

BUILDING TRUST IN NORTHERN IRELAND: THE ROLE OF CIVILIAN REVIEW OF THE POLICE

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In response to increasing concern about police brutality and abuse, governments all over the world are implementing or strengthening systems of civilian review of police conduct. The police of Northern Ireland, a province rife with conflict between the police and the citizenry, have operated under some form of civilian review of the police for several decades. Despite such review, the police have continued to be the objects of domestic and international criticism for wide-spread corruption and abuse of power.

In 1998, the British government and nationalist and loyalist parties signed the Good Friday Agreement, which stipulated the need for a study of the police system in Northern Ireland and the need for police reform. That same year, the Secretary of State for Northern Ireland appointed an Independent Commission on Policing, lead by Christopher Patten, the former governor to Hong Kong. In 1999, the Commission issued its report, which called for widespread reforms to the police system. Pursuant to this report, the British Parliament passed sweeping legislation to restructure the police force of Northern Ireland and substantially strengthen civilian review of police conduct.¹

The new legislation enacts many - but not all - of the reforms recommended by the Patten Commission. In light of failed attempts at reform in the past, it remains to be seen whether the new legislation will effect a substantial improvement in the police accountability system or whether it will prove to be yet another toothless attempt at reform.

This Article will explore the context of the current debate over policing in Northern Ireland, describe the civilian oversight protections in the newly-enacted police reform legislation, and evaluate these reforms in light of dominant theories of police review.

I. THE CHANGING FACE OF POLICE OVERSIGHT

Civilian oversight of the police stems from distrust of the police's ability to investigate themselves. This distrust - and distrust of the police in general - is particularly prevalent in minority communities, where the people feel that they are not adequately represented among the police force, and that they are

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1. See Police (Northern Ireland) Act 2000.

not sufficiently involved in police decision making processes. In the United States, this distrust of and alienation from the police percolated during the civil unrest of the 1960s and led to greater support for reform of the police.² Support for police reform waned in the 1970s but increased again during the 80s and 90s. Police reform movements in other countries have followed suit.

One of the most common products of the police reform movement has been civilian review of police conduct. As of 1992, thirty-four of the fifty largest U.S. cities had implemented some form of civilian review. This trend toward civilian review is also evidenced in other English-speaking countries.³

In perhaps the most comprehensive study of police review systems, Douglas Perez identifies and evaluates three types of police review: 1) internal review, 2) civilian monitor, and 3) civilian review.⁴ As the name suggests, internal review represents a system where investigations of police misconduct are conducted entirely within the police department itself. In the civilian monitor model, police conduct these investigations under the supervision of an independent body. In the civilian review model, the most comprehensive system of review, an independent civilian body conducts the entire investigation.⁵

In its long history of unsuccessful police reform and attempts to improve police accountability, Northern Ireland has employed each of these three forms of review, buttressed by a general oversight body and local community liaison committees. The most recent reforms of the police system in Northern Ireland have provided for a civilian review model, along with reforms to the internal operations of the police force.

In determining the type of review that is best suited for a particular locality, it is necessary to consider the culture, history, and politics of the current policing situation. The following sections will describe the political and historical situation in Northern Ireland, explain why the current structures for police accountability have been ineffective, and evaluate whether the more recent reforms will improve the system.

II. BACKGROUND

The Royal Ulster Constabulary (RUC), the police force of Northern Ireland, has been a source of conflict among the Catholic community there since its establishment in 1922. Widely criticized for its partiality and its abusive practices, the RUC has been charged with a long list of abuses ranging

2. See Andrew J. Goldsmith, *External Review and Self-Regulation: Police Accountability and the Dialectic of Complaints Procedures*, 33, in *COMPLAINTS AGAINST THE POLICE* (Andrew J. Goldsmith ed., 1991).

3. See Goldsmith, *supra* note 2 (noting the emergence of civilian review systems in Australia, Canada, Northern Ireland, England, and Wales).

4. See DOUGLAS W. PEREZ, *COMMON SENSE ABOUT POLICE REVIEW* 82-3 (1994).

5. See *id.*

from failure to prevent crimes against nationalist communities to collusion in the murders of prominent defense lawyers.⁶

While the conflict between the Irish and the British dates back several centuries, the conflict peculiar to Northern Ireland originated in 1922, when the Republic of Ireland gained independence from Britain, conditioned on the partitioning of the northern province, which remained British territory. Since this time, Northern Ireland has suffered from sectarian conflict between the majority Protestant loyalist community, who maintains allegiance to Britain, and the minority Catholic nationalist community, whose goal is independence from Britain and reunification with the Republic of Ireland.⁷

As a British province, Northern Ireland was effectively governed by its own parliament at the Stormont Castle until civil unrest broke out in the late 1960s.⁸ Unable to effectively subdue public unrest, the Stormont government collapsed, and the British government imposed direct rule and deployed British soldiers to Northern Ireland to help restore order.⁹

A multitude of factors has contributed to the tense relationship between the Catholic community, on one hand, and the RUC and the British army on the other. On a purely political level, nationalists oppose British rule in Northern Ireland *in toto*; they therefore have little or no respect for a force whose job it is to maintain the British rule of law. As a result, the nationalist community has boycotted service in the RUC almost since its inception in 1922, which has contributed to a severe underrepresentation of Catholics in the force.¹⁰ While Catholics make up over forty percent of the population in Northern Ireland, they represent only eight percent of RUC membership.¹¹

Although original plans for the RUC included a provision requiring that one-third of the officers represent the Catholic community, this level of representation never materialized.¹² The extent to which this underrepresentation is due to the nationalist boycott of the RUC and fear of ostracism by nationalist communities and the extent to which it is due to other

6. See, e.g., *The Unfinished Story of Robert Hamill*, IRISH TIMES, May 14, Nov. 1, 4, 5, 1997 (describing incident in which a Catholic man was fatally assaulted by loyalist youths as RUC officers looked on and did nothing); Committee on the Administration of Justice Report 2000 (suggesting RUC collusion in the assassinations of prominent defense lawyers Rosemary Nelson and Patrick Finucane) [hereinafter CAJ Report].

7. Not all Protestants are loyalists, and not all Catholics are nationalists; however, these categorizations are generally accurate.

8. See DERMOT P.J. WALSH, BLOODY SUNDAY AND THE RULE OF LAW IN NORTHERN IRELAND 110 (2000).

9. See JOHN DARBY, SCORPIONS IN A BOTTLE 33 (1997).

10. See JOHN MCGARRY & BRENDAN O'LEARY, POLICING NORTHERN IRELAND: PROPOSALS FOR A NEW START 10 (1999) (citing opinion polls in which Catholics cite fear of intimidation as the most frequent reason for co-Catholics' decisions not to join the RUC). *But see id.* at 14-15 (suggesting bias of polls).

11. See A New Beginning: Policing in Northern Ireland, Independent Commission on Policing for Northern Ireland, Section 14.1 (September 1999) [hereinafter Patten Report].

12. See MCGARRY & O'LEARY, *supra* note 10, at 30.

factors, such as discriminatory hiring practices and intimidation by a predominantly Protestant police culture, is subject to debate.¹³

The conflict between the Catholic community and the security forces results, in large part, from the same causes of conflict between the nationalists and loyalists in general - a host of historical, political, and socio-economic problems. From its inception in 1922, representation in the Stormont government was gerrymandered to preclude the effective representation of Catholics.¹⁴ In addition to political disenfranchisement, employment discrimination has resulted in large economic inequalities between Catholics and Protestants.¹⁵ Because high unemployment caused large numbers of Catholics to emigrate, employment discrimination was intricately connected with political domination.¹⁶

Because the unionist majority controlled the political apparatus, it also effectively controlled the courts and the police force.¹⁷ Studies conducted by the British government concluded that the RUC was effectively controlled by the Ulster Unionist Party and failed to impartially enforce the law.¹⁸ In fact, at least one reason for the deployment of British troops in 1969 was the failure of the RUC to impartially handle the political unrest.¹⁹ A report commissioned

13. While nationalists claim that they are underrepresented in the RUC because of discrimination in recruiting and hiring, unionists claim that this underrepresentation is due not only to political pressure by nationalist parties, but also intimidation by nationalist paramilitary groups. *See generally* MCGARRY & O'LEARY, *supra* note 10, at 7-15. *See also* Chris Ryder, *Boycotting NI Police a Barren Ploy*, IRISH TIMES, Jan. 20, 2000, at 16 ("The evolution of the RUC as the armed wing of unionism in the years after 1922, and the lasting rift between the police and the minority community, only became possible because Catholics then deemed the policing mechanisms unacceptable and boycotted them"); BRENDAN O'LEARY & JOHN MCGARRY, THE POLITICS OF ANTAGONISM: UNDERSTANDING NORTHERN IRELAND, 126 (1993) (noting that Catholics did not join the police "because they did not regard it as legitimate, and because they faced potential ostracism or worse from their own community" and that the ensuing imbalance was reinforced by the police affiliations with the Orange Order, an exclusively-Protestant loyalist group) [hereinafter ANTAGONISM].

14. *See* ANTAGONISM, *supra* note 13, at 119-25.

15. Although employment discrimination was officially prohibited in 1976, unemployment rates for Catholics continue to be twice as high as that for Protestants. *See* note 9, at 60, 81.

16. *See* Darby, *supra* note 9, at 29 ("The most serious general allegation in this field was that the government operated a policy of deliberate discrimination against part of the province . . . creating conditions which encouraged emigration to counter the higher Catholic birth rate in these areas."). During a depression in the 1930s, a future Prime Minister of Northern Ireland exhorted: "I recommend those people who are Loyalists not to employ Roman Catholics, 99 per cent [sic] of whom are disloyal; I want you to remember one point in regard to the employment of people who are disloyal . . . You are disfranchising yourselves in that way." ANTAGONISM, *supra* note 13, at 129. Had there not been such high levels of Catholic emigration, the Catholics would currently represent a much higher proportion of the total Northern Ireland population and thus have greater political power. *See id.* at 131.

17. In 1969, only six out of sixty-eight senior judicial appointments were held by Catholics. *See* ANTAGONISM, *supra* note 13, at 128.

18. *See* MCGARRY & O'LEARY, *supra* note 10, at 32.

19. *See id.*

by the British government found a “breakdown of [police] discipline,’ police involvement in the assault of civilians, and the use of provocative sectarian and political slogans by police officers.”²⁰

Such inequality and disenfranchisement led to major civil rights protests in the late 1960s and early 1970s. These protests, together with a growing campaign by the Irish Republican Army, invoked a harsh response by the RUC and the British army that resulted in an era of violence commonly referred to as “The Troubles.” Between 1969 and 1994, over 3,000 people were killed in Northern Ireland as a result of political violence. Of these deaths, fifty-eight percent were caused by republican paramilitary groups, twenty-eight percent were caused by Protestant paramilitary groups, and sixteen percent were caused by security forces. A majority of those killed by security forces were Catholic and about half were unarmed at the time of their death.²¹

Due to RUC abuses, many Catholics initially welcomed the arrival of British troops.²² That positive reaction, quickly faded when British troops opened fire on unarmed Catholic civil rights marchers in 1972 a massacre that later became known as “Bloody Sunday.” Although the British government conducted an investigation and produced a report vindicating the officers involved, this report has been widely criticized for covering up the fact that British troops opened fire on innocent civilians.²³ The ensuing decade of violence between the police force and the nationalist community has further deepened distrust between the two groups, making it increasingly difficult to reconcile the differences between them.

Given this dynamic, it is not surprising that public opinion surveys reveal a significant disparity in police approval rates among Catholic and Protestant populations.²⁴ Similarly, substantially fewer Catholics than Protestants believe that the police treat the two communities equally.²⁵ Only the establishment of an effective police accountability system and comprehensive reform of police operations will lead to better relations between the police and the Catholic community.

20. *Id.* (quoting the Cameron Report).

21. See AI Report United Kingdom Summary of Human Rights Concerns 1995.

22. See MCGARRY & O’LEARY, *supra* note 10, at 32.

23. See, e.g., SAM DASH, JUSTICE DENIED: A CHALLENGE TO LORD WIDGERY’S REPORT ON BLOODY SUNDAY. Interestingly, the local RUC commander had opposed the plan of containing the march, which was sure to cause a direct confrontation between the security forces and the marchers. See DERMOT P.J. WALSH, *supra* note 8 at 6. However, his opinion was overruled by the chief constable of the RUC and the British commander of land forces in Northern Ireland, and the plan to contain the march was implemented. See *id.*

24. See Patten Report, *supra* note 11, at 13.

25. See *id.* at 14.

III. PAST ATTEMPTS AT CREATING ACCOUNTABILITY

In addition to feeling as though they are the victims of unfair treatment by the police, Catholic communities also feel that they have no effective recourse for such mistreatment. Prior to 1970, the Chief Constable was solely responsible for the operations and accountability of the force.²⁶ He had sole authority over the investigation of complaints against his own police force, and regulations governing the management and control of the RUC were generally not published as statutory rules.²⁷ Although there have been several attempts at establishing and reforming a police review system since 1970, none have been particularly effective in creating accountability or increasing public confidence in the police.

More recent reforms grant greater power to oversight structures and have a greater likelihood of effectiveness. These changes in accountability have also been accompanied by major changes in the structure and culture of the police force itself.

A. *The Police Authority*

Prior to 1970, the RUC was effectively controlled by the loyalist Ulster Unionist Party. In response to findings of two government-sponsored commissions criticizing the politicization and ineffective complaints system of the police,²⁸ and in an attempt to quell the civil unrest and conflict between the police and the nationalist community, the Stormont Parliament created the Police Authority in 1970. The Police Authority was designed to hold the Chief Constable and senior officers accountable.

The 1970 Act provided that all members of the Police Authority be appointed by the Secretary of State.²⁹ It also charged the Police Authority with the rather vague duty "to secure the maintenance of an adequate and efficient police force in Northern Ireland."³⁰ Following this provision, the 1970 Act lists more specific duties, including determining the size and rank of the police force, appointing senior officers and requesting the resignation of any senior

26. Brice Dickson, *The Police Authority for Northern Ireland*, 39 NORTHERN IRELAND LEGAL QUARTERLY 277 (1988).

27. *See id.* at 278.

28. *See* Ivan Topping, *The Police Complaints System in Northern Ireland*, in COMPLAINTS AGAINST THE POLICE: THE TREND TOWARD EXTERNAL REVIEW 233, 244 (Andrew J. Goldsmith, ed., 1991); *see also* MCGARRY & O'LEARY, *supra* note 10, at 100.

29. *See* Patten Report, *supra* note 11, at Section 5.5. Because of several shortcomings of the Police Authority, discussed *infra*, nationalist leaders have refused to nominate members of their communities for appointment to the Authority, making proportional representation difficult to achieve. *See id.*; *see also* Dickson, *supra* note 26, at 279.

30. *See* GERALD HOGAN & CLIVE WALKER, POLITICAL VIOLENCE AND THE LAW IN IRELAND 35 (1989).

officer in the interest of efficiency.³¹ The Authority can also require the Chief Constable to submit a report on any matter relating to policing; however, it can conduct no inquiries on its own.³²

The Police Authority has been criticized for both its lack of power to hold the RUC accountable and its partiality towards the police.³³ The Police Authority's power to hold the police accountable is severely limited.³⁴ Although the Police Authority is responsible for ensuring the maintenance of an adequate and efficient police force, the "direction and control" of the force remains vested in the Chief Constable.³⁵ The Police Authority is therefore "not meant to interfere with the way in which the police actually do their job."³⁶

The Police Authority ostensibly has the power to compel reports from the Chief Constable. However, the Constable can appeal to the Secretary of State to overrule the Police Authority's request if the report is not in the public interest or is not necessary for the Police Authority to discharge its functions.³⁷ The Police Authority's power to hold the police accountable is further limited by the fact that it has no power to follow up a report by holding an inquiry on the matter.³⁸

These limitations have caused nationalists to criticize the Police Authority as a toothless organization that provides only the appearance of accountability.³⁹ The Police Authority's lack of power - and the loyalist bias of the RUC - was highlighted by the former RUC Chief Constable, Hugh Annesley when he commented that he would likely pay as much attention to the Police Authority as to a letter in the *Irish News* (a nationalist newspaper).⁴⁰

In addition to the limited nature of its power, the Police Authority has also been considered ineffective due to its pro-police bias.⁴¹ The Police Authority has declined to inquire into the use of plastic bullets on unarmed demonstrators, abusive interrogation practices, shoot-to-kill policies, or allegations of RUC collusion with loyalist paramilitaries, despite widespread allegations of these practices.⁴² Although the Police Authority has the power

31. *See id.*

32. *See id.*

33. BRICE DICKSON, *THE LEGAL SYSTEM OF NORTHERN IRELAND* 188 (1993).

34. *See id.*

35. *See id.*

36. *See id.*

37. *See id.*

38. Patten Report, *supra* note 11, at 24.

39. *See Shake-up Plan for Police Body*, BELFAST TELEGRAPH, Feb. 9, 1998.

40. *See* MCGARRY & O'LEARY, *supra* note 10, at 102.

41. *See* Patten Report, *supra* note 11, at Section 5.12 ("There is a perception that . . . Police Authority members have strongly pro-police orientations.") (internal citations and quotation marks omitted); *see also* MCGARRY & O'LEARY, *supra* note 10, at 39-40 ("The Police Authority . . . did not seem willing, in the face of the campaign of violence, to say anything remotely critical of the police, or to suggest a change of policy.").

42. *See* Dickson, *supra* note 26, at 282; *see also* MCGARRY & O'LEARY, *supra* note 10, at 101.

to request reports from the Chief Constable, this power has rarely, if ever, been exercised.⁴³ The Police Authority has also been reluctant to criticize the RUC and defends the RUC's role in investigating its own members.⁴⁴ Instead of being an independent regulator, the Police Authority has been considered more akin to an executive collaborator or public relations branch of the RUC.⁴⁵ In 1989, the Police Authority praised the RUC as "one of the best police forces in the world."⁴⁶ With no apparent research accompanying this claim, it appeared to be based entirely on the subjective views of Police Authority members.⁴⁷

The Police Authority has shown intolerance toward any criticism of the police, a loyalist bias, and a lack of independence. These traits were demonstrated in 1996, when two Police Authority members objected to the flying of the Union Jack over police stations on unionist holidays and to the requirement that police recruits swear allegiance to the Queen.⁴⁸ These members were subsequently censured by the Police Authority and dismissed from their positions by the Secretary of State.⁴⁹ Following this event, the Police Authority conducted a study of the RUC and public perceptions of the police in 1996; however, it concluded that there should be no change in the name, uniform or badge of the RUC, and merely suggested changing the oath of allegiance to the Queen to an affirmation.⁵⁰

The constraints on the Police Authority's power, together with its reluctance to criticize police actions, has undermined public confidence in its role as an independent check on police conduct. An essential element of civilian oversight of the police is the ability to win public confidence as an independent check on police conduct. Without this confidence, the Police Authority cannot fulfill its role as a legitimate means to hold the police accountable.

B. *The Independent Commission for Police Complaints*

While the Police Authority was designed to hold accountable the Chief Constable and other senior officers, a separate system was set up to handle citizen complaints about the conduct of individual officers. The Police Complaints Board, established in 1977, was followed by the Independent

43. See Molly R. Murphy, *Northern Ireland Policing Reform and the Intimidation of Defense Lawyers*, 68 *FORDHAM L. REV.* 1877, 1911 n.267 (Apr. 2000).

44. See, e.g., *Concerns Being Acted on at Last*, *IRISH TIMES*, Apr. 11, 2001 (noting Police Authority support of RUC involvement in Nelson murder investigation).

45. See Patten Report, *supra* note 11, at Section 5.13.

46. MCGARRY & O'LEARY, *supra* note 10, at 100.

47. See *Concerns Being Acted on at Last*, *supra* note 44.

48. See MCGARRY & O'LEARY, *supra* note 10, at 101.

49. See *id.* at 102.

50. See *Id.*

Commission for Police Complaints in 1987.⁵¹ Like the Police Authority, neither of these bodies were successful in effectively reviewing police conduct or winning the confidence of the nationalist community.

The creation of the Police Complaints Board was the first step in implementing an independent element to the review of police conduct in Northern Ireland.⁵² The duties of the Police Complaints Board included considering the results of police investigations of complaints of officer misconduct and deciding whether the officer implicated should be charged with a disciplinary offense.⁵³ Because the Board had no oversight role of the actual investigation, the RUC continued to exercise total control over the investigations of its own members.

To address such shortcomings, the British Parliament replaced the Board with the Independent Commission for Police Complaints (ICPC) in 1987.⁵⁴ As an improvement to the Police Complaints Board, the Parliament vested the ICPC with independent supervisory power over RUC investigations of complaints.⁵⁵ Additionally, the Secretary of State and the Police Authority were given the power to refer any major public interest matter involving an officer's possible criminal or disciplinary offense to the Commission.⁵⁶ This referral could take place even though no formal complaint had been made.⁵⁷

Despite these improvements, the ICPC failed to win public confidence in its ability to hold the RUC accountable. The most widely voiced criticism of the ICPC was its limited involvement in the actual investigative process.⁵⁸ The ICPC's authority over RUC investigations was limited to vetoing the appointment of the officer chosen to conduct the investigation and imposing requirements on how the investigation was to be conducted. After the investigation was complete, the investigator was required to submit a report to the ICPC, which determined whether or not the investigation had been completed satisfactorily.⁵⁹ If the Chief Constable recommended disciplinary charges, the case would be referred to a tribunal composed of three RUC officers.⁶⁰ Thus, the ICPC had no real remedial power to deal with complaints beyond rejecting an RUC investigative report. In effect, the RUC was again left to police itself.

51. See generally Police (Northern Ireland) Order 1987; see also Police (Northern Ireland Order) 1977.

52. See TOPPING, *supra* note 28, at 244.

53. See *id.*

54. See *id.*, at 246-48.

55. See *id.* at 246.

56. See TOPPING, *supra* note 28, at 249.

57. See *id.*

58. See HOGAN & WALKER, *supra* note 32, at 35.

59. See Mary O'Rawe and Linda Moore, *Accountability and Police Complaints in Northern Ireland in Civilian Oversight of Policing* (Andrew J. Goldsmith and Colleen Lewis, eds. 2000) at 278.

60. See Dermot Walsh, *Report on RUC Goes to Heart of the Problem*, IRISH TIMES, Jan. 14, 1997, at 14.

Even after the establishment of the ICPC, it remained rare for an RUC officer to be subject to discipline. In 1995, less than one percent of complaints against the RUC resulted in any form of disciplinary action.⁶¹ Between 1990 and 1992, the ICPC received 1235 complaints from persons arrested under the emergency powers legislation; none of these complaints were upheld.⁶² During this same period, over one million pounds was paid in compensation to complainants filing civil suits for injuries suffered by police abuse of power under the Emergency Powers Act, indicating a disparity between outcomes in the judicial system and the system of police review.⁶³

IV. THE FAILURE OF PAST REFORMS: CONTINUING BRUTALITY BY THE POLICE

Despite government efforts at reform, policing by the RUC continues to raise serious questions of abuse and partiality.⁶⁴ Several cases illustrate the continuing abuse by RUC officers and the lack of an effective check on their conduct.⁶⁵ Widespread allegations of ill-treatment of detainees, collusion with paramilitary forces, and failure to protect Catholic citizens from loyalist abuse continue to taint the reputation of the RUC.⁶⁶

The RUC's impunity for the ill-treatment of detainees was recently evidenced by the case of David Adams.⁶⁷ Adams claims that he was subjected to brutal beating and kicking as well as verbal abuse upon his arrest in 1994.⁶⁸ He suffered a fractured leg, two fractured ribs, a punctured lung, and cuts and bruises to his face and body.⁶⁹ Adams won thirty thousand pounds in compensation in a civil suit against the officers, and the High Court judge concluded that the injuries suffered by Adams "were likely to be the result of direct, deliberate blows" which constituted "illegal behavior."⁷⁰ Although the ICPC referred the case to the Director of Public Prosecutions (DPP), the DPP refrained from bringing any criminal charges against the officers implicated.⁷¹ In 1998, the UN Special Rapporteur made a request to the UK government on the findings of the ICPC investigation.⁷² He was told that an investigation was being carried out; however, his request was never granted.⁷³ Despite several

61. See Walsh, *supra* note 7, at 14.

62. See *id.*

63. See *id.*

64. See *infra* text and accompanying notes, 69-103.

65. See *infra* text and accompanying notes, 69-103.

66. See *infra* text and accompanying notes, 69-103.

67. See AMNESTY INTERNATIONAL United Kingdom: Northern Ireland, End Impunity for Ill-treatment: The David Adams Case, 2 (1999).

68. See *id.*

69. See *id.*

70. See *id.*

71. See *id.*

72. See *id.*

73. See *id.*

calls for an independent inquiry by Amnesty International, no criminal action has been taken against the officers.⁷⁴

Some of the most disturbing evidence of abuse involves RUC collusion with loyalist paramilitaries to carry out the murders of prominent nationalists. There is substantial evidence that the RUC deliberately leaked documents of IRA suspects to the Ulster Defence Association (UDA), a loyalist paramilitary group, who then carried out the murders of these suspects while the RUC turned a blind eye.⁷⁵ Conversely, loyalist paramilitaries augmented the intelligence gathering of the RUC and the British army on Republican suspects.

The evidence of such collusion began to emerge in 1989 when loyalist paramilitary spokesmen justified the killing of a Catholic by claiming that police files indicated that the victim was an IRA member.⁷⁶ In response to public concern, the Chief Constable appointed British police officer John Stevens to investigate the leaks.⁷⁷ In 1992, two British soldiers were convicted of passing on information that led to a murder by the UDA.⁷⁸ One soldier also admitted that he had passed on the names of 14 suspects to loyalist paramilitary groups, had gathered information for these groups while on duty, and had passed them ammunition from the army.⁷⁹ Brian Nelson, who served as a military intelligence agent of the army and a senior intelligence officer of the UDA at the same time, was also arrested as a result John Stevens' inquiry.⁸⁰ Nelson pleaded guilty to twenty charges; however, some of the most serious charges against him were dropped under suspicious circumstances.⁸¹ According to Nelson, he brought evidence to the RUC on a weekly basis.⁸² Evidence later surfaced, however, that Nelson's information to the army about UDA activities saved the lives of only two individuals and resulted in neither arrests nor raids on any UDA operations.⁸³

Abuse by the RUC involves not only active misconduct, but also a failure to protect Catholic civilians from loyalist violence. A recent case involved the death of twenty-five year old Robert Hamill.⁸⁴ Hamill and four friends were returning from a Catholic dance hall in the city center of Portadown when they were attacked by a mob of loyalist men and women.⁸⁵

74. *See id.*

75. *See* AMNESTY INTERNATIONAL United Kingdom: Political Killings in Northern Ireland, 14-18 (1994).

76. *See id.* at 14.

77. *See id.*

78. *See id.*

79. *See id.* at 14-15.

80. *See id.* at 15.

81. *See id.* at 16.

82. *See id.* at 18.

83. *See id.* at 14.

84. *See* AMNESTY INTERNATIONAL United Kingdom: Northern Ireland The Sectarian Killing of Robert Hamill, 1 (1999).

85. *See id.*

Two of the men were severely beaten, and Hamill suffered fatal injuries.⁸⁶ At the time the assault occurred, two RUC officers were sitting in an official vehicle, which was parked across the street from the place where the incident occurred; however, they failed to make any attempt to prevent the assaults.⁸⁷ An ambulance was reportedly called by the RUC at some point, however, the officers did not get out of their jeep until just prior to the arrival of the ambulance.⁸⁸

It appears that the officers had sufficient time to prevent – or at least interrupt – the assaults against Hamill and his friends. Not only were the officers made aware of the situation by shouts for help from two women in the group, but the officers had also been given advance notice of a possible confrontation shortly before it occurred.⁸⁹ A Catholic man, who had been frightened by the group on his way home from the dance hall, asked the officers to keep an eye out for other Catholics coming from the hall.⁹⁰

Early RUC reports claimed that there had been a battle between loyalist and republican factions, that it would have been unsafe for the police to intervene, and that the police had come under attack.⁹¹ The RUC officers did not collect any evidence at the scene of the crime, and no one was immediately arrested.⁹² Although six people were later arrested for the murder, none were convicted as a result of a lack of evidence⁹³ (likely due to the RUC's failure to conduct a prompt investigation⁹⁴). After his death, Hamill's family filed a complaint against the police, claiming that the RUC failed to act on continuing loyalist harassment against them and that the family has suffered harassment by RUC officers themselves.⁹⁵

In response to the Hamill family's complaint, the ICPC initiated an investigation into the actions of the RUC officers at the scene of Robert Hamill's murder.⁹⁶ The investigation was undertaken by other RUC officers from the Portadown station – the same station where the officers under investigation were based.⁹⁷ The ICPC approved the report of the investigation and forwarded it to the DPP.⁹⁸ The implicated officers have suffered neither criminal charges nor disciplinary action for their conduct.⁹⁹

86. *See id.*

87. *See id.*

88. *See id.*

89. *See id.*

90. *See id.*

91. *See id.*

92. *See id.*

93. *See id.* at 2.

94. *See id.*

95. *See id.* at 2.

96. *See id.*

97. *See id.*

98. *See id.*

99. *See id.*; *see also* MCGARRY & O'LEARY, *supra* note 10, at 39.

V. WORKING TOWARD A NEW POLICE FORCE: THE GOOD FRIDAY AGREEMENT AND ITS AFTERMATH

Due to pervasive police abuse and weak police accountability structures, the police have been a major source of conflict between nationalists and unionists and have impeded efforts to establish stability in Northern Ireland. Reform of the police force has thus been a critical issue in securing peace in a territory historically plagued by sectarian strife.

There have been several major improvements to the police system in general and police accountability in particular in the past few years. These changes have occurred in two phases. In 1998, the ICPC was replaced with a Police Ombudsman, whose office is now responsible for handling complaints against individual officers. Second, pursuant to the Good Friday Agreement, sweeping police reform legislation was passed in 2000, which more broadly restructured the police force and the police accountability system. The new legislation replaces the Police Authority with a new Police Board, and provides for the establishment of local community policing boards.

It is not surprising that many of these reforms have followed an increasingly conciliatory environment between loyalists and nationalists, and in particular, the signing of the Good Friday Agreement in 1998. The Good Friday Agreement provided:

The participants [in the negotiations] believe it essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it policies, and operates within a coherent and cooperative criminal justice system, which conforms with human rights norms.¹⁰⁰

In accordance with the Good Friday Agreement, the Secretary of State appointed an Independent Commission on Policing for Northern Ireland, which was headed by Christopher Patten, the former British governor of Hong Kong. In September 1999, this Commission published a report (the Patten Report), which proposed recommendations for reform of the Northern Ireland police force.¹⁰¹ Following the release of the Patten Report, the British Parliament fashioned and passed the Police (Northern Ireland) Act of 2000, which provided for reform of the police system, adopting some - but not all - of the recommendations set forth in the report.¹⁰²

100. Good Friday Agreement, Art. VI, Paragraph 2.

101. See Patten Report, *supra* note 11.

102. See Police (Northern Ireland) Act 2000.

An important corollary to police reform is a power-sharing government and the demilitarization of Northern Ireland by the British Army in exchange for decommissioning by the IRA. The logistics of decommissioning continue to pose a substantial obstacle to full implementation of the Good Friday Agreement; however, there is hope by both sides that a peaceful agreement will be reached on the issue.

A. *Police (Northern Ireland) Act 1998: The Office of Police Ombudsman*

The Office of the Police Ombudsman is perhaps the most important development in external police accountability that has occurred in Northern Ireland. Because the Ombudsman has the power to conduct independent investigations of complaints against the police, it put an end to the RUC's long practice of investigating itself for its own abuses. While the ICPC had the power to supervise RUC investigations of complaints against the police, it had no authority to have its own officers conduct the investigations. The Ombudsman, on the other hand is equipped with a staff of investigators and is authorized to conduct his or her own investigations of complaints against individual members of the police. After an investigation has been conducted, the Ombudsman, not the Chief Constable, decides whether to seek disciplinary charges.¹⁰³

The Ombudsman need not wait for a formal complaint to be filed before investigating an incident of police misconduct. The Ombudsman also has the controversial power to investigate past incidents, and she has recently undertaken an investigation into the death of Robert Hamill, the Catholic man who was beaten to death while RUC officers sat across the street in their vehicle.¹⁰⁴

The Independent Commission on the Police noted that they "[could not] stress too much the importance" of this position.¹⁰⁵ The first appointment to the position of Ombudsman provides encouragement that the Ombudsman will be truly independent and not merely a puppet of the British government. The first person appointed to the position of Ombudsman is Nuala O'Loan, a Catholic who served on the Police Authority and is married to a nationalist politician.¹⁰⁶ O'Loan enjoys the approval of not only the British government, but also non-partisan human rights organizations.¹⁰⁷

103. See *Police (Northern Ireland) Order 1987 supra*, note 51.

104. See *Ombudsman Supervises Hamill Case*, BELFAST NEWS LETTER, Nov. 25, 2000 at 5.

105. Patten Report, *supra* note 11 at 38.

106. See, Gerry Moriarty, *Law Lecturer Appointed North's Police Ombudsman*, IRISH TIMES, Oct. 12, 1999 at 8.

107. See, e.g., British-Irish Rights Watch 2000 Annual Report, 9 (2000) (referring to the appointment of O'Loan as a "positive development").

Despite concerns that the Ombudsman lacks all of the powers recommended in the Patten Report, the new office has received positive reviews from human rights organizations.¹⁰⁸ Moreover, an increase in the number of complaints filed since the establishment of the Ombudsman's Office indicates that it enjoys greater public trust than its predecessor, the ICPC.¹⁰⁹

B. *Police (Northern Ireland) Act 2000: The Police Board*

The establishment of the Office of the Police Ombudsman was the first important step in strengthening external structures to hold the police accountable. Two years later, pursuant to the Good Friday Agreement, the British government passed the Police (NI) Act 2000, which provided for major restructuring of the Northern Ireland police force.¹¹⁰ Along with other sweeping changes, the Police (NI) Act 2000 replaced the Police Authority with a new Police Board vested with greater powers.

The Police Board is to be composed of nineteen members - ten from the Northern Ireland Assembly, and nine independent members from various fields.¹¹¹ The Police Board has the important power to hold inquiries, which is not held by the present Police Authority.¹¹² It is also required to hold its meetings in public, with certain exceptions.¹¹³

Although the Police Board is vested with greater power than the previous Police Authority, it is still significantly limited by the Secretary of State. While the Board can hold inquiries, the Secretary of State can overrule the Board's decision and terminate the inquiry if she determines that the inquiry pertains to an individual and is of a personal and sensitive nature or that it might prejudice court proceedings or the detection of a crime.¹¹⁴ The Board's power in this area, then, is subject to the Secretary of State that happens to be in office.

VI. POLICE REFORM AND DEMOCRATIC ACCOUNTABILITY IN A BROADER PERSPECTIVE

The recent reforms in Northern Ireland go a long way toward increasing citizen participation in the system of police accountability. However, two

108. See, e.g., CAJ Report, *supra* note 6 (noting that "the Office of the Police Ombudsman signals an important new beginning in the protection and vindication of the rights of all"); British-Irish Rights Watch 2000 Annual Report, *supra* note 107, at 9 (noting the improvement of the office of the Ombudsman over the previous ICPC).

109. See *Ahern Urges Independent Nelson Inquiry*, BELFAST TELEGRAPH, Feb. 21, 2001.

110. See generally Police (Northern Ireland) Act 2000.

111. See Police (Northern Ireland) Act 2000, Schedule 2, Part III, Paragraph 6(1).

112. See *id.*

113. See *id.* at Part IV (19).

114. See Police (Northern Ireland) Act 2000 Part VII (60)(5).

questions remain: 1) whether increased civilian participation is an effective means of deterring or preventing police misconduct and increasing public confidence in the police accountability system, and 2) whether the civilian oversight structures in place will have the power to effectively curtail police abuses.

While the role of civilian oversight has been widely hailed as an essential tool in creating police accountability, its actual effectiveness in addressing police misconduct has been subject to debate. At least two commentators have suggested that the effectiveness of civilian review is overrated and that such a system is not necessarily superior to a system in which the police conduct their own internal investigations.¹¹⁵ These doubts are based on findings that internal review procedures find officers at fault at least as often as do civilian review procedures.¹¹⁶ Such findings challenge assumptions that the police are incapable of conducting an impartial investigation of other officers, which is the primary rationale for civilian oversight.¹¹⁷ It has also been suggested that internal review procedures enjoy more respect and deference by police officers, and thus may be more effective in deterring police misconduct.¹¹⁸

Although civilian review may not be the panacea its advocates make it out to be, there are two reasons why a strong system of civilian review is essential to police reform in Northern Ireland. First, the findings about the effectiveness of civilian investigations may not apply to the situation in Northern Ireland. Second, despite its shortcomings, civilian review helps to provide legitimacy to a system that has historically suffered from widespread distrust and suspicion.

The suggestion that civilian review is not significantly more effective than internal review does not apply to Northern Ireland with the same force that it applies to policing systems in the United States. The RUC has a long history of allegations of human rights abuses. Particularly disturbing from a self-policing perspective is the evidence of state-sanctioned murders and collusion with loyalist paramilitaries. The severity of human rights abuses by the RUC and state involvement in those abuses casts doubt on RUC investigations beyond the usual suspicions roused by a system in which the police investigate themselves. Because the RUC investigations are more likely to be faulty, the implementation of independent review procedures is likely to have a greater impact.¹¹⁹

115. See, e.g., PEREZ, *supra* note 5, at 243-44; JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 229-30 (1993).

116. See PEREZ, *supra* note 5, at 233.

117. See *id.* at 233.

118. See *id.* at 233.

119. See SKOLNICK & FYFE, *supra* note 115, at 230 (noting that civilian review is unlikely to significantly change the pattern of dispositions of citizen complaints "unless the former review mechanism has habitually engaged in blatant whitewashes").

In addition to increased effectiveness in investigating police abuses, civilian review also provides a sense of legitimacy that is lacking in the current system.¹²⁰ Where “police-community relations suffer from significant tensions,” external review procedures are particularly beneficial in gaining the trust of the community.¹²¹ The Catholic community in Northern Ireland has experienced alienation from the police in the extreme, which is reflected in Protestants’ occasional reference to the RUC as “our police,” reinforcing perceptions among Catholics that the police is not theirs - i.e. that the RUC is a Protestant police force for a Protestant population.¹²²

In response to challenges to its effectiveness, advocates of civilian review have argued that it is nevertheless valuable because it provides democratic legitimacy to the police accountability system. In fact, Skolnick and Fyfe have argued that the primary purpose of a system of external review is not effectiveness, but credibility and legitimacy.¹²³ Ultimately, civilian involvement in governmental processes has its roots in the theory of civic republicanism and participatory democracy. Just as elected representatives should be accountable to the citizenry, so too should those who enforce laws passed by those representatives. Where citizens know that police conduct is reviewed by an independent body, they are more confident that the police are being held accountable.

Beyond its effectiveness, then, civilian involvement carries benefits that cannot be obtained through internal review systems. Because internal and external review structures have their own respective benefits, most of the literature on police review suggests that the most effective type of review combines internal review by the police themselves with some form of external review.¹²⁴ This combination of internal and external review often takes the form of the “civilian monitor” model, like the ICPC, where police officers conduct initial investigations, which are supervised and reviewed by a civilian board.

The civilian monitor model has proven effective in a number of localities in the United States.¹²⁵ In determining which form of review is best suited for a particular locality, however, one must consider the history, culture, and reputation of a particular police force. Where the record of the RUC’s

120. PEREZ, *supra* note 5, at 236.

121. PEREZ, *supra* note 5, at 236.

122. See Patten Report, *supra* note 11, at 16.

123. See SKOLNICK & FYFE, *supra* note 115, at 231-40.

124. See, e.g., Errol P. Mendes, *Raising the Social Capital of Policing and Nations: How Can Professional Policing and Civilian Oversight Weaken the Circle of Violence?* 26 *DEMOCRATIC POLICING AND ACCOUNTABILITY: GLOBAL PERSPECTIVES* (Mendes et al. eds. 1999) [hereinafter *DEMOCRATIC POLICING*]; Paul G. Chevigny, *Police Accountability in Hemispheric Perspective* in *DEMOCRATIC POLICING* 69,80; PEREZ, *supra* note 5, at 263.

125. See, e.g., PEREZ, *supra* note 5 at 248 (finding that Kansas City’s civilian monitor model was perhaps the most effective system in a study of five prominent civilian review systems).

investigations is so shoddy, and where there is such a poor relationship between the police and the community, any system in which the police are involved in investigating serious complaints will fail to ensure effectiveness or public confidence.

VII. WINNING COMMUNITY SUPPORT IN NORTHERN IRELAND: A COMPREHENSIVE APPROACH TO REFORMING THE POLICE

Although a complaints system that involves internal investigations may offer advantages that a completely external system does not, a strong external review system is necessary in Northern Ireland until the police force wins broad support from the entire community. In evaluating the recent reforms, then, two questions remain: 1) whether the external review structure is equipped with the necessary authority to effectively investigate police abuses and to win the confidence of the Catholic community; and 2) whether the legislation represents substantial long-term reform of internal police investigations and practices. The extent to which the Police (NI) Act 2000 implements the recommendations by the Patten Commission is a good way of evaluating whether the reforms enacted by the legislation are extensive enough to effect real reform of the police or whether they represent mere window dressing to an inherently flawed system.

1. *External Accountability*

The reforms to the external accountability structures are far-reaching and represent a vast improvement over current accountability structures. Compared with other civilian oversight systems, Northern Ireland's system is very extensive.¹²⁶ The Ombudsman's power to conduct a completely independent investigation of complaints from the initial fact-finding stage is not held by the British Police Complaints Authority,¹²⁷ and only one-third of the systems in the United States are vested with this power.¹²⁸ Further, the Ombudsman's responsibility to decide whether an officer should be

126. The United States Department of Justice conducted a study that categorized civilian oversight systems from one to four, with one being the most expensive and four being the least expensive. See PETER FINN, U.S. DEPT OF JUSTICE AND NAT'L INST. OF JUSTICE, CITIZEN REVIEW OF POLICE (2001) available at <http://www.ncjs.org/pdffiles1/nij/184430.pdf> (last visited Jan. 31, 2002). Northern Ireland's Ombudsman Office would fall into category number one.

127. See Mike Maguire, *Complaints Against the Police: The British Experience*, in COMPLAINTS AGAINST THE POLICE: THE TREND TOWARD EXTERNAL REVIEW 187 (Andrew J. Goldsmith, ed. 1991) (noting that the PCA has merely the authority to supervise investigations of complaints). See Mendes, *supra* note 125, at 26 (civilian oversight bodies in Canada have no power to deal with complaints from their inception).

128. See Samuel Walker & Betsy Wright Kreisel, *Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police*, 15 AMERICAN JOURNAL OF POLICE 65, 73 (1996).

disciplined adds to his or her power to hold the police accountable, which many other civilian oversight systems lack.¹²⁹

In many respects, the Ombudsman's power compares to the civilian review board of Berkley, California, which has been called one of the most independent systems in America.¹³⁰ Like Berkley's Police Review Commission, the Northern Ireland Ombudsman has its own completely independent investigatory staff and procedures. While the Berkley Police Review Commission has the power to recommend disciplinary action,¹³¹ the Ombudsman actually has the power to direct the Chief Constable to carry out his or her recommended discipline.

Unlike Berkeley's review board, however, the Ombudsman has no power to review police policies and practices. Patten strongly recommended that the Ombudsman should have the power to investigate and comment on police policies and practices, to investigate and draw conclusions from clustering in patterns of complaints and to make recommendations for change to police management and the Policing Board.¹³² This power is important because it provides a means for civilian input into preventing future police abuses. Practices that senior officers view as an effective means of law enforcement may be seen as an unreasonable and insulting practice by civilians.¹³³ Consistent with the representation theory of police review, one of the most important benefits of a civilian review structure is its ability to offer citizen perspectives and evaluations of police conduct and practices. The power to comment on policies and practices is important in establishing the policing service as a democratic institution accountable to the people.¹³⁴

The Police (NI) Act 2000 similarly does not fully implement Patten's recommendations for the powers of the Police Board. In several areas, the Police Board's authority is subject to the power of the British Secretary of State. The independence of the Policing Board from the British government is essential to its validity as an impartial body that can effectively investigate such allegations as state-sanctioned murders. The power of the Policing Board is limited in that the Secretary of State can stop an inquiry by a number of vaguely defined justifications.¹³⁵ The Board is further constrained by the

129. See Ian Freckelton, *Shooting the Messenger: the Trial and Execution of the Victorian Police Complaints Authority*, in COMPLAINTS AGAINST THE POLICE: THE TREND TOWARD EXTERNAL REVIEW 63, 104 (Andrew J. Goldsmith, ed. 1991) (noting that most civilian review boards in Australia lack any disciplinary power).

130. See PEREZ, *supra* note 5, at 126.

131. See *id.*

132. Patten Report, *supra* note 11, at 38.

133. See SKOLNICK AND FYFE, *supra* note 115, at 233.

134. Many experts have recognized the importance of the power to comment on policies and practices. See CITIZEN REVIEW OF POLICE, *supra* note 126, at 69. This power has proven useful to at least one oversight body in the United States and has proven particularly useful in addressing the use of force and crowd control. See *id.* at 70-71.

135. See Maggie Beirne, *The Police (Northern Ireland) Act 2000*, JUST NEWS, (Bulletin of the Committee on the Administration of Justice), Nov. 2000, at 1,7.

discretion of the Secretary of State, as approval is required for the appointment of an individual to carry out an inquiry.¹³⁶

The Board's power to hold an inquiry is further impeded by the requirement of a weighted majority vote to hold an inquiry or to appoint an individual to carry out an inquiry.¹³⁷ Because of the composition of the Board, this requirement effectively grants unionists a veto power over any inquiry.

2. *Reform of the Internal Police System*

While the police accountability reforms enacted by the Police (NI) Act 2000 ("the Act") could be stronger, they create an accountability system substantially stronger than the system that existed just a few years ago. Greater concern arises from the shortcomings of the reforms made to internal police practices.

One of the most significant reforms included in the Police (NI) Act 2000 involves clear and ambitious plans to recruit more Catholics. In this area, the legislation embodies the full recommendation by Patten that Catholics represent fifty percent of new recruits.¹³⁸ Through this recruitment strategy, Catholics will represent thirty percent of all officers in the near future.¹³⁹ Unlike previous plans to increase Catholic participation, this time Catholics are responding in record numbers, and there is little doubt that the fifty percent target will be met.¹⁴⁰

While the recruitment plans represent encouraging steps in reforming the police force from within, the Act failed to incorporate two critical recommendations made by Patten: 1) the disclosure requirement for officer membership in sectarian organizations, and 2) the requirement that all officers take an oath to uphold human rights.¹⁴¹

One of the main sources of Catholics' distrust of the RUC is the high rate of overlapping membership in the RUC and loyalist organizations, such as the Orange Order. Although the Police (NI) Act 2000 requires disclosure of officers' memberships in sectarian organizations, the officers are only required to notify the Chief Constable, who will keep the information confidential. This weak requirement may allow for the continuation of current association between the Orange Order and the police force. Furthermore, not

136. See Lawyers Committee for Human Rights, Northern Ireland Update 3 (February 2001) available at www/chr.org/n.ireland/update.pdf (last visited Feb. 20, 2002). [hereinafter Northern Ireland Update].

137. See *id.*

138. See Police (NI) Act 2000, Part VI, Section 46(5)(a).

139. In comparison, it took the New York City Police Department twenty-five years to increase the proportion of ethnic minority officers from 12% to 33%. See Patten Report, *supra* note 11, at 83.

140. See Michael Bradley, *Half of NI Police Force to be Catholics*, The Irish Times, Oct. 13, 2001 at 5.

141. See Northern Ireland Update, *supra* note 136, at 5-6.

even the Ombudsman will have access to this information, demonstrating a lack of trust in the Office of the Ombudsman and undermining her ability to conduct thorough and accurate investigations.¹⁴²

Patten's recommendation that all officers be required to take an oath to uphold human rights, which would take precedence over any other oaths taken by officers who belong to sectarian groups, would mitigate the effect of the weak notification requirement. This recommendation, however, was implemented only partially; while new recruits are required to take the new oath, current officers are under no obligation to swear to such an oath.¹⁴³

There is no justification for a failure to require all officers – both currently serving officers and new recruits – to take an oath to uphold human rights. The Implementation Plan states "[e]xisting officers have already been attested as constables and cannot be required to take the new oath."¹⁴⁴ The plan simply offers no reason for excusing currently serving officers from the oath, particularly when some of these very officers have committed human rights abuses in the past and are likely to commit them again.

Promising compromises have been made with regard to issues of culture, ethos, and symbols. The Act implements Patten's recommendation to change the name of the RUC to the Police Service of Northern Ireland (PSNI), and left the design of the flag and the uniform and policies with respect to the flying of the British flag to resolution by the Policing Board, with the consideration of recommendations by the Secretary of State.¹⁴⁵ The compromise reached with respect to these issues provides a flag and emblem that is neutral and be acceptable to all parts of the community.¹⁴⁶ The badge approved by the Policing Board takes the shape of a Garter star, which includes the force's new name, along with a St. Patrick's cross, scales of justice, a crown, a harp, a shamrock, a torch, and an olive branch.¹⁴⁷ The flag features the badge design on a dark green background.¹⁴⁸ The Policing Authority provided that the flag of the PSNI would be the only flag that could be flown from any police building or official police vehicle.¹⁴⁹ The only exceptions to this rule are days on which a station will be visited by the Queen, in which case, the British flag will be flown.¹⁵⁰

Both the police accountability reforms and other police reforms enacted by the Police (NI) Act 2000 could be stronger. The government did not implement the Patten recommendations in their entirety, which would have

142. See Northern Ireland Update, *supra* note 136.

143. See Northern Ireland Update, *supra* note 136, at 6.

144. Secretary of State for Northern Ireland, Updated Implementation Plan for Report of the Independent Commission on Policing for Northern Ireland 1 (Aug. 2000)

145. See Police (Northern Ireland) Act 2000 (1)(1); see also *id.* at (54)(2).

146. See Patten Report, *supra* note 11, at 99.

147. See *Tories Hit out at Union Flag Ban*, Belfast News Letter, Jan. 22, 2002, at 11.

148. See *id.*

149. See *id.*

150. See *id.*

guaranteed the full support of nationalist leaders and human rights organizations. Furthermore, many issues have been left to be resolved by future amendments to the legislation. The nationalist parties in Northern Ireland are divided over whether the new police plan represents a substantive change or it is merely making minor changes in an unacceptable police force. Both the Catholic Church and the Social Democratic Labour Party (SDLP), the moderate political party of Catholics in Northern Ireland, have endorsed the new policing structures and the SDLP has nominated members of its party to sit on the Policing Board.¹⁵¹

Sinn Fein, the nationalist party, has refused to support the new force, claiming that it is simply a disguised RUC.¹⁵² Sinn Fein has a point in that the PSNI includes many officers who have committed human rights abuses in the past and should be required to take the new oath or be expelled from the force. This raises particular concern in view of U.S. studies showing that a small number of officers typically generate a disproportionate percentage of all police complaints.¹⁵³

Despite its shortcomings, however, the new reforms have been endorsed by Christopher Patten and represent a vast improvement over the current system of policing.¹⁵⁴ The Police (NI) Act 2000 deserves the participation and support of the nationalist community. Without such participation, loyalist groups will continue to dominate the policing apparatus, which has proved dangerous to the welfare of Catholic citizens. Only by working within this new framework will the Catholic community be in a position to oversee the work of the police and the success or the failures of the new structures.

CONCLUSION

Recent reforms in the police force and police accountability structures in Northern Ireland represent a significant advancement towards these goals. Where the police force lacks public trust, only a system independent of the police can win the support of the Catholic community. Because of the benefits of internal review, some powers of review may best be devolved back to the responsibility of the police at some point in the future. This devolution should not happen, however, until the police force is significantly reformed and enjoys the support of all sectors of the community. Considering the long

151. See Dan Keenan, *Still Working to Take Politics Out of Policing*, *The Irish Times*, Dec. 29, 2001 at 14.

152. See generally *Different Name, Same Bigots*, *An Phoblacht*, Nov. 8, 2001; *Sinn Fein – Response to the Revised Implementation Plan on Policing*, Aug. 29, 2001.

153. See Samuel Walker and Vic W. Bumphus, *The effectiveness of Civilian Review, Observations on Recent Trends and New Issues Regarding the Civilian Review of Police* 11(4) (1992) at 19.

154. See Patten Endorses New Police Plan; A Powerful Appeal from One of the Architects of the New Police Service, *Belfast Telegraph*, Nov. 28, 2000.

history of abuses by the RUC and the British army, this support may be a long time in coming.

