security forces who appear in front of them one realizes that this "accountability" is little more than notional. In combination, these factors create a democratic deficit, which is profoundly disturbing.³⁸

Emergency powers have recently been strengthened. In the aftermath of the Omagh bombing in which twenty-nine people, mostly women and children, were killed and hundreds more were horribly wounded, the British and Irish Governments hastily introduced new emergency legislation in both states. Civil liberties groups immediately condemned the measures. The Committee on the Administration of Justice stated its belief that the Criminal Justice Terrorism and Conspiracy Act 1998, being introduced in the United Kingdom, would be in conflict with the

34. McVEIGH, *supra* note 12, at 67.

35. *Id.* at 104.

36. *Id.* at 101.

37. *Id.* at 56.

38. *Id.* at 35.

soon to be enacted Human Rights Act.³⁹ Irish Council for Civil Liberties spokesperson Michael Farrell warned that

[t]he response by the Irish government is reminiscent of the actions taken by Britain in the wake of the Birmingham bombing over 25 years ago. We should remember that those departures from the rule of law led to miscarriages of justice and the imprisonment of people like the Birmingham Six and the Guildford Four while those responsible remained free.⁴⁰

Human rights groups have consistently argued that emergency legislation is counter-productive and, rather than reducing conflict, actually fuels it. Individuals and communities that experienced harassment through the implementation of emergency legislation are more likely to become alienated from and hostile to the state. In the case of Omagh, the sheer scale of community pressure and public outrage at the bombing helped to push the real IRA towards its declaration of a ceasefire.

To change police institutions, without addressing the legislative context, would be a recipe for disaster. The possession of such draconian powers would potentially lead any future police service into the risk of abuse.

C. *Denial*

The establishment of an independent Commission on Policing was particularly welcomed by human rights groups, which had consistently argued that policing was part of the problem and that changes in policing must be part of the solution.⁴¹ One of the difficulties with the Agreement, however, is a reticence about the problems associated with policing in the North. Few people, if any, could disagree with the aim of securing a representative, accountable, effective, and professional police service. Even supporters of the RUC concede that the force as presently constituted is not representative of society as a whole. The reasons for the lack of catholic/nationalist representation, however, have been hotly disputed. Some of these reasons will be dis-

39. COMMITTEE ON THE ADMINISTRATION OF JUSTICE, A BRIEFING ON THE CRIMINAL JUSTICE (TERRORISM AND CONSPIRACY) ACT 1998 (Aug. 1998).

40. COMMITTEE ON THE ADMINISTRATION OF JUSTICE, PRESS RELEASE: LOCAL CIVIL LIBERTIES GROUPS JOINED BY AMNESTY INTERNATIONAL AND HUMAN RIGHTS WATCH EXPRESS CONCERN ABOUT GOVERNMENT PROPOSALS (Aug. 1998).

41. O'RAWE & MOORE, *supra* note 8.

cussed in the following debate. The Agreement clearly signals the need for change in policing and in the public's attitude to policing, but nowhere does it concede the problems that make this change necessary. Thus, according to one's perspective, the problem lies simply in the attitudes of critics and opponents of the police who must be convinced of the need to support the RUC or, alternatively, that policing in Northern Ireland is deeply flawed and in urgent need of overhaul.

Given the polarity of perspectives on policing, it would be unreasonable to expect the Agreement to have spelt out in detail the nature of the problem or for signatories to have reached a consensus on this issue. Indeed, these perspectives might have pre-empted and perhaps prejudiced the work of the independent Commission. The dilemma, however, is that unless the problems in policing are acknowledged it is difficult to find solutions.

D. *Official Denial: The Policy Continues?*

Over the course of the conflict, the leadership of the RUC has been keen to portray the force as the "pig in the middle"—the "thin green line" between warring factions. The RUC, the public is assured, has stood between the forces of good and evil—and saved the North from falling into complete disarray. Sir Ronnie Flanagan, Chief Constable, explained that "[f]or 30 years now, the RUC has quite simply been the bulwark between anarchy and order."⁴² From this perspective, the RUC has played the role of a neutral arbiter.

Successive British Governments and the RUC have historically adopted a policy of official denial.⁴³ While the Agreement is couched in language of change, since its signing, government ministers, including the Prime Minister and the Secretary of State, have continued to rebut any criticism of the RUC. While the remit of the independent Commission is broad and theoretically allows the possibility of recommending the disbandment of the RUC, the British Government has been at pains to assure both police officers and their supporters that this is not an op-

42. *Ulster: The Deal; Why I Want to See Real and Improved Police Changes*, BELFAST TELEGRAPH, Apr. 30, 1998.

43. See O'RAWE & MOORE, *supra* note 8, ch. 3 (discussing this area in greater detail).

tion. As Secretary of State Dr. Mo Mowlam told a meeting of the Police Federation that “[s]caremongers have implied that the RUC will be disbanded This will not happen. The police service in Northern Ireland will *remain* professional, effective, efficient, fair, and impartial and free from partisan control.” If the RUC already meets these criteria, then why set up a Commission on Policing? If it is to succeed in producing meaningful recommendations, then the Commission must first address the phenomenon of denial and identify the very real and persistent flaws in policing practice and policy.

The Ulster Unionist Party (“UUP”) in its submission to the Patten Commission states that “[t]he Commission will be unable, even with hindsight, to alter what is past; it should not dwell on either the malice of the RUC’s enemies nor on the sycophancy of its admirers—neither will be satisfied.”⁴⁴ While there is merit in this argument and it is certainly time to move beyond the past, it is impossible to produce a blueprint for the future of policing without an examination of what has gone wrong.

V. THE COMMISSION ON POLICING: MAKE-UP AND PROCESS

A. *The Membership*

Secretary of State Mowlam announced the make-up of the Commission on Policing in June 1998. The fact that she chose a meeting of the Police Federation, the professional organization for RUC officers, to make this announcement caused consternation in human rights circles.⁴⁵ The Commission is headed up by Chris Patten, former Governor of Hong Kong. Patten had been a Conservative Government Minister in Northern Ireland during the 1980s. Before going to Hong Kong, he had been unceremoniously voted out as member of parliament by the electorate in the General Election of 1992. There are seven other members on the Commission. The Northern Ireland Office described the role of two of the representatives as having policing expertise. One representative comes from each of Northern Ireland’s main communities. The others are two leading academics and a se-

44. KEN MAGINNIS, AN ULSTER UNIONIST PARTY PERSPECTIVE ON THE ROYAL ULSTER CONSTABULARY: POLICING IN NORTHERN IRELAND (Sept. 15, 1998).

45. Chris Thornton, *Mo Tells of Stone Decision: ‘I Agonised over Killer’s Release*, BELFAST TELEGRAPH, June 3, 1998.

nior, and significant business figure.⁴⁶ The members are listed below.

- Sir John Smith, a former Deputy Commissioner in the Metropolitan Police, who has previous experience as one of Her Majesty's Inspectors of Constabulary.
- Kathleen O'Toole, who started her career in the Boston police and is now Secretary for Public Safety.
- Peter Smith, QC, a barrister of twenty years standing and seen as the representative of the unionist community.
- Dr. Maurice Hayes, former senior civil servant and subsequently Ombudsman, who produced a review of the police complaints system in 1997 that led to change in the system for dealing with complaints against the RUC and to the setting up of the office of Police Ombudsman. Dr Hayes is seen by government as the representative of the nationalist community.
- Prof. Clifford Shearing, Director of the Centre of Criminology at the University of Toronto, who is an academic expert on policing in South Africa, Australia, and Canada.
- Dr. Gerald Lynch, President of John Jay College, New York, whose curriculum vitae includes developing a course on police and community relations for the United States Department of Justice.
- Lucy Woods, Chief Executive of British Telecom in Northern Ireland.

The appointment of Patten was met with mixed reactions. Patten had overseen the handover of Hong Kong from Britain to China. This aspect of his career naturally made him suspect to the unionist community who feared that he may have come to perform a similar task in relation to Northern Ireland, but for the same reason gave nationalists hope that he would produce a radical report. Patten's background as Government Minister in Northern Ireland, however, concerned nationalists. In particular, there was a fear that his former close involvement in the running of the state in Northern Ireland could prevent him from impartially studying the performance of the RUC.

Human rights groups were less concerned with Patten as a figurehead than with other issues. Despite the explicit reference

46. NORTHERN IRELAND INFORMATION SERVICE (June 3, 1998).

to human rights in the remit of the Commission, there was no one with specific human rights expertise on the Commission. The membership of the Commission was not as international as had been hoped for. In particular, human rights organizations had argued that those with an experience in policing and human rights in countries undergoing transition should be identified and their expertise used in the process of change.

B. *The Process*

For the first few months of its life, the Commission was barely seen by the public. Members from outside of Northern Ireland were not in the country full time and the Commission, when it was in the North, spent much of its time visiting RUC stations and talking to police organizations. The signs were ominous. Towards the end of 1998, however, the Commission went "on tour" throughout Northern Ireland, holding a series of over thirty public meetings in protestant, catholic, and mixed areas in every local council area of Northern Ireland.⁴⁷ Over the course of the tour, the Commission heard from an estimated 10,000 people.⁴⁸ The entire Commission was at some of the meetings, but for the final weeks, the Commission split into two to cover meetings, inevitably leading to complaints from people who felt slighted by the absence of Chris Patten himself from "their" meeting. Transcripts from the meetings have not been published yet, and there has been no public indication as to whether they will be. The Committee on the Administration of Justice sent members to attend and observe at twenty-four of the meetings. Detailed records of the discussions provide a useful guide to areas of contention and consensus within and between communities.

The public meetings tended to take the form of people arguing either for or against the RUC per se. At meetings in nationalist areas, the Commission heard strong calls to disband the RUC, and at meetings in loyalist areas people vigorously defended the force and suggested that any change would be unacceptable and even treacherous. One newspaper described the overall mood, as follows:

[i]n more than 30 meetings across Northern Ireland . . . in

47. COMMISSION ON POLICING, LEAFLET ADVERTISING PUBLIC MEETINGS (1998).

48. *The Task That Lies Ahead of Patten*, BELFAST TELEGRAPH, Jan. 11, 1999.

front of 10,000 people, and from the mouths of a good portion of 1,000 speakers, Patten and his fellow Commissioners heard that the key to their remit for successful policing in Northern Ireland was one thing or another: scrap the RUC in recognition of human rights violations or preserve it in tribute to decades of sacrifice.⁴⁹

Perhaps the most important outcome of the meetings was that they provided people with the opportunity to express their grievances, experiences, hopes, and fears for policing to the Commission. Despite inevitable complaints about venues and times, the "Commission on tour" did provide ordinary citizens with a platform for their views. The Commission heard from a wide range of people including police families and widows, victims of crime and paramilitary violence, relatives of those killed or injured by the security forces, and people who had experienced police harassment or, alternatively, help from the police.

While the public meetings gave an idea of the strength of feelings about policing in some communities, it is unlikely that the meetings helped the Commission to develop its collective thinking on possible ways forward for policing in Northern Ireland. Debates about possible structures, recruitment strategies, or improved accountability mechanisms were impossible in the circumstances. At one of the first meetings, in West Belfast, Chris Patten underestimated the depth of feeling and told the gathering that while he was happy to continue hearing stories of personal experiences, he also hoped that people would want to make "positive suggestions for changes in policing." People in the audience of several hundred strong were visibly angry at the suggestion that by recounting, sometimes traumatic experiences, they were somehow not being positive or forward looking.⁵⁰

The other main ways that the Commission is gathering evidence are through submissions from individuals, interest groups, and political parties—over 3000 submissions were received. Other methods include formal and informal meetings with those concerned with policing and fact-finding visits to other jurisdictions to talk to those involved in policing issues.

49. *Id.*

50. See Kevin Keenan, *Patten on the Road*, JUST NEWS (Bulletin of the Committee on the Administration of Justice, Belfast, Northern Ireland) Jan. 1999, vol. 14, no. 1) (giving account of this and other meetings).

VI. *THE POLICING DEBATE: CONSENSUS AND CONFLICT*

It is well-documented and recognized in the Agreement that policing is a divisive and emotive issue in Northern Ireland. Public opinion surveys demonstrate the gulf between nationalist and unionist views of the RUC. A recent poll conducted for the Police Authority for Northern Ireland (or "PANI") found that while sixty-five percent of protestant respondents want the RUC to be allowed to carry on unchanged, forty-eight percent of catholic respondents wish to see the RUC reformed and a further thirty-five percent want replacement or disbandment.⁵¹ This division has led many to conclude that Chris Patten will need the wisdom of Solomon to produce not only recommendations for the future of policing, but also a way of convincing people from unionist and nationalist communities and other parties to support his proposals.

At first sight, the situation appears zero-sum: produce a reformist report and antagonize republicans and many nationalists, put forward radical suggestions and unionists will not accept the outcome. The Belfast Telegraph described Patten's task succinctly as being to "make the impossible possible."⁵²

The logistics faced by the Commission illustrate the difficulty. With a current figure of around 11,500 officers, which include full-time, permanent, and reserve officers, as economist Paul Teague points out, "a peaceful Northern Ireland would only require a police force of 3500-4000; that suggests an end to violence would threaten about seventy percent of RUC jobs." While downsizing is necessary to create a viable peacetime policing service, there is a converse need to increase catholic recruitment to the police in order to create a more representative service. To quote Teague again, "making the RUC more representative and, at the same time, reducing its size would mean, assuming that no serving catholic officers were made redundant, 8500 protestant officers losing their jobs and between 750 and 1000 new recruits being drawn in from the minority community."⁵³

The stakes faced by Patten—and the whole of society in the

51. POLICE AUTHORITY NORTHERN IRELAND, *supra* note 3, at 3, § 9.

52. *The Task That Lies Ahead of Patten*, *supra* note 48.

53. PAUL BEW ET AL., *NORTHERN IRELAND BETWEEN WAR AND PEACE: THE POLITICAL FUTURE OF NORTHERN IRELAND* 99 (London 1997).

North—are high. Hopes are pinned on the Commission to find a solution, which both political traditions can, if not embrace, then grudgingly accept. The cost of failure could signal serious problems for the peace process itself. The political situation remains uncertain and potentially creates problems for the Commission in selling its ideas to the political parties and the public. A report of a public meeting in Carrickfergus, which is mainly protestant, recorded that “the former Hong Kong governor was explicitly informed [that] . . . the entire Belfast Agreement would be in serious jeopardy if he and his commission of terrorist appeasers were to touch so much as an emblem on the caps of the uniforms of the proud members of the Royal Ulster Constabulary.”⁵⁴

The job of the Commission is facilitated, however, by evidence of a real desire among the majority of people in Northern Ireland to make the peace process work. For some, this growing desire means embracing change. The survey cited above found that almost one-third of protestants now support reform of the RUC.⁵⁵ Others, while not desirous of change, may be prepared to stomach reform to preserve the peace process. The depth of the current conciliation and its potential for consensus on policing should not be romanticized. Ken Maginnis, UUP security spokesman, warns that “[w]hatever may be argued by either the malicious or the naïve, society as a whole did not go to the ballot box on 22 May to vote ‘Yes’ for an unrecognisable [sic] police force or for uncertainty.”⁵⁶ Nonetheless, people voted “yes” in the certain knowledge that the future of policing would be examined through the Commission and that some degree of change was likely. The small protestant socialist party, the PUP, stated that “in the changing climate there needs to be reform within the R.U.C. to meet the new challenges created by the Good Friday Agreement. That reform must be based on practical and operation considerations and not ‘change for the sake of change.’”⁵⁷

Public reaction to the Commission illustrates the effect of this commitment to peace. Despite the misgivings of some per-

54. Brenda Power, *300 RUC Men Did Not Give Their Lives for Us to Give in to Their Murderers*, SUNDAY TRIBUNE, Dec. 13, 1998, at 9.

55. POLICE AUTHORITY NORTHERN IRELAND, *supra* note 3, at 3.

56. MAGINNIS, *supra* note 44, at 13.

57. PROGRESSIVE UNIONIST PARTY, *supra* note 1.

spectives, the Patten Commission has met with cooperation from most political parties and communities. This cooperation gives the Commission a historic opportunity. In the past, official bodies concerned with policing issues have been boycotted. For example, the Police Authority for Northern Ireland, the main oversight body for the RUC is boycotted by both main nationalist parties and by the trade unions. Nationalist politicians also refuse to participate in the local police-community consultative bodies, Community Police Liaison Committees. The Patten Commission has certainly met with a hostile reaction from some loyalist groups and individuals—most notably supporters of the Democratic Unionist Party—but even opponents of the Commission have attended the meetings and put their point of view across forcefully rather than boycotting or disrupting the proceedings.

While Patten faces an awesome task with many obstacles ahead, an analysis of some of the submissions to the Commission indicates that attitudes to the RUC and to potential change are not necessarily as polarized on a communal basis as might be assumed at first glance.⁵⁸

There is consensus across the board that policing in Northern Ireland has suffered as a result of the abnormal situation and that the future lies in the development of community policing, more responsive to local needs. The UUP submission to the Commission explains that

[p]olicing in Northern Ireland suffers primarily from the fact that the community has constantly expected RUC officers to compensate for the disintegration of the normal democratic process. Since this breakdown has existed for almost 30 years, no one under the age of 35 years has really experienced the benefit of policing carried out within a “normal society.”⁵⁹

From the UUP perspective, it is not so much the RUC as the attitude of the public, including the loyalist community, which needs to be changed.

One has only to look at Drumcree and other areas of con-

58. The bulk of submissions to the Police Commission have not yet been made public. This analysis, therefore, is based on submissions made during public meetings and those made available to the Committee on the Administration of Justice by their various authors.

59. MAGINNIS, *supra* note 44, at 15.

frontation to recognise the huge difficulties with which the R.U.C. has had to cope on a regular basis; to realise that it is this stratum of society and not the police which has to be changed and to understand that criticism of the R.U.C. is predominantly subjective.⁶⁰

Despite this reticence to admit any defects on the part of the RUC, the UUP does have proposals for altering police management structures in order to devolve decision-making to a more local level where appropriate.

Those with a strong base within the most socially deprived protestant areas recognize that attitudinal change on behalf of the civilian population is not enough and that the RUC must shoulder some responsibility for the problems in policing. Previous research had already demonstrated a high level of alienation between protestant working class communities and the police.⁶¹ At some public meetings of the Commission on Policing held in protestant working class areas, there has been strong criticism of certain aspects of policing. At the public meeting in the Shankill area, in the heart of "protestant West Belfast," the Commission was told about police harassment of local young people. One man commented that "[o]ur community police do get along with youth, until there's trouble. Then they bring in the riot police and start beating heads." At a meeting in a predominantly unionist area in North Belfast, some self-identified loyalists spoke of their frustrations with the police and the need for change. Another person commented that

[t]he Protestant community does not want disbandment of RUC. We love the RUC. But, community policing should be a separate unit. Don't take your community policeman and put him in a riot squad uniform. These Ninja-turtles squads [mobile support units] show up to put down disturbances and raid houses, destroying any trust that has been built up.⁶²

The protestant PUP states that there is a need to get rid of the "Landrover Syndrome" in policing and return to "proper policing on the beat."⁶³

60. *Id.*

61. HAMILTON ET AL., *supra* note 17.

62. See Keenan, *supra* note 50 (summarizing these meetings).

63. PROGRESSIVE UNIONIST PARTY, *supra* note 1.

A. *Under-representation and Strategies for Redressing Imbalance*

The RUC is a predominantly protestant and largely male institution. The difficulties in securing change are exacerbated by the fact that the force has swollen numerically over the course of the conflict and is grossly over-sized for peacetime policing. The circle, which must be squared by those who seek change without the actual disbandment of the force, is that the RUC needs to be "downsized" for peacetime policing, but at the same time, increased recruitment of catholics, nationalists, women, and ethnic minorities is required to create a more balanced organization. Several parties are struggling to create proposals aimed at redressing this imbalance.

There is broad agreement expressed both at public meetings and through political party submissions to the Commission that the RUC is unbalanced in terms of representation and that this balance should be redressed. There is disagreement about why catholics and nationalists have not been recruited to the force in large numbers and consequently about the possible solutions. For unionists, the main barriers to the recruitment of catholics to the RUC have been politically-motivated opposition to the state among nationalists and the terrorist threat against catholic police officers. Remove the terrorist threat, the argument goes, and "ordinary decent" catholics will feel free to join. Nationalists, on the other hand, argue that people from their community will not consider policing as a career until a police service is established that respects the rights and cultures of all.

While there was little emphasis at public meetings on under-representation of women and ethnic minority officers in the police, political party submissions have made some reference to this. Several parties including the Alliance Party, the North Ireland Women's Coalition, and the main nationalist parties such as the Social Democratic Labour Party ("SDLP") and Sinn Féin, have proposed that affirmative action measures be adopted to increase recruitment of catholics/nationalists, women, and minority communities. The Women's Coalition has argued for targets, timetables, and outreach programs, as well as anti-harassment procedures within the organization.⁶⁴ The SDLP argues for similar measures and also for the need to create a neutral

64. NORTHERN IRELAND WOMEN'S COALITION, SUBMISSION TO INDEPENDENT COMMISSION ON POLICING FOR NORTHERN IRELAND (1998).

working environment and disclosure of loyal order membership.⁶⁵ Sinn Féin's position is that the RUC must be disbanded and an entirely fresh start made if nationalists are to have confidence in policing. It does concede, however, that RUC officers should be able to apply for posts in the new service, provided screening is put in place to ensure that those responsible for human rights abuse are not re-recruited. Membership of the loyal Orders would debar a candidate from recruitment to the new police. Sinn Féin also argues for a quota system for entry to the new service to ensure balanced representation.⁶⁶

Perhaps the most politically interesting response is that of UUP security spokesman, Ken Maginnis. The UUP submission to the Commission states that "[g]iven some assurance that the R.U.C. is not going to be destroyed or changed beyond recognition there will be a willingness to address seriously the whole issue of religious imbalance." Not surprisingly, Maginnis opposes any suggestion that there be a one-off special intake of catholic recruits into the RUC. However, he does suggest that "one, maybe the only, way forward would require derogation from the present anti-discrimination legislation for a limited period of time." He also accepts that redundancies are likely given the need to downsize the organization.⁶⁷

It is clear that, although the parties have very different ideas about how the problem of under-representation of minorities can be resolved, most have addressed the issue and come up with a variety of innovative mechanisms for tackling the imbalance. This openness to finding ways forward is something that the Commission on Policing must seek to build upon.

B. *Emergency Legislation*

Attitudes to emergency legislation cut across the communal divide. Not surprisingly, those who are opposed to the continued use of emergency legislation are the parties based in working class areas that have suffered the brunt of its implementa-

65. SOCIAL DEMOCRATIC AND LABOUR PARTY, SUBMISSION TO PATTEN COMMISSION (1998).

66. SINN FÉIN, A POLICING SERVICE FOR A NEW FUTURE, SUBMISSION TO THE COMMISSION ON POLICING (Sept. 1998).

67. See MAGINNIS, *supra* note 44, at 14 (stating that Maginnis is keen to make clear that this suggestion is his own personal view and that it does not as yet have endorsement of his party).

tion. From the protestant community, the PUP argues that “[w]e must move away from emergency policing and emergency legislation which can so easily put aside basic civil liberties in the name of security.”⁶⁸ The party also calls for the end of the juryless Diplock Courts and a return to the jury system. The Workers Party, a small cross-community socialist party, also calls for an end to emergency legislation. Both the Workers Party and the North Women’s Coalition suggest the development of a Bill of Rights will be important in securing the protection of rights.

Recognizing the importance of the legal context in which policing takes place, Sinn Féin warns that

[n]ew structures for a new policing service will have little impact while the legal culture of repression remains unchanged. A new policing service which continues to use the powers in the EPA and PTA and the new measures announced by Tony Blair, after the Omagh bomb will prove equally as unacceptable as the RUC.⁶⁹

Both the SDLP and Sinn Féin call for an end to emergency powers and the use of plastic bullets.

C. *Increased Accountability*

There is consensus across the political spectrum that mechanisms for ensuring police accountability to the public should be improved. Neither of the main nationalist parties, SDLP and Sinn Féin, have faith in the bodies currently charged with ensuring RUC accountability: the Police Authority for Northern Ireland and the locally-based Community Police Liaison Committees. Nationalists generally want to see these replaced with new accountability structures. Sinn Féin states that there is a need for the creation of a body with widespread and broadly-based political support. This body should be given powers to recruit senior officers, to allocate budgets, and to call those senior officers regularly to account for their activities. Sinn Féin recommends the setting up of a Commission made up of “Irish and British government representatives, monitoring representatives from the European Commission and legal experts such as lawyers, magistrates, criminologists and human rights experts.” It could also include political representatives of unionism, nation-

68. PROGRESSIVE UNIONIST PARTY, *supra* note 1.

69. SINN FÉIN, *supra* note 66, at 19.

alism, and republicanism. The party envisages this body remaining in being “until all-Ireland policing structures are in place.” Local advisory committees would also be developed with power to insist on consultation with local policing structures.⁷⁰

The protestant PUP is also heavily critical of Policing Authority of Northern Ireland (“PANI”). The party complains that “[t]he present situation where the Chief Constable has total and absolute power is absolutely unacceptable. The Police Authority should be multi-faceted, socially representative and should have Reasonable status and power.”⁷¹ The UUP seeks the strengthening of the Police Authority’s powers to make it more effective. The UUP submission to the Commission concedes that a previous Chief Constable, Hugh Annesley, “frustrated the Authority by refusing to give it adequate information or to properly cooperate with it.”⁷² The party recommends that the recruitment process for PANI be improved and include one-third of members selected from nominees of Community Policing Liaison Committee (“CPLCs”). In the party’s view, this method would improve consultation between the RUC and people working in local communities.⁷³

The cross-community Northern Ireland Women’s Coalition and Alliance Party both agree with the need to strengthen accountability structures. The Northern Ireland Women’s Coalition suggests that in addition to a strong, elected, representative Police Authority, there should be an “[i]ndependent monitoring and evaluation of police operations and community attitudes towards safety and security.”⁷⁴

As on the issue of representation, there is division between nationalist and unionist parties about the form that change of accountability mechanisms should take. There is agreement, however, that enhanced accountability structures would be welcome.

D. *Devolved Structures*

The unionist parties are all committed to retaining the RUC

70. *Id.* at 17.

71. PROGRESSIVE UNIONIST PARTY, *supra* note 1.

72. MAGINNIS, *supra* note 44, at 16.

73. *Id.* at 18.

74. NORTHERN IRELAND WOMEN’S COALITION, *supra* note 64, at 6.

as a unitary police organization. The PUP concludes that "Northern Ireland is a comparatively small country and therefore it is both practical and economical to have a single police service." The party does accept, however, that there could be an overhaul of police infrastructure, i.e. police district and divisions, departments, etc.⁷⁵ The UUP also recommends that while the force should remain a single unit, there could be some devolution of decision-making within the organization.⁷⁶

The nationalist parties have recommended that policing be reconstituted on a regional basis. They have different proposals for how this regionalization might be structured. The SDLP has for some time proposed a multi-tiered police service organized on a regional basis. Individual regionalized forces would be created, but they would fall under the authority of a single Chief Commissioner.⁷⁷ Republicans in Sinn Féin continue to demand the disbandment of the RUC and its replacement by a new policing service. In the party's view "[r]eform is not an option. . . . The imperative for the Commission is to produce an approach which will work. It is our contention that this means establishing a new policing service."⁷⁸ Despite its commitment to a thirty-two county republic, however, Sinn Féin has developed proposals for a new policing service based in the first instance on a six-county model. The party is in favor of a tiered approach for the new police service and suggests the possibility that policing could be devolved either on district council areas of Northern Ireland or health or education board boundaries. These local police would deal with locally-based crime. There would be a need for specialist units of this new police service to deal with crimes such as drugs and organized criminal activity. Sinn Féin argues that "clear mechanisms for accountability will need to be established to ensure that such units do not undermine good relations between local communities and the local police." At the same time as this creation of a new police service based in Northern Ireland, Sinn Féin favors the immediate institutionalization of links with the police in the south of Ireland.⁷⁹

75. PROGRESSIVE UNIONIST PARTY, *supra* note 1.

76. MAGINNIS, *supra* note 44, at 6.

77. See Policing in Northern Ireland presented at the SDLP's annual conference (Nov. 18, 1995).

78. SINN FÉIN, *supra* note 66, at 2.

79. *Id.* at 19.

Although there is agreement across party lines that more localized policing structures should be developed, there is still considerable disagreement between nationalists and unionists over the structural future of policing. Nationalists are generally supportive of more radical change in this area than are unionists who favor the continuation of a unitary RUC.

The issue of how best to develop effective policing structures will be one of the most contentious issues the Patten Commission will face. Human rights activists have argued that whatever structures are developed for the future of policing, these must be tested for their potential to protect civil liberties and human rights.

Proposals about the future form and structure of policing in Northern Ireland will presumably form part of the political negotiations. It is very important, however, that such discussions not be restricted solely to politicians but that there is a wide-ranging discussion of how best we want to ensure effective policing in the future. The international research provides a series of very important principles which provide the framework against which any structural model proposed . . . should be measured.⁸⁰

E. *The Symbols*

While there is a degree of consensus on the need for a more balanced police service in terms of representation, for improved structures of accountability, and for some devolution of police decision-making, suggestion of making change to the symbols of policing remains an anathema to the unionist parties. The name of the force and the question of whether it should be changed have been particular bones of contention. The name Royal Ulster Constabulary is disliked by nationalists for several reasons—"Royal" because of the identification with the British monarchy and because the title was granted to the Irish police force for its fight against the Fenian movement in the 1860s and "Ulster" because it refers only to the six counties of Northern Ireland rather than to the historic province of Ulster that incorporates nine counties. For many unionists, police officers, and families, to change the name would be an insult to those who have been injured or killed. For nationalists, a change of name,

80. O'RAWE & MOORE, *supra* note 8, at 208.

while less important than structural and procedural change, would demonstrate commitment to a fresh start. It is unsurprising that at public meetings there was no consensus between different communities on the issue of names or symbols. However, the Alliance Party and the Northern Ireland Women's Coalition⁸¹ have argued for changes in the symbols of policing to encourage cross-community support.

CONCLUSION

Human Rights Principles: The Minimum Standard for Change

It is clear from the above discussion that the Commission on Policing has difficult decisions to make and must be sensitive in the way that it puts forward its recommendations. Some decisions will undoubtedly be based on the Commission's understanding of what recommendations it is politically possible to secure consensus on. It is important, however, that the Commission bases its final report on the incorporation of internationally accepted minimum standards of human rights. These rights should not be used as political bargaining chips; they are minimum standards that the U.K. Government has a duty to uphold. Indeed, the implementation of international law and the recommendations of international human rights bodies are a government responsibility and do not need to await the Patten Commission report. Had the Blair Government taken a principled decision to implement the recommendations of the United Nations Committee Against Torture, for example, this would demonstrate a commitment to human rights and would depoliticize the issues to a great extent.

The piece of international legislation that relates most specially to the work of policing organizations is the United Nations Code of Conduct for Law Enforcement Officials ("Code").⁸² The Code insists that policing must respect human rights and human dignity and that domestic law make specific reference to the relevant international and regional standards in this regard.

81. The Alliance Party and the Northern Ireland Women's Coalition argued their positions with cross-community membership and support. NORTHERN IRELAND WOMEN'S COALITION, *supra* note 64, at 6; ALLIANCE PARTY, ORAL SUBMISSION GIVEN TO THE COMMISSION ON POLICING (Oct. 15, 1998).

82. The United Nations Code of Conduct for Law Enforcement Officials ("Code") was adopted in December 17, 1979.

Were the Code to be incorporated into domestic legislation governing policing in the new Northern Ireland, it would offer increased protection for civilians against the abuse of human rights by the police.

Also important is the United Nations Basic Principles on the Use of Force.⁸³ These principles provide guidance on the use of force and on accountability mechanisms for ensuring that force is not over-used or misused by the authorities. The standards set down by the United Nations in this document have been routinely flouted in Northern Ireland through the use of plastic bullets.⁸⁴

Other international standards such as the United Nations Convention on the Rights of the Child,⁸⁵ if incorporated into domestic legislation, would give protection and a form of legal redress to some of the most vulnerable members of our society. Children, as young as ten, have been subject to emergency legislation, and young people have regularly been used by the RUC as "informers," putting their lives in real danger. The Commission must look at this broad range of issues and test its recommendations against how they will meet the needs of the most marginalized and vulnerable sections of the communities in Northern Ireland.

The signing of the Belfast Agreement, the paramilitary cease-fires, the work of the Commission on Policing, and the review of the Criminal Justice system all provide perhaps the best chance to date in Northern Ireland to create a more equitable and just policing process and justice system. To make proposals based on a return to "normal" policing, which has never existed in Northern Ireland, would be a waste of this opportunity. It is to be hoped that the Commission will produce a report based on international standards of best practice in policing and with full protection of human rights.

83. The United Nations Basic Principles on the Use of Force ("Principles") was adopted in 1990.

84. COMMITTEE ON THE ADMINISTRATION OF JUSTICE, *THE MISRULE OF LAW: A REPORT ON THE POLICING OF EVENTS DURING THE SUMMER OF 1996 IN NORTHERN IRELAND* (1996); COMMITTEE ON THE ADMINISTRATION OF JUSTICE, *POLICING THE POLICE: A REPORT ON THE POLICING OF EVENTS DURING THE SUMMER OF 1997 IN NORTHERN IRELAND* (1997); AMNESTY INTERNATIONAL, *supra* note 19.

85. The United Nations Convention on the Rights of the Child was established in 1989, and ratified by the U.K. Government in 1991.

The question cited at the start of this chapter poses the important choice:

For those who ask the question 'how can policing return to normal?' are perhaps asking the wrong question. We should be asking 'how can we make policing applicable to the society we hope to create and develop here for the first time?'⁸⁶

86. PROGRESSIVE UNIONIST PARTY, *supra* note 1.