Parading Protestants and Consenting Catholics in Northern Ireland: Communal Conflict, Contested Public Space, and Group Rights

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After several hours of stalemate when the RUC stopped the parade from marching through a Catholic area of Portadown, several hundred more Protestants joined the demonstrations. In response the RUC drafted in extra riot police as tension grew after all entrances were blocked off by the RUC to prevent the march. Hundreds of police officers used Land Rovers to close off the routes while Republicans blocked the Garvaghy Road along which the Orangemen traditionally parade after the annual service at Drumcree Parish Church, just outside the County Armagh town. The 800 Orangemen remained outside the church hoping they might be allowed to march. It was the first time the parade had been blocked off in 200 years.1

I. INTRODUCTION

This description of the police in Northern Ireland, then called the Royal Ulster Constabulary (“RUC”), now the Police Service of Northern Ireland (“PSNI”), blocking a “traditional” parade held by the Orange Order, a Protestant fraternal organization, from a route that took it through a largely Catholic housing estate, typifies the ongoing conflict over parades in Northern Ireland. Whilst the details of this dispute, born out of a conflict with religious, ethnic, and national dimensions, are specific to Northern Ireland, similar problems exist in many parts of the world. They are disputes of a similar nature to those over the temple at Ayodya in India and the clash over the Temple of the Mount in Jerusalem, and they raise issues comparable to those generated by the wearing of Islamic headdresses in schools in France. They highlight issues of religious tolerance, a core problem for philosophers, political scientists,
lawmakers, and managers of conflict alike.² Claims to rights of freedom of expression, speech, and assembly are often accompanied by attempts to secure legitimization of religious belief and traditional practice.

Whilst not all such disputes are part of broader nationalist claims to self-determination, as is the case in Jerusalem and Portadown, many such as those at Ayodya and in French schools do have important implications for the state and ideas of nation in the places where they occur and also often have transnational consequences. These disputes capture some fundamental political and legal issues around group and individual rights and rights of citizenship. They frequently symbolize apparent conflict between majority and minority populations within countries and therefore come under the watchful gaze of international bodies such as the UN and within the scope of international legislation.³ The international implications of these disputes have become even clearer under the redefined notions of world politics post-September 11, where clashes of religion, culture, and civilization have replaced the clashes between political systems that defined the Cold War era.

In this Article, I examine the communal divisions in Northern Ireland, particularly the disputes over parades, how the United Kingdom government has attempted to deal with such disputes, the influence of international precedent, and the implications for future legislation in Northern Ireland. I argue that whilst attempts made by the UK government since 1995 to resolve the disputes have often been inadequate, there are no easy answers. International instruments, such as the European Convention on Human Rights and cases in the European Court have provided only the most limited of guidance for a possible resolution. I tentatively suggest that legalistic approaches, using the language of rights, have been of limited use in attempting to resolve communal aspects of the conflict and indeed that these approaches threaten, in some respects, to heighten the conflict.

II. COMMUNITY DIVISIONS AND CONFLICT IN NORTHERN IRELAND

Northern Ireland is a complex and modern Western European society with large disparities in class and wealth. It suffers from many of the same social and economic problems as other Western European and North American countries. It is ethnically divided between people who belong to the Protestant community and view themselves as British, wishing to remain part of the United Kingdom, and those from the Catholic community who see themselves as Irish, wishing to

² For a recent discussion, see Jürgen Habermas, Religious Tolerance—The Pacemaker for Cultural Rights, 79 Philosophy 5 (2004).
³ For a broad discussion, see Christine Bell, Peace Agreements and Human Rights (Oxford 2000).
be part of a politically united Ireland. Whilst culturally these two groups are very similar, share many values and social practices, and are similarly divided by economic class, they are distinct from each other on questions of national allegiance and, at least to a degree, over their Christian religious belief. Around 60 percent of the population is Protestant and has been represented by the Ulster Unionist Party ("UUP"), which controlled a local Parliament from 1921 to 1972. Various forms of discrimination against the Catholic minority during that period led, in 1967, to the development of a civil rights movement. This political conflict in turn led to increased communal violence in the form of rioting, house burning, and sectarian attacks and then to a growing paramilitary campaign by the Irish Republican Army ("IRA") and two unionist/loyalist groups, the Ulster Volunteer Force ("UVF") and Ulster Defence Association ("UDA"). The UK government first introduced the British Army to undertake policing duties in 1969 and then, in 1972, introduced direct government from London. Since then the Democratic Unionist Party ("DUP") under the more fundamentalist Reverend Ian Paisley has grown to rival the UUP as a representative of Protestant and Unionist interests whilst the Catholic community is primarily represented by the Social Democratic Labour Party ("SDLP") and Sinn Féin (the political wing of the IRA).

At the start of the 1990s, a peace process developed which resulted in a cessation of violence from the IRA, the UVF, and the UDA. In 1998, a Multi-Party Agreement (also known as the Good Friday Agreement or the Belfast Agreement) brought some degree of local democracy back to Northern Ireland. Since then there have been numerous difficulties and, at the time of this writing, the operations of the new Northern Ireland Assembly have been suspended over the issue of decommissioning of paramilitary weapons. Above all, whilst there is presently a more peaceful environment in Northern Ireland, there are many victims in both communities and an enormous residue of fear and resentment.

Over the years, communal divisions in Northern Ireland have manifested in many different contexts, including discriminatory practices in employment and a divided system of education. They have also resulted in territorial separation so that in both urban and rural areas, housing and public space is often defined as "Protestant" or "Catholic." In Belfast, the fear of attacks from the other community and sporadic violence has led to the building of "peace walls" between "interface" areas separating "Protestant" and "Catholic" territories. In rural areas towns and villages are often viewed as being "Protestant" or "Catholic" and objects like war memorials and churches become ethnic markers.

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4 Id at 51–65.
It is important to stress that the categories of “Protestant” and “Catholic” in Northern Ireland are ethnic demarcations broader and more complex than the religious groups to which they generally refer. So, for example, a person could be deemed to come from one community or another without necessarily having any strong religious belief. The category of “Protestant” in Northern Ireland implies that someone is likely to be Unionist and British, as the category of “Catholic” implies that someone is Nationalist and Irish. Religion plays an important role in these identifications, but it is not the central point of difference. For example, within the Protestant community there are a wide range of churches and theological beliefs. To put it at its most basic, when one teenage boy throws a stone at others, it is usually because they represent “the other community”; he does not do it because of disagreements over theological issues such as transubstantiation. This point is particularly important when we come to view disputes over parades because there is not even clear agreement amongst those taking part, let alone those opposing it, as to what extent they are distinctly religious events.

The relationships between Protestant and Catholic communities are complex. Whilst there is a range of practices that serves to divide these groups, there is also a range of cross-cutting ties that mean we cannot depict them as having two different cultures or as being two distinct societies. In everyday interaction people can use their social knowledge to tell which community the people they meet are from. In the main they do so not necessarily to avoid “the other” but to attempt to behave in an acceptable manner such as not starting conversations about religion and politics that might prove divisive. Ironically, the friendliness or politeness of the people of Northern Ireland is, in part, a function of the conflict. People will often shop in one area rather than another, visit amenities in particular areas, catch particular buses, or use a particular taxi firm dependent upon their knowledge of territorial divisions. On the other hand, some middle-class areas are mixed, and many pastimes and associations also lead to social mixing.

Northern Ireland, like most other societies throughout the world, is a mix of separateness and cohesion, conflict and accommodation. Managing this mix becomes a central problem in building a working political system. Fundamental to this problem is the way in which groups are treated by the law, particularly minority groups. Does social cohesion demand a common set of principles by which all citizens must abide, or do we allow for abrogations from this in the name of diversity and the protection of minorities? In Northern Ireland these questions have given rise to a debate about whether we give rights to groups. The 1998 Multi-Party Agreement is consociational and has within it political

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institutions naming the existence of two groups, “Unionists” and “Nationalists,” and giving those groups specific voting rights in the new assembly. A new Bill of Rights is to be proposed that will, in all likelihood, recognize the “two traditions.” Other possible groups that may suffer a variety of forms of social exclusion—for example, the economically deprived, women, and smaller ethnic groups—will not be given such a profile.

To see why such developments might be necessary but to also examine possible pitfalls, it is worth looking in a little more detail at aspects of the relationship between communities. Since the mid-1990s this has probably been best encapsulated in the use of public space, particularly in terms of demonstrations, parades, memorials, and the flying of flags.

III. COMMUNITIES AND THE REGULATION OF PUBLIC SPACE

Ritual practices (including commemorations, parades, and demonstrations) have played an important role in defining public space in Northern Ireland. Within the Protestant community, local marching bands and organizations such as the Orange Order, the Apprentice Boys of Derry, and the Royal Black Institution organize a wide range of parades. The majority of these events occur between April and August—a period popularly referred to as the marching season. The best-known parades are those held on the Twelfth of July, commemorating what is seen as Protestant King William’s victory over Catholic King James at the Battle of the Boyne in 1690. While there are similar organizations in the Catholic community, such as the Ancient Order of Hibernians, they organize fewer parades and these have less significance than those organized by the Orange Order. Of greater political importance are Republican demonstrations that commemorate the Easter Rising of 1916, the 1981 Hunger Strike (May), and Internment (August). There is also a large event held annually at the end of January in Derry to commemorate Bloody Sunday.

During 2001–2002, there were 3301 parades in Northern Ireland. The largest number, 2489 (75 percent), were categorized as “loyalist,” whilst 584 (18 percent) were categorized as “others,” and only 228 (7 percent) as “nationalist.”6 There is a historical explanation for this differential in the number of “loyalist” and “nationalist” events. Since the partition of Ireland in 1921, the legal regulation of parades in Northern Ireland has generally favored those in power—in other words, Unionists. Prior to the enactment of the Public Order (Northern Ireland) Order 1987, the police were required to have regard to the desirability of not interfering with “a public procession customarily held along a

particular route." Furthermore, the organizers of parades "customarily held along a particular route" did not have to provide prior notification to the police of the proposed parade. The majority of Protestant parades were allowed to become well-established, but events reflecting nationalist or republican aspirations were often restricted since they were viewed as a threat to public order. Thus, this exemption from the notice requirement privileged the Protestant tradition. In short, the Catholic community was never given the same access to public space as the Protestant community. Consequently, parades have played a more central role in Protestant and Unionist religious and political cultural practice.

The relationship between parades, territory, and public order became explicit during the civil rights demonstrations from 1967 to 1972. The demonstrations threatened an uneasy status quo that had existed since the 1920s as large numbers of Catholics and left-leaning Protestants tried to show opposition to the Unionist Government by marching into the center of the cities and towns of Northern Ireland. Opposition to the civil rights movement, frequently organized by the Reverend Ian Paisley, controlled the center of these towns with counter-demonstrations. The RUC usually viewed the civil rights demonstrators, not the Unionist opposition to their demonstrations, as the threat to public order. The resulting clashes between police and civil rights demonstrators raised tensions in such a way that attacks by one community on another became more common and areas were "cleansed" of the other community. It was the intensity of these processes and the breakdown of the status quo that eventually led to the introduction of the British Army to undertake policing duties in 1969, which in turn led to an escalating conflict between the IRA and the British Army. The British Army and more rigorous policing by the RUC led to restrictions on Orange parades and civil rights events alike, but the most infamous effect of soldiers policing demonstrators came on January 30, 1972, when members of the British Parachute Regiment shot dead thirteen people in the Bogside area of Derry in what became known as Bloody Sunday.

The failure to regulate public space in a society with two ethno-national-religious communities was central to the nature of the developing conflict in Northern Ireland, and it is worth highlighting the role played by public events. Whilst the issue of parades and demonstrations became secondary to more pressing security issues during the ongoing violence in the 1970s, 1980s, and 1990s, there were major disputes over parades in Portadown in 1985 and 1986 leading directly to the loss of one life, millions of pounds worth of damage, further territorial divisions in the town and, in 1987, a change in legislation

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7 Tom Hadden and Anne Donnelly, *The Legal Control of Marches* 19 (Northern Ireland Community Relations Council 1997) (on file with author).
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Dealing with parades. It is not surprising, however, that after the paramilitary ceasefires in 1994, the political differences again revealed themselves through such events. In hindsight it is also not surprising, given the historic imbalance in the use of public space between the communities, that it was the Protestant community, or the Orange tradition, that was to suffer further government restrictions.

On Sunday, July 9, 1995, Orangemen were stopped from proceeding along their traditional route along the Garvaghy Road in Portadown, County Armagh. There are records of this annual parade dating back to 1807. On the Sunday before the annual Twelfth of July demonstration, they parade from the town to a service in the Church of Ireland church at Drumcree. These parades commemorate the Battle of the Boyne; however, since about 1997 Orangemen have also claimed that the service and parade remembers those men that died at the Battle of the Somme in July 1916. The return section of the parade follows the Garvaghy Road on which sit a number of ostensibly Catholic housing estates. For many Protestants this event is seen as an important part of their tradition because the Orange Order was founded only a few miles outside Portadown in 1795. For many Catholics the Orange Order, an all-male, all-Protestant organization to which many Unionists belong, played, and continues to play, a key role in organizing sectarian practices in Northern Ireland. What followed the halting of the parade in 1995 was a two-day standoff that led to serious rioting but eventually resulted in an apparent settlement, despite the disputing parties not actually meeting. In the years that followed, the dispute in Portadown and similar ones around Northern Ireland escalated.

In July 1996, the Chief Constable of the RUC, Hugh Annesley, decided to block the Drumcree parade. In response to this decision, the Orange Order organized protest parades all over Northern Ireland, particularly targeting interface areas, and many roads were blocked. Even the sizable combination of the RUC and the British Army struggled to control the situation. The international airport at Antrim was closed for a time, and the country was almost brought to standstill. A Catholic taxi driver, Michael McGoldrick, was murdered close to Portadown. After five days, the Chief Constable reversed his decision, saying: “I would not have traded one life for the Garvaghy Road. If the rule of law had to be turned back in the short term so be it. But that patch of road is not worth one human life.”

8 See Dominic Bryan, Orange Parades: The Politics of Ritual, Tradition and Control (Pluto 2000); Chris Ryder and Vincent Kearney, Drumcree: The Orange Order’s Last Stand (Methuen 2001).
of rioting in Nationalist areas in which Dermot McShane, a Catholic in Derry, was crushed to death by an army vehicle.

After the turmoil of July 1996, the government appointed an inquiry into the regulation of parades that was published in January 1997 as the Independent Review of Parades and Marches (the North Report). In 1997 the RUC decided to put the parade down the road, a decision which led to further rioting in Nationalist areas. Meanwhile, the UK Government, acting on some of the recommendations from the North Report, was putting through new legislation to cover parades. The cornerstone of this legislation, the Party Processions Act 1998, was a new independent institution called the Parades Commission that would both make determinations over the parades deemed to be in dispute and encourage mediation. In certain respects this was an innovative response to a difficult problem. In 1998 the Parades Commission rerouted the Drumcree parade away from the Garvaghy Road and, in spite of significant opposition from Orangemen and supporters, the parade has been rerouted every year since. In addition to this, the Parades Commission has made significant decisions over numerous other parades around Northern Ireland. This has led to continuous disputes in a number of areas in Belfast and around Northern Ireland but also to broad resolution over two Apprentice Boys parades in Derry.

In the years 1998, 1999, and 2000, the cost of policing the protest at Drumcree in July was £11 million, £6 million and £5.5 million respectively. During the period July to December 1998, the monthly cost of maintaining a police presence at Drumcree was approximately £400,000, whilst by 2002, this monthly, post-July premium had reduced to £54,250. The cost of policing parades and protests is contingent upon police-community relations, and these are influenced by many factors other than the parades issue—not least of all, the composition of the police service itself. Furthermore, in the three years prior to the enactment of the Party Processions Act 1998, the cost of police manpower directly employed in policing the Drumcree parade was £960,000 in 1995,
£2,110,000 in 1996, and £680,000 in 1997. The cost of upholding the Parades Commission's decision in 1998 to prevent parading along the Garvaghy Road, therefore, was greater than had been the direct cost of facilitating the parade in previous years.

The dispute is this: The Orangemen claim they should be able to hold their parades in the areas they wish. They make this claim on the basis that parading is a cultural tradition within the Protestant community going back hundreds of years, that some of these parades are part of religious services, that they should have access to "the Queens Highway," and that the denial of the right is an attack upon the Protestant community. They point out that many parades, such as the Drumcree Church parade, would take no more than fifteen minutes to pass along the disputed part of the route. They also point out that many of the residents groups that oppose their parades have spokespeople with connections to the Republican movement with a number of key individuals being ex-prisoners. The residents groups point to the sectarian nature of the Orange Order, the relationship between the Orange Order and the UUP through periods of discrimination against Catholics, ongoing sectarian attacks upon Catholics in areas like Portadown, and the existence of alternative routes that the Orangemen could take. They argue that the parades are therefore "coat trailing exercises" of "triumphalism" designed to keep Catholics in their place. Significantly, both parties claim to represent the views of the Protestant/Unionist or Catholic/Nationalist communities.

In the first couple of years of these disputes, 1995 and 1996, the arguments used by the disputing parties and by the police were not those first and foremost based on a claim to rights or rights legislation, at least not directly. The Orange Order used the claim of "tradition," that is, legitimacy derived from historical precedence, to demand that they should be able to use "the Queen's Highway." An attack upon their tradition was therefore depicted as an attack upon the Protestant people. The residents, on the other hand, used an argument based loosely on a claim to local democracy, demanding that their "consent" should be sought, and presumably given, before a parade should be given access to "their" area. This argument was also problematic as it was just such an argument that Unionists used to claim legitimacy for the existence and nature of Northern Ireland. What is important to note is that both of these arguments are highly communitarian in nature, making a claim on the basis of membership of the

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15 314 Parl Debate (Hansard), House of Commons, column 251 (June 17, 1998) (Adam Ingram in response to written question no 44749 by Mr. Salter).

collective rather than simply as an individual. Nor did the police make claims to human rights; instead they drew upon their legal duty to maintain public order and depicted themselves as being caught in the middle of two factions. In many respects this reflected the UK legal tradition of public order policing and, unlike what might happen in the United States, there was little exploration of the issue as one of freedom of speech. For example, the legal debate and process was very different from that which took place over the case for the National Socialists’ right to march in Skokie, Illinois in 1977.17

IV. PUBLIC ORDER, HUMAN RIGHTS AND THE PARADES COMMISSION

In the second half of this paper I look at the responses to this issue, the influence of legislation on this communal dispute, the role of European Human Rights legislation, and arguments for group rights. In doing so, I am interested in whether these approaches offer possibilities of resolving the disputes. The North Report was an urgent macro-level response to micro-territorial violence. It was not only driven by the escalating violence around parade disputes but also by criticism of current legislation and the way disputes were policed. It attempted to set the disputes within a broader context of international conventions on civil and political rights, particularly within the European Convention on Human Rights and the small amount of case law from the European Court. As has been highlighted by other reports,18 legislation used by the police up to this point placed a premium on the maintenance of public order. Although throughout the 1990s Nationalist and Republican events had been given increasing access to public space,19 a reliance on the public order criterion tended to favor those with pre-existing “traditional” rights, which inevitably reflected the powerful position of Unionists. Given that at that point in time the RUC was 92 percent Protestant in composition, it is not surprising that Nationalists had little faith in the existing framework for regulating parades.20 That said, in order to improve community relations, the RUC had since the early 1980s taken a tougher line on the Orange parades they deemed to be provocative.21 The North Report argued that the legislation as it stood failed to recognize either the rights of peaceful assembly or the rights of residents and those of the wider community. Rather, it encouraged a party to threaten disorder

17 See Philippa Strum, When the Nazis Came to Skokie: Freedom for Speech We Hate (Kansas 1999).
18 Jarman and Bryan, Parades and Protest (cited in note 16); Hadden and Donnelly, Legal Control of Marches (cited in note 7).
19 Jarman and Bryan, From Riots to Rights (cited in note 16).
21 Jarman and Bryan, From Riots to Rights (cited in note 16).
so as to influence the decision of the police.\textsuperscript{22} This escalation was, of course, quite explicit in the events of July 1996 as recounted above.

In considering responses to the problem the North Report looked at new legislation in South Africa as well recommendations from the American Civil Liberties Union handbook.\textsuperscript{23} It recommended the creation of an independent Parades Commission that would use a series of criteria to make determinations based on the rights of those involved whilst encouraging local accommodations through processes of mediation. I do not want to consider now the mediative processes or the way in which the new legal structures were constructed.\textsuperscript{24} Of interest here is how human rights and the notion of community are understood. The resulting legislation, the Public Processions (Northern Ireland) Act 1998, still stressed public order considerations. However, section 8(6) stated that the guidelines used by the Commission should have regard to:

\begin{itemize}
  \item[a)] any public disorder or damage to property which may result from the procession;
  \item[b)] any disruption to the life of the community which the procession may cause;
  \item[c)] any impact which the procession may have on relationships within the community;
  \item[d)] any failure of a person of a description specified in the guidelines to comply with the Code of Conduct (whether in relation to the procession in question or any related protest meeting or in relation to any previous procession or protest meeting); and
  \item[e)] the desirability of allowing a procession customarily held along a particular route to be held along that route.
\end{itemize}

The Parades Commission, in its published \textit{Public Processions and Parades: Guidelines}, reaffirmed the importance of human rights legislation and made more explicit its interpretation of "disruption to the life of the community" and "impact of the procession on relationships within the community." Factors taken into account include restriction of freedom of movement by local residents, restriction of normal commercial activity, restrictions of access to public amenities and places of worship, the demographics of the area within which the parade is taking place, the presence of sensitive sites (churches, etc.), the purpose of the parade and whether "the route is necessary or proportional to

\begin{footnotes}
\item[22] The Independent Review of Parades and Marches § 12.2 at 133 (cited in note 10).
\item[23] Id § 12.66 at 150.
\end{footnotes}
that.” In addition the “broader context” can be taken into account, by which the Commission gauges the impact upon relationships with the “wider Northern Ireland community.”\(^{25}\)

The new criteria still left question marks over how public order decisions should be made, but even harder were judgments over the impact of the procession on “relationships within the community.” In 1998, the first year in which the new legislation was enforced, there was an application for judicial review where what actually constituted “the community” was discussed.\(^{26}\) After a determination made by the Parades Commission that a parade on the lower Ormeau Road in south Belfast could take place on July 6, 1998, the applicant claimed that the Parades Commission had made an unlawful decision on the basis that it failed “to appreciate that true meaning of ‘community’ in the subsection which means the local community.”\(^{27}\) The Parades Commission had interpreted “community” to mean Northern Ireland, whereas the applicant claimed it simply meant the local community. The applicant, pointing out that the lower Ormeau “is predominantly Catholic,”\(^{28}\) was arguing that allowing this particular parade was simply a “political decision in the nature of a trade-off”\(^{29}\) because the Drumcree Parade had been stopped some days earlier. The Lower Ormeau Concerned Community group, who, since 1992, had sought to represent the area in opposing parades by the Orange Order and the Apprentice Boys, backed the applicant. The legal representative for the Parades Commission claimed that the community that was being considered in certain circumstances was the greater community, that is, the people of Northern Ireland as a whole. Judge Campbell found against the applicant, quoting from the North Report and arguing that such a limited interpretation of community was never intended.

The issue was still being explored in terms of communal politics. The difficulty, as ever, was defining what the community is and who represents it. This goes to the heart of politics in Northern Ireland and, rather than resolving the political conflicts, represents a legal terrain, as well as a physical one, over which the conflict might be fought. What was missing from these criteria, even if it appeared notionally in the Parades Commission’s Guidelines, is a reference to rights and, importantly, the responsibilities that come with them. Along with the North Report, reports from organizations such as the Committee on the Administration of Justice (“CAJ”) and Democratic Dialogue, along with both

\(^{25}\) Public Processions and Parades: Guidelines §§ 3.1, 3.2, 4.1 and 4.2 (Parades Commission 1999).

\(^{26}\) In the Matter of an Application by Patricia Pelan for Leave to Apply for Judicial Review Re a Decision Made by the Parades Commission for Northern Ireland on or about 5 July 1998, No 73 (QB 1998) (N Ireland) (on file with author).

\(^{27}\) Id at 6.

\(^{28}\) Id at 1.

\(^{29}\) Id at 8.
residents groups and those parading, were calling for an approach more closely based upon human rights legislation.\(^3\) The Human Rights Act 1998 meant that as of October 2000, the European Convention on Human Rights was incorporated in UK domestic legislation and therefore created the possibility of using different ways of dealing with conflicts over parades. At the very least it meant that legal cases involving rights issues that previously would have ended up at the European Court could now be considered in domestic courts. Furthermore, under the 1998 Multi-Party Agreement, the Northern Ireland Human Rights Commission was set up with a brief to develop a Bill of Rights specific to Northern Ireland based on principles laid down in the Agreement.

In March 2001, Hamilton, Jarman, and Bryan produced a detailed report published by the Northern Ireland Human Rights Commission that explored possible lessons from European Court cases.\(^3\)\(^1\) They not only examined cases involving freedom of assembly, association, and expression but also rights that might be drawn upon by residents such as the right to freedom from harassment, freedom from inhuman or degrading treatment, to respect for private and family life, and rights of minorities. The conclusion was that the cases were inconclusive in providing guidance, in part because the Court had applied the doctrine “margin of appreciation.” They did, however, suggest that the Parades Commission was in an ideal position to interpret parade determinations through the 1998 Human Rights Act.\(^3\)\(^2\)

The Parades Commission’s approach to the new legal environment was to act in a way so as to protect themselves against the possibility of judicial reviews being taken against their determinations. As Hamilton has pointed out, the language of the determinations had changed so that judgments are made within the context of the 1998 Human Rights Act; however, he argues that the Parades Commission Guidelines, rather than developing human rights approaches, simply adopted a “standardised, ‘boilerplated’ format for its determinations” to guard against possible judicial reviews. What the Commission has not done is to use the Human Rights Act in a more positive way to define the rights possessed by those wishing to parade and those who live in the areas of parade.\(^3\)\(^3\) Equally, the police have become cognizant of the new environment and they have also begun couching their decisions using the language of rights.


\(^3\) Hamilton, Jarman, and Bryan, Parades, Protest and Policing (cited in note 24).

\(^3\) Id.

There is another very distinctive, and controversial, rights-based approach that is being taken with a view to managing relationships between the communities in Northern Ireland. The 1998 Multi-Party Agreement is a consociational type agreement recognizing the existence of two (and effectively only two) communities:

The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:

... (v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities.34

Note the key phrase: “both communities.” Whilst the Agreement goes on to use the language of plurality and diversity it is essentially a political agreement designed to regulate the two political blocks, Unionism and Nationalism, which represent the Protestant and Catholic communities. Bell has described the Agreement as “a masterpiece of ambiguity, violating all rules of legal drafting.”35

Within the Agreement are provisions for an Assembly to be run using a system of weighted voting, effectively requiring consent from “both communities.” These are, according to the Agreement, to help ensure “that all sections of the community are protected,” although only two communities are named.36 Parties self-designated as “other” are therefore effectively irrelevant from any key votes unless they have redesignated themselves “Nationalist” or “Unionist.” This, again, replicates the reality of communal politics in Northern Ireland. The Agreement affirms the importance of human rights and lays down the basic terms of reference for the Northern Ireland Human Rights Commission to draw up appropriate legal instruments specific to Northern Ireland. Again, note that the Agreement specifies these additional rights are “to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem...”37

34 The Multi-Party Agreement (also known as the Good Friday Agreement or Belfast Agreement) 2 (1998).
35 Bell, Peace Agreements and Human Rights at 135 (cited in note 3).
36 The Multi-Party Agreement at 5 (cited in note 34).
37 Id at 17.
This has opened up an increasingly acrimonious debate, around and within the Northern Ireland Human Rights Commission, on how the Multi-Party Agreement should be interpreted. The Human Rights Commission produced a comprehensive consultation document on a new Bill of Rights that, as the Agreement demanded, reflects the particular circumstances of Northern Ireland. The introduction to the consultation document encapsulates the issue:

So it must recognise and guarantee parity of treatment and esteem for members of the two main communities. But it must also avoid the risk of institutionalizing the division between these communities. And it must protect the rights of smaller communities and of those who do not want to be treated as belonging to any particular community.

Quite simply, some believe that naming group rights will help manage the conflict whilst others believe the claims made for group rights are simply part of the struggle: particular communities are being indulged and the conflict being sustained. Harvey, a supporter of the consociational approach, has argued that “[t]he aim of this conflict management approach . . . is to get the two main communities (that really exist) to work together over time within all the new institutions.” He goes on to point out that an approach favoring “multi-ethnic integration” carries little support in Northern Ireland and that the Bill of Rights must reflect the core idea within the Agreement that was voted on in a referendum. Wilson, a trenchant critic of both consociationalism and group rights in the form being suggested, has argued that the type of group rights being demanded are beyond those for which there is any international standard and reflects a communalism that blights politics in Northern Ireland.

What is being exhibited here is, of course, a debate also being fought out by social and political theorists, as well as lawyers attempting to develop international instruments to protect different sorts of groups variously described as minority, ethnic, national, socially disadvantaged, linguistic, or religious. The Northern Ireland Human Rights Commission is presently utilizing the European Framework Convention on the Protection of National Minorities to develop strengthened rights, although interestingly they have rejected the use of the term

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“minority” for that of “community” “to avoid complaints that one or other community is being given preference over others.” This of course returns us to the discussion above on the definition of “community,” particularly when the Commission has already argued for “specific guarantees for the two main communities” in line, as Harvey argues, with the Multi-Party Agreement.

The Northern Ireland Human Rights Commission consultation document, an attempt to present a possible Bill of Rights for Northern Ireland, recommended no additions to Article 11 of the ECHR that most centrally deals with parades. They do recommend the following clause:

5. The government and public bodies shall, without prejudice to existing legal requirements . . . adopt effective and appropriate measures to:

- promote equality in all areas of economic and social, cultural and political life among and between persons belonging to national, ethnic religious or linguistic communities and the conditions necessary for them to maintain and develop their culture;
- preserve the essential elements of the identity of such persons, namely their religion, language, traditions and cultural heritage; and
- promote tolerance and mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of their cultural, ethnic or linguistic identity, in particular in the fields of education, culture and the media.

Returning to the original communal problem: do these human rights approaches offer us any likely resolution over the conflict between the rights of Protestant Orangemen to follow their “traditional” route and the rights of Catholic, Nationalist residents who feel threatened by what they argue is the intolerance and bigotry of the Orangemen? The answer seems to be that it does not. By the Northern Ireland Human Rights Commission’s own argument, we are not dealing with minorities but rather with communities. And whilst Northern Ireland is certainly dealing with the legacy of discrimination and well-entrenched sectarianism, the relationships of power between local communities all over Northern Ireland vary widely. Management of this area of communal conflict will not be found using group rights. The evidence also suggests that whilst human rights approaches are important in managing conflict, their utility is often limited.

Looking at the parades disputes, what human rights approaches have been good at is holding the state accountable for the activities of the police and of its commissions and officials. In no small part thanks to human rights NGOs such as the CAJ, who had legal observers at Drumcree and other disputes, the RUC

42 Northern Ireland Human Rights Commission, Making a Bill of Rights for Northern Ireland at 27 (cited in note 38).
43 Id at 25.
44 Id at 28.
Parading Protestants and Consenting Catholics in Northern Ireland have improved their policing in a number of significant ways, such as in the use of force and the display of identifying numbers on vehicles and police officers. Equally, the Parades Commission has couched its determinations with at least some thought to the language of rights. But human rights instruments are not nearly so effective in providing guidance for inter-communal disputes. They can provide a basis upon which the representatives of the state can behave, but they do not solve the communal conflict itself. Whatever views one might have of the attempts by the UK government to deal with parade disputes, it is unlikely that courts in Europe or in the UK would strike down the broad approach.

VI. CONCLUSION

There is a growing body of literature that looks at the tension between meditative approaches to conflict management and human rights approaches. Few people would deny the necessity of both but their relationship can be difficult. The conflict in Northern Ireland takes place within a number of spheres, ranging from a fundamental dispute between states and peoples over the political status of six counties to antagonisms born out of cultural identity politics, to religious and political differences as well as challenges to the sense of localized territory. What has been called the peace process has, in actuality, been an attempt to manage the conflict with a desire to overcome political differences and create a new political entity. This paper has attempted to explore the way in which human rights have been used as part of that process of conflict management surrounding disputes over parades.

The disputes over parades encapsulate many of the elements of the wider cultural conflict. It has demanded a military response to deal with a developing conflict. It has required reform of the state institutions and the development of new institutions better in a position to manage the conflict. And it has demanded that basic fundamental rights are made explicit and protected by the state. Up to this point, some regulation of the conflict has taken place. But so far it is similar to the building of peace walls around Belfast in that it is simply managing difference, not overcoming the divisions that underlie the conflict. That can only be done through the creation of social bonds that create interdependence between the communities. The notions of basic human rights may provide a basis for that society, but if they are to provide more than that, a

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much more sophisticated notion of the relationship between human rights and peace building is demanded.

There seem to me to be aspects of conflict that rights approaches deal with well, and aspects of conflict that need to be managed in other ways. Bell has shown the use and limitations of international human rights instruments through a range of recent peace agreements. Human rights approaches are good at dealing with the state but they have been less successful at providing ways of managing conflicting communities or giving clear guidance on the regulation of disputes between groups. So, for instance, in the parades disputes they have offered guidance on policing but less so on making determinations. Group rights may have some utility in protecting small minorities, but in contemporary Northern Ireland they simply provide competing groups with more weapons with which to fight one another. What we need to do is lower our expectations of the utility of human rights approaches, both individualistic approaches and those protecting groups. They may only provide broad parameters for managing and resolving the conflict. Indeed, we need to be aware that whilst legislation protecting minorities is vital in all societies, the enshrining of group rights in certain circumstances will provide another avenue for ethnic entrepreneurs and communal struggles to replicate.

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46 See generally Bell, *Peace Agreements and Human Rights* (cited in note 3).