THE PROTECTION OF HUMAN RIGHTS:

LESSONS FROM NORTHERN IRELAND

THE PAUL SIEGHART MEMORIAL LECTURE 2000

British Institute of Human Rights
King's College, London, 6 April 2000

Professor Brice Dickson, Chief Commissioner,
Northern Ireland Human Rights Commission

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Mr Chairman, My Lords and Ladies, Ladies and Gentlemen…

Thank you very much, Sir Stephen, for that kind introduction. It is indeed a signal honour to have been invited here this evening to give this lecture. I did not ever meet Paul Sieghart but of course I knew him by repute. When I first took a serious interest in human rights law many years ago his was a name which featured prominently in a lot of the literature. I know that he combined great intellectual rigour with tremendous personal energy and helpfulness. In 1989, when I was helping to start an LL.M. programme in Human Rights Law at Queen's University in Belfast, his name became even more familiar to me through his handy pocket-book introduction to international human rights law *and* through his massive treatise on the subject which was then the bible for all postgraduate students. It is therefore a privilege to have been asked to commemorate Paul Sieghart's name tonight. I am also extremely gratified to see so many people here tonight – and such a distinguished audience at that!

I should make it clear at the outset that my talk this evening is *not* given on behalf of the Northern Ireland Human Rights Commission. I am speaking in a personal capacity and I do not pretend that everything I say - or the way that I say it - would necessarily meet with the absolute agreement of all the other members of the Commission, of whom there are nine. We were, after all, appointed to that body as "representatives of society in Northern Ireland," with all that that entails.

In this address I want to get across one basic message. It is that failure properly to protect human rights in Northern Ireland made the troubles of the past 30 years or so *worse* than they might have been. An important lesson we can draw from those terrible years of conflict is that abuse of human rights exacerbates such a situation - it helps to feed it and prolong it. I do not deny there were many other factors which prolonged the conflict, and I do not claim that by addressing human rights concerns in a more concerted way the Government could have ensured that the paramilitary forces would have brought their violence to an end sooner, but I do claim that a failure on the part of the authorities to properly address human rights concerns made reaching a political settlement between the parties which did not support violence all the more difficult. Side by side with this apparently deliberate shunning of a human rights approach to resolving the conflict was a regrettable lack of imagination in developing a human rights approach tailored to the specific needs of Northern Ireland, both institutionally and, in terms of legislation,

substantively. Any reforms which were introduced were piecemeal rather than *mainstreamed* into the whole course of the legal system.

The core of my message can perhaps be made more clear by resorting to a metaphor first employed in this context, I think, by Edward Moxon-Browne, now a Professor of Politics at the University of Limerick. In his seminal 1983 study entitled *Nation, Class and Creed in Northern Ireland*,[1] which was based on an extensive public opinion survey, Moxon-Browne concluded that there was not just one problem in Northern Ireland but at least six – amongst these were the tensions within the Protestant community and those within the Catholic community, as well as the tensions between people who wished to be part of a united Ireland and those who wished to remain part of a United Kingdom.. He wrote that a remedy addressed to one of the problems might exacerbate at least one of the others. He summed up his work by saying:

> "To seek a solution to the Northern Ireland problem is to pursue a mirage in the desert: a better ploy would be to irrigate the desert until the landscape looks more interesting."

My message today, therefore, is that if we irrigate the desert of Northern Ireland – which as I hope to indicate already has extensive oases of enlightenment – with a flood of human rights and equality thinking then we stand a much better chance of achieving peace, justice and stability in that part of the world – three crucial goals for any society.

In developing this message I want to divide my presentation into three parts. In Part One I will briefly examine the causes of the conflict in Northern Ireland from a human rights point of view. With the benefit of hindsight we can, I think, safely conclude that the majoritarianism principle, which reigned supreme in Northern Ireland from 1921 to 1972, entrenched divisions and provoked resentment and alienation. In Part Two I will reflect upon some of the human rights issues which arose *during* the worst years of the conflict, the "symptoms" of the troubles if you like. Then, in Part Three, I will focus on recent developments which, I hope, raise the real prospect of a more peaceful future for all who live in Northern Ireland. My thesis is that it will be a more peaceful future *because* - or at any rate *partly* because - human rights and equality concerns are now being mainstreamed.[2]

Part One - The Causes of the Conflict

I will not attempt in this section of my address – "The Causes of the Conflict" - to analyse the many theories that have been propounded on what the conflict in Northern Ireland is all about. For present purposes the conflict is perhaps best reduced to something quite simple: there are those in Northern Ireland who want to be Irish and there are those who want to be British – the challenge for the policy- and law-makers is to recognise that duality – as well as the position of those who want to be both Irish and British – and to devise policies and laws accordingly. I do not think the legal system over the years has adequately reflected the rights to those national identities.

The legal system, during those years of Unionist rule, was *supposedly* a neutral system holding the ring between the state in one corner and opponents of the state in the other. The reality, however, was different. In their early book on the legal system entitled *Law and State* (1974), Kevin Boyle, Tom Hadden and Paddy Hillyard explained how the political and legal structures in Northern Ireland failed to respond adequately to the civil rights campaign which started in the 1960s. Their study shows clearly that in the early years of the troubles, when the army had primacy as regards the control of law and order, the soldiers misused the system in pursuit of their own military security policy. It goes on to examine the operation of the arrest powers, the internment policy and, the prosecution system. The authors argue that the legal system in Northern Ireland was being used as an instrument of repression and that the authorities were oblivious to the fact that the conditions in which repression can work are strictly limited.

What is now incontrovertible is that there was discriminatory treatment of Catholics during most of the Stormont era. Whether it was deliberate or not, whether it was systemic or not, is not the point. The point is that the *effect* of unequal treatment was keenly felt within one section of the community. And, just as bad, the legal system was seen as being powerless to redress the imbalance. It could not counter gerrymandering of electoral boundaries, it could not counter unfair allocation of housing, it could not interfere with the hiring and firing policies of public, let alone private, employers. One of John Whyte's early contributions to the debates in Northern Ireland was his article enitlted "How much discrimination was there under the Unionist regime, 1921-68?" In it he undermines the revisionists who, even today, would claim that the discrimination was all in the mind. He aligns himself with Professor John Darby's opinion which he describes as "fractionally sharper" than that of Patrick Buckland. In Buckland's view:

> "The Unionist regime was neither as vindictive nor as oppressive as regimes elsewhere in the world with problems of compact or irredentist minorities. The fact remains that, owing to local conditions, the power of the government was used in the interests of Unionists and Protestants, with scant regard for the interests of the region as a whole or for the claims and susceptibilities of the substantial minority."[3]

As Buckland implies, a legitimate question to ask of this period is whether there were many other legal systems in the world which would have coped better with the kinds of divisions exemplified in Northern Irish society. Not many other societies had been left split along such sectarian lines as Ireland was by the 1920 settlement. I venture to suggest that most other systems would, in retrospect, be seen to have failed too. For most of the 20th century there was not the realisation that legal systems can be forces for good, that they can be instruments for allowing societies to gel together as well as instruments for adjudicating upon disputes and laying down rules and regulations. Above all, at any rate in common law systems, there was not a set of human rights principles in place which could be actively applied in legal practice.

Part Two - Fuelling the Flames

Turning now to the second part of my talk, which I am calling “Fuelling the Flames”, it has to be immediately observed that in the conflict in Northern Ireland more than 3,600 people have died. Approximately 90% of these deaths were at the hands of paramilitaries.[4] This is the context against which the reaction of the state authorities has to be assessed. The context may not excuse the reaction, but it does help to explain it. I should add at this point that even when examined in its own terms the use of violence in Northern Ireland can be shown to have been counter-productive. This is almost self-evidently the case for Loyalist violence, which has deepened the frustration of people living in Great Britain who would otherwise have favoured the maintenance of the Union. It is also, in my view, and in the view of Moxon-Browne and the people canvassed in his opinion survey, the case for Republican violence. This point has been eloquently made by the West Belfast journalist Malachi O'Doherty. In his aptly named book, *The Trouble With Guns*,[5] he observes:

> "It is possible to see that there has been huge injustice in Northern Ireland without holding it responsible for IRA violence. It is also important to see that the IRA campaign was honed to be an efficient party political instrument for preventing reconciliation, rather than delude ourselves that it is merely a symptom of the pain of excluded people…I will tell [my children and theirs] that [the IRA campaign] was a wasteful and horrid business. But the price of ending it may be a reassessment of our history to allow for it."

One of the earliest responses to the paramilitary violence was internment without trial. Between 1971 and 1975, when the policy was reversed, no fewer than 2,158 internment orders were issued.[6] I had thought it was now almost universally acknowledged that a reintroduction of internment, however it is dressed up, would be like pouring petrol on to smouldering embers in Northern Ireland. I was therefore all the more disappointed to read that some MPs and Peers are in favour of an amendment to the Terrorism Bill currently going through Parliament which would make internment a government option once again.

Another strategic response to the violence was the use of "supergrasses", the phenomenon whereby paramilitary informers were granted immunity, or at least special treatment, if they testified against former colleagues. What made this tactic so unacceptable was not the use of informer evidence *per se* (without it criminal courts could not function, even in this part of the country) but the use of it on such a grand scale - with so many defendants being charged on the word of one informer - and in the absence of other strong evidence. To their credit the judges in the Northern Ireland Court of Appeal eventually brought the supergrass system to an end by holding that nearly all of the initial convictions based on supergrass evidence were unsafe and unsatisfactory.

Then there were the "shoot to kill" allegations.[7] This matter is currently before the European Court of Human Rights, which earlier this week declared a series of cases admissible against the UK government. My own Commission was permitted to make a third party intervention in that case. There is a suggestion that there was a policy in place

whereby the army and/or police in Northern Ireland, when engaged in anti-terrorist work, were directed to fire first and ask questions later.[8] Whether there ever was such a policy may never be established; what amounts to a policy in the first place is in any event a moot point. But it is at least possible - I would even say probable - that there was a tolerance at a high official level of a certain way of proceeding which did not pay as much attention as it should have done to the right to life of suspects. I am the first to admit that the average person in the street may not find much to object in, say, the three IRA terrorists at Gibraltar being killed by the SAS in the way that they were in 1988. But such an opinion would, we have to remember, be based on incomplete information. I do not need to remind this audience that the European Court of Human Rights eventually held that the UK authorities had breached Article 2 of the European Convention in that case by not taking more care over how the capture of the three individuals was organised.[9] Strangely the European Court absolved the soldiers who fired the shots from any personal responsibility, and the Ministry of Defence from any vicarious responsibility; to me that is a conclusion which sits uneasily alongside the Nuremburg principle whereby obedience to orders is no excuse. That would also be the position under the domestic British law of murder. Perhaps the outcome of the case illustrates the limitations of the Strasbourg system.

There are question marks over the way in which the emergency arrest powers provided by the PTA and EPA were exercised in the 1970s and 1980s. Throughout that period no fewer than about 75% of all such persons arrested were not charged with any offence, and many of those who were charged were charged with non-terrorist related crimes. The search powers were also abused. In 1973 alone some 75,000 homes were searched - nearly 20% of all houses in Northern Ireland at that time![10]

The Government eventually put in place a review mechanism for the emergency laws. Eminent lawyers were appointed to conduct these every year and occasionally there were larger scale reviews. The names of Shackleton, Jellicoe, Baker, Bennett and Colville are some of those which feature prominently in this regard. To my mind, however, nearly every one of those reviews was flawed because the reviewers did not focus on two key questions: (1) was the emergency power in question really necessary in the sense that the ordinary criminal law could not achieve the same ends, and (2) was the emergency power in question proving effective in practice? To my mind these questions could only have been fully answered if a proper research exercise had been conducted on a large number of sample cases where the powers had been used. The reviewers, I believe, were always that bit too ready to accept the word of security advisers who, of course, had a vested interest in retaining the widest possible powers for themselves. Lord Lloyd's more recent review of anti-terrorism laws is better in this respect than most, but the present reviewer of the PTA and EPA is not, in my view, as meticulous as he needs to be. What undoubtedly happened in practice during the 1970s and 1980s was that the police began to resort to the emergency powers in situations where the criminal law's ordinary powers would have sufficed quite well. In this context it is worth noting that suspects arrested under the PTA were not taken to ordinary police stations - even after the fundamental reform of police custody arrangements brought about by the PACE legislation (introduced in 1986 in England and Wales and in 1990 in Northern Ireland) - but to

holding centres or police offices. There was never, and there is still no, statutory basis for these special holding centres. I am glad that the RUC Chief Constable felt able to announce the closure of the Castlereagh Centre in December 1999. What is strange, and revealing, is that the decision appears to have been his and not the Government's.

There is also, I am afraid, substantial evidence of police brutality in the holding centres. Only gradually, and grudgingly, did the Government allow detainees the right to have someone informed of their detention, or the right of access to a solicitor prior to or after an interview with the police, or audio-recording of interviews, or the assistance of an Independent Commissioner to deal with complaints (Sir Louis Blom-Cooper). Only in the last few months has video-recording been permitted of such interviews and even today there is no right of access to a solicitor *during* interviews, unlike in England and Wales. It would seem that the current Terrorism Bill preserves this distinction between detainees in different parts of the country arrested under the same law. The UK lost two important cases in Europe on detention of suspect terrorists - the inter-sate case (*Ireland v UK*)[11] and the *Brogan* case.[12] The former did not, I regret to say, put an end to mistreatment in holding centres but only to the peculiar five techniques at issue in that case (hooding, exposure to noise, deprivation of food and drink, deprivation of sleep, and enforced standing against a wall). The *Brogan* case (on the seven day detention power) led the Government to derogate from the European Convention, a derogation which the European Court itself upheld in the subsequent case of Brannigan and McBride.[13] There are many who believe that the European Convention on Human Rights did not cover itself with glory in the many cases brought under it from Northern Ireland during the years of conflict.

It has to be admitted that the system for dealing with complaints against the police was somewhat of a joke. The police investigated themselves and the standard of proof required for all disciplinary offences was that of beyond a reasonable doubt. The experience of two respected Catholic priests in this regard (Fathers Denis Faul and Raymond Murray[14]), each of whom lodged hundreds of complaints and had none of them substantiated, is worth remembering in this context. If we take the years 1993 to 1996, just by way of example, we see that there 929 complaints made by people arrested under the emergency laws, including 384 allegations of assault during interview and 65 of assault prior to arrival at the holding centre. The ICPC was not able to substantiate even one of these complaints: in 1995 a detective sergeant was "admonished" for his interviewing technique and in two other cases "constructive discussions" took place with four officers. Ladies and gentlemen, that is not the kind of accountability system which we are entitled to respect in a modern democracy committed to the rule of law.

Another controversial matter was - and remains - the juryless Diplock Courts. These courts mean that there is one kind of criminal justice for one type of offender and another kind for another type. This inevitably produces an inequality - or at any rate differential treatment - "separate but equal" treatment perhaps. In fact, research shows that the Diplock Courts may not have led to any more miscarriages of justice than the ordinary courts.[15] There was, and to some extent still is, a very real risk of intimidation of jurors, and it was right that this be recognised. But there was, again, a certain lack of

imagination on the part of the authorities in dealing with that problem. Simply removing juries altogether was a drastic step indeed. A review of the Diplock Court system is under way at present and my own Commission has made practical suggestions as to how the system could be altered while still taking account of the reality of intimidation.

It could be argued, moreover, that the *judges* in Northern Ireland were more than usually conservative in their approach to arguments based on human rights. I do not myself share that view. For one thing, as Professor Stephen Livingstone from Queen's University has pointed out, the judges in the House of Lords were frequently much more conservative than the Court of Appeal judges in Northern Ireland in the dozen or so cases that wended their way to the highest court from Belfast.[16] For another, the judges in Northern Ireland actually preserved human rights in the face of quite severe executive and Parliamentary pressure by, for example, preserving on the prosecution the onus of proof in possession cases,[17] by insisting on retaining their discretion to exclude evidence as inadmissible even though it complied with a statutory admissibility test,[18] and by holding that a person's detention becomes unlawful once the police cannot show that the person was not physically assaulted while in custody.[19] In other respects the judges were not so forthcoming, for instance in recognising a common law right in all detainees to have a lawyer present during interviews with the police. In their use of the European Convention of Human Rights as an aid to development of the common law I think they did not match the (albeit occasional) ingenuity of their English brethren. But again the context in which Northern Irish judges had to work should not be forgotten in any of this analysis: the constant threat to their lives and to those of their family, the seclusion in which they had to live because of the security threat, must be difficult for anyone to comprehend who has not lived in Northern Ireland. I have confidence that the judges in Northern Ireland will embrace the new Human Rights Act every bit as enthusiastically as the judges here. Already one High Court judge has quashed a vesting order largely because the relevant Government department had not consulted properly with the persons affected by the order, as required by Article 6 of the European Convention.[20]

In the face of all these criticisms of the legal system in Northern Ireland, was there any attempt to introduce reforms? Yes, there was, but in a rather half-hearted way. The changes that were made were often too little and too late. In this respect the Stormont Government of the late 1960s and early 1970s, the Labour Government of the mid-1970s and the Conservative Government throughout the 19890s were all just as bad. The Stormont Government created the posts of Parliamentary Commissioner for Administration and Commissioner for Complaints; they also set up a Police Authority for Northern Ireland. 1973 saw the formation of the Standing Advisory Commission on Human Rights, one of the first such bodies of its kind in the world, a body that was able to do much valuable work in the following 25 years only to find itself largely ignored by the Governments of the day. In 1976 the Fair Employment Agency was formed to help deal with religious and political discrimination in the workplace, and in 1989 this body was transformed into a more powerful Fair Employment Commission. NGOs began to take more of an interest in Northern Ireland, especially Amnesty International, the NCCL and Human Rights Watch.[21] Legal academics began to take more of an interest too,[22] although few campaigning practitioners emerged.

I do not want to exaggerate the part played by the failure to address human rights concerns. It goes without saying, I hope, that a decision on the part of the paramilitaries to put an end to their obnoxious campaigns of violence would have helped enormously to alleviate concerns, certainly if this had been part of a deal which included the slackening of some of the emergency laws. The saddest thing is that the emergency laws became political bargaining chips. To some extent, I regret to say, they still are. This is morally indefensible and, in my view, also politically unwise. Lawyers everywhere should not be silent when emergency laws are being kept in place for political ends.

Part Three - Positive recent developments

Turning to the third and final part of my talk - recent developments - I can strike a more optimistic note. There has been a sea-change in the legal system of Northern Ireland in the last few years, largely driven by the GFA of 1998, the second anniversary of which we celebrate on Monday of next week.[23] It has been driven as well by the paramilitary ceasefires - the Loyalist one in place since the autumn of 1994, the IRA one in place from July 1997 (following the ending of the first 1994 ceasefire with the bomb at Canary Wharf in February 1996). The context has therefore changed and this has given room to the authorities to make changes to the legal system. It is implicit, if not explicit, in what I said in Parts One and Two that the authorities did not have to wait for the ceasefires to do many of the things they are now doing. They are things worth doing in their own right, not because they are being traded for ceasefires. Indeed one of the most disappointing features of the years of the troubles has been the tying of legal reform to the political agenda of the day. When the NIHRC is told that it would not be appropriate for the emergency laws to be relaxed not because of security risks but because of political fall-out, then the rule of law clearly is in jeopardy.

The fact that the reforms could have been forthcoming anyway is borne out by the fact that violence has not in any event ceased in Northern Ireland. Between the GFA and today over 50 people have been killed as a result of paramilitary activity, including 29 at Omagh in August 1998. So-called paramilitary punishment attacks also continue and every right-thinking - not to say *rights-thinking* – person would and should condemn those out of hand. The provisional police figures on these forms of attack for 1999 show that there were 73 shootings and 134 beatings; there were roughly twice as many perpetrated by Loyalist paramilitaries as by Republicans.[24] When 13 year old boys have their limbs broken by paramilitary thugs, when nail-studded baseball bats are used as instruments of chastisement, and when people are forced to leave not just their home but their country because of threats, all of us in the human rights field must surely express our abhorrence.

What, then, are the main features of the new legal landscape, to revert to Eddie Moxon-Browne's terminology?

Central to the new arrangements are the two major reviews which have already been conducted into policing and the criminal justice system. The Patten Commission Report

and the Report of the Criminal Justice Review Group - the latter published just last week - each put human rights thinking at the forefront of the plans for the way forward. Both bodies are to be congratulated for asserting this set of values and the challenge now is for those who are responsible for implementing the changes to ensure that the human rights thinking recommended by the reports permeates every aspect of the policing and criminal justice systems. It ought to affect training, internal preferment, accountability mechanisms and community partnerships. The many agencies involved in criminal justice work must play their part in this culture change - the Probation Service (or the Community Punishment and Rehabilitation Service as we may soon have to call it), the Prison Service and the Court Service to name but three in Northern Ireland. Likewise, any community-based initiative on criminal justice, such as restorative justice schemes, must be very firmly rooted in human rights thinking.

The creation of the Police Ombudsman's office is another real step forward. Although this derives from the Hayes Report on police complaints, which pre-dates the GFA by two years - it has been endorsed by the Patten Commission and is to come on stream in October of this year. I have every confidence that the person appointed to the role - Mrs Nuala O'Loan - will perform her duties with utter integrity and dedication. The lowering of the standard of proof required in disciplinary matters will at last bring police officers into line with other professionals. But the fact that the Police Ombudsman will be able to direct that complaints are investigated by persons other than police officers is likely to make the biggest difference.

The creation of the Criminal Cases Review Commission[25] is also a great boon for the Northern Irish legal system. Already cases have been referred back to the NI Court of Appeal as a result of the Commission's investigations and convictions have been quashed. The setting up of such a body - largely prompted, we should not forget, by the terrible instances of injustice suffered by groups of Irish people in this country - provides an invaluable backstop against mistakes (or worse) on the part of the police, prosecutors, forensic scientists, judges and juries.

The new dispensation in Northern Ireland has also allowed for more attention to be paid to victims of violence. A Victims' Commission[26] has reported on what steps could be taken to improve the position of victims and another Committee - chaired again by Sir Kenneth Bloomfield - has made a number of recommendations for changes to the criminal injuries compensation system. My own Commission - the Human Rights Commission - has decided to establish a Victims' Rights Project to look at the rights of victims of violence and how they could be improved. It is surely appropriate that in the new rush to apply human rights and equality thinking in Northern Ireland - not that it has been *entirely* absent heretofore - pride of place should go to those who have suffered most in the troubles, i.e. those who have been maimed, disabled, injured or bereaved. This applies to all the victims - victims of Republican violence, of Loyalist violence and of state violence. Two other initiatives - the Location of Victims' Remains Commission, which is searching for the bodies of the dozen or so individuals who were kidnapped and murdered by the IRA - and the second Bloody Sunday Inquiry[27] also deserve to be mentioned here. Both are positive developments even though from a purist human rights

point of view there may be dubious aspects to the arrangements that have been made - such as the rule that information supplied during the search for victims' remains cannot be used against the supplier of the information in subsequent criminal proceedings[28] and the rule that certain soldiers at the second Bloody Sunday Inquiry will be able to testify anonymously.[29] The second Bloody Sunday Inquiry, on-going at present, perhaps epitomises what was wrong with the approach of the legal system - the British as well as the Northern Irish - in the 1970s and 1980s: there was a reluctance even to countenance wrongdoing by the state - that “appalling vista” syndrome which affected even the much admired Lord Denning in relation to the Birmingham Six case - and an unwillingness to put in place mechanisms to get at the truth effectively. A recent book by Professor Dermot Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland*,[30] makes a strong case for the view that the rule of law was sacrificed in Northern Ireland in order to achieve the result desired by the political and security establishments.

There are other new bodies in Northern Ireland, like the Parades Commission,[31] the International Commission on Decommissioning and the Sentence Review Commission. There are proposals in the latest Criminal Justice Review Group Report for the creation of a Law Commission and a Judicial Appointments Commission. Some believe that there is room for a Truth and Reconciliation Commission,[32] though I am not myself among them at this time. Most importantly for present purposes, there are the Equality Commission and the NIHRC. Before I say a few words about each of these, it is worth remarking how ironic it is that just as Northern Ireland is gaining devolution - we hope - there is a proliferation of quangos consisting almost entirely of non-elected appointees. I am not completely certain myself that that fully accords with principles of international human rights law!

The Equality Commission is a body which brings together four pre-existing bodies which dealt with discrimination on religious or political grounds, with gender and marital discrimination, with racial discrimination and with discrimination based on disability. But more importantly the new Commission has the responsibility of overseeing the new equality duties which are imposed on designated public authorities in Northern Ireland. These duties go a long way towards the mainstreaming of equality concerns in policy- and law-making in Northern Ireland, a goal which many activists both in Northern Ireland and here in England - I am thinking in particular of Professor Christopher McCrudden at Oxford - have been campaigning for. The new so-called section 75 duties will require designated public authorities to publish "equality schemes" in which they demonstrate to the Equality Commission's satisfaction how, for example, they will have due regard to the need to promote quality of opportunity between men and women, between different religious and political groups, between those of different age or sexual orientation, between those with a disability and those without, and between those with dependants and those without. There is also a duty to have regard to the desirability of promoting good relations between different racial, religious and political groups. These new duties will concentrate the mind, even if they are not justiciable in the sense of giving someone aggrieved by a scheme, or the failure to abide by a scheme, the right to go to court for a remedy. The valuable work of SACHR in reviewing the FEA 1989 five to six years later, which led to the Government's White Paper *Partnership for Equality* in

March 1998, just a month before the Good Friday Agreement, and then to the Fair Employment and Treatment (NI) Order 1989, deserves special praise for helping to create the appropriate atmosphere in which these new equality duties can operate effectively.

The NIHRC is of course the body about which I can say the most.[33] But at this hour I shall be brief. We are the first and so far the only HRC in these islands, although a Bill is currently before the Irish Parliament to create a Commission there (as required by the GFA). A recent debate in the Scottish Parliament showed that there is cross-party support there too.[34] The present Labour Government *was* in favour of a HRC for the UK before it came to power. Now it purports to have an open mind on the matter and is proceeding cautiously by supporting the establishment of a Joint Parliamentary Committee, one of the first tasks of which will be to consider whether a HRC should be created for the UK, or at any rate for England and Wales. If one were created, the UK would be joining a growing world club because HRCs have proliferated in places as far apart as Mexico and Indonesia, Kazakhstan and South Africa.

The NIHRC has the potential to be a great force for good in Northern Ireland. Through engaging in educational work on what human rights and responsibilities mean, through giving the Government - in London or in Belfast - well-thought out and constructive advice on policy and legislative initiatives, and through strategic employment of its investigative and litigating powers, the Commission can help to establish that much vaunted but rarely clearly identified phenomenon known as a human rights culture. The creation of such a culture was the subject of one of the brilliant Hamlyn Lectures delivered by Professor Claire Palley in 1990. She was careful to point out at that time that unless public administrators - as well as lawyers - are imbued with human rights ideas, the result will be lip-service to, rather than genuine respect for, human rights. She realised at the same time the enabling role of human rights thinking. "Perhaps after all", she said, "human rights thinking is yet another Hobbesian manifestation: it leads to voluntary co-operation rather than to mutual damage".[35] The fact that the Department for Education and Employment in Great Britain has decided to include human rights in the citizenship element of the national curriculum as from September 2002 is to be warmly welcomed. I trust that *at least* as much can be done in Northern Ireland.

One of the HRC's most crucial duties is to advise the Government on what scope there is for defining rights in Northern Ireland supplementary to those in the European Convention. These supplementary rights are to reflect the particular circumstances of Northern Ireland, draw upon international instruments and experience and reflect the principles of parity of esteem and mutual respect for the identity and ethos of both communities in Northern Ireland. Together with the European Convention the document enshrining these supplementary rights is to form a Bill of Rights for Northern Ireland. There is a real challenge in this: we will have to engage in the kind of imaginative thinking which I have accused others of avoiding in the past. The Commission has already launched its consultation exercise on this Bill of Rights, which it wants to be as inclusive and participative as possible. I very much hope that, in a year's time, when we deliver our final advice to the Government in London, it will be acted upon swiftly and fully. The idea of a Bill of Rights for Northern Ireland is by no means a new one - many

political parties and community groups have been campaigning for one for years, and as far back as 1977 the SACHR produced an excellent report setting out the benefits such a Bill would bring to Northern Ireland. That we are arguing for it almost full 25 years later epitomises the point I am trying to make tonight about lost opportunities and wasted moments.

It would not be fair to complete this survey of recent developments without paying tribute to the foremost civil liberties organisation in Northern Ireland - the CAJ. Although stubbornly misunderstood in some quarters - and unfairly maligned on occasions - the CAJ has fully deserved the recent award of the Council of Europe's Human Rights Prize. Its professional approach to issues and its unbending adherence to international principles have rightly brought it much praise and gratitude from governments, political parties, community and voluntary organisations and individuals. The dynamism of the CAJ played a crucial role in ensuring that human rights formed a central part of the 1998 peace settlement. On this side of the Irish sea I would also like to pay tribute to the excellent work of British Irish Rights Watch, and of its Director, Jane Winter, in particular.

Nor would it be fair to end this last part of my address without mentioning some of the on-going worries which human rights activists still have in Northern Ireland. There are concerns over collusion between the police and Loyalist paramilitaries (in this regard the murder of the solicitors Patrick Finucane and Rosemary Nelson are particularly troublesome): the Human Rights Commission wants to see an independent judicial inquiry into Mr Finucane's death and thinks that a similar inquiry may well be necessary in due course in relation to Mrs Nelson's death. We believe, too, that threats are still being made by police officers with respect to certain solicitors.[36] The Commission is also concerned that the prosecution system appears to be failing in some respects. We are in discussions with the Director of Public Prosecutions to see what positive, rights-based changes can be made to law and/or practice in this regard. I hope that the new Freedom of Information legislation will help to facilitate such changes. The Commission is looking too at the juvenile justice system, at the use of plastic bullets and at the law concerning the mentally ill.

Conclusion

Tonight I have attempted what is inevitably a very brief synthesis. Having posited that the causes of the conflict in Northern Ireland can be attributed in part to a short-sightedness as far as human rights norms are concerned, I continued by trying to show that the really difficult and dangerous period - the 1970s and 1980s - was marred by what might best be described as a studied indifference to the centrality of internationally accepted rules and principles for the protection of human rights and equality. I very much hope that in the months and years to come the new institutions in Northern Ireland - including the Northern Ireland Assembly once it has been freed from its current state of suspended animation - will demonstrate that a new landscape has indeed been fashioned out of the desert, that new channels of irrigation are indeed flowing in a way and in a direction that will give life to parts of society that for too long have lain under-developed

and that all the public bodies responsible for making Northern Ireland a good place in which to live will take those responsibilities very seriously.

At this juncture it is appropriate to mention the coincidence that the European Convention on Human Rights is being incorporated into Northern Ireland law - as it is into English law - as from 2 October 2000 (in fact before then if devolution is restored). [37] That is clearly a hugely important event in England and Wales. I venture to suggest that it may be less so in Northern Ireland because lawyers there are already very familiar with what is or is not a "runner" as far as the Convention is concerned. That is another lesson which Northern Ireland has been able to teach us during the past 30 years. The judges in Northern Ireland, especially with the prompting of the Human Rights Commission, have an opportunity now to apply other international standards on human rights to supplement those in the European Convention. This would put into effect the well-known Bangalore Principles of 1988, drawn up by a panel of very distinguished judges from all over the Commonwealth. Principle 4 of the Bangalore Principles recognises that there is a growing tendency for national courts in common law countries to have regard to international norms for the purpose of deciding cases where the domestic law - whether constitutional, statute or common law - is uncertain or incomplete.

In conclusion, ladies and gentlemen, the price of liberty, as we all know, is eternal vigilance. I would dare to add that in Northern Ireland the price of peace is full and honest adherence to human rights principles. The violence perpetrated by the paramilitaries during the years of troubles was - and still is today - terrible. But this cannot justify the inappropriate use of state violence nor a lack of determination to ensure that the human rights of everyone in Northern Ireland are fully and equally protected.

[1] Gower, Aldershot.
[2] Paul Mageean and Martin O'Brien, "From the Margins to the Mainstream: Human Rights and the Good Friday Agreement" (1999) 22 Fordham International Law Journal 1499 and Christopher McCrudden, "Mainstreaming Equality in the Governance of Northern Ireland" *ibid*. 1696.
[3] John Whyte, in Tom Gallagher and James O'Connell (eds), *Contemporary Irish Studies* (1983), p.30.
[4] Martin Dillon and Denis Lehane, *Political Murder in Northern Ireland* (Penguin; 1973); Martin Dillon, *The Enemy* Within (Doubleday; 1994); Alan Simpson, *Murder Madness: True Crimes of the Troubles* (Gill and Macmillan; 1999)
[5] Blackstaff Press; 1998.
[6] Paddy Hillyard in John Darby, *Northern Ireland: The Background to the Conflict* (Appletree Press; 1983), at p.39.
[7] Mark Urban, *Big Boys' Rules: The SAS and the Secret Struggle against the IRA* (Faber and Faber; 1992)
[8] Fionnuala Ni Aolain, *The Politics of Force* (Blackstaff Press; 2000).
[9] *McCann v UK* (1996) 21 EHRR 97.
[10] Paddy Hillyard in Darby, note 6 above, at p.41.
[11] (1979-80) 2 EHRR 25.
[12] *Brogan v UK* (1989) 11 EHRR 117.
[13] (1994) 17 EHRR 539.
[14] *E.g.* Raymond Murray, *State Violence: Northern Ireland 1969-97* (Mercier Press; 1998)
[15] John Jackson and Sean Doran, *Judge Without Jury* (Oxford University Press; 1995).
[16] "The House of Lords and the Northern Ireland Conflict" (1994) 57 *Modern Law review* 333.
[17] *R v Killen* [1974] NI 220.
[18] *R v O'Halloran* [1979] 2 NIJB.
[19] *In re Gillen's Application* [1988] NI 40.
[20] *R v Department of Enterprise, Trade and Industry, ex parte Cowan* (December 1999; as yet unreported).
[21] See, e.g. *Human Rights in Northern Ireland* (1991).
[22] See, e.g., Dermot Walsh, *The Use and Abuse of Emergency Legislation in Northern Ireland* (The Cobden Trust), largely based on a survey of all 170 individuals whose trials began in the Diplock courts in Belfast in the first three months of 1981.
[23] Paul Bew and Gordon Gillespie, *The Northern Ireland Peace Process 1993-1996: A Chronology* (Serif; 1996)
[24] *Annual Report of Base 2* (NIACRO; Belfast), p.14.
[25] Siobhan M. Keegan, The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland", (1999) 22 Fordham International Law Journal 1776.
[26] See Sir Kenneth Bloomfield, "How should we remember? The work of the Northern Ireland Victims Commission", ch. 5 in Brandon Hamber (ed.), *Past Imperfect: Dealing with the past in Northern Ireland and societies in transition* (INCORE; 1998); Marie Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland's Troubles: The Human Costs* (Pluto Press; 1999)
[27] See Kara E Irwin, "Prospects for Justice: The Procedural Aspect of the Right to Life under the European Convention on Human Rights and its Application to Investigations of Northern Ireland's Bloody Sunday", (1999) 22 Fordham International Law Journal 1822. The transcript of the Inquiry is available at http://tap.ccta.gov.uk/bs/bsdoclibrary.nsf.
[28] Northern Ireland (Location of Victims' Remains) Act 1999, s.3.
[29] *R v Lord Saville of Newdigate, ex parte A* [1999] 4 All ER 860 (CA).
[30] Macmillan Press; 2000. See too Peter Pringle and Philip Jackson, *Those are real bullets, aren't they?* (Fourth Estate; 2000).
[31] See Tom Hadden and Anne Donnelly, *The Legal Control of Marches in Northern Ireland* (Community Relations Council; 1997): they recommended a "communal accommodation approach" to marching, whereby a set of guidelines for non-provocative marching and a set of procedures for decision making would be established; these were seen as encouraging negotiation and compromise. A Draft Code of Conduct for Peaceful Parades in a Divided Society was included (p. 72). See also Neil Jarman, "Regulating Rights and Managing Public Order: Parade Disputes and the Peace Process, 1995-1998", (1999) 22 Fordham International Law Journal 1415.

[32] Brandon Hamber, "Conclusion: A Truth Commission for Northern Ireland?", ch. 7 in Brandon Hamber (ed.), *Past Imperfect: Dealing with the past in Northern Ireland and societies in transition* (INCORE; 1998).
[33] Also, Stephen Livingstone, "The Northern Ireland Human Rights Commission", (1999) 22 Fordham International Law Journal 1465.
[34] Scottish Parliament Official Report, 2 March 2000, cols. 301 to 353.
[35] Claire Palley, *The United Kingdom and Human Rights* (Stevens & Sons; 1991), p.225.
[36] *Human Rights and Legal Defense in Northern Ireland* (Lawyers Committee for Human Rights; 1993).
[37] Brice Dickson "Northern Ireland", ch.6 in Anthony Lester and David Pannick, *Human Rights Law and Practice* (Butterworths; 1999).