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Mary O'Rawe

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HUMAN RIGHTS, TRANSITIONAL SOCIETIES AND POLICE TRAINING: LEGITIMATING STRATEGIES AND DELEGITIMATING LEGACIES

MARY O'RAWE*

ABSTRACT

A practically universal feature of violently conflicted societies is the damage done to the Rule of Law by allowing legislation and legal process to become another theatre of conflict. In such societies law is manipulated to fit a State conception of order and is thereby rendered unfit to sufficiently restrain and legitimise that order. In terms of transition, the goal of moving a society from violent conflict to shared peace is rendered more complicated by law's inability to garner, at a key defining moment, respect across the societal divisions in need of mending. The story of many transitions is, at one level, the story of law's attempt to rehabilitate itself. Police (security sector)¹ reform tends to have both emblematic and practical significance in this endeavour.

This article is, in part, a case study of how issues of legitimacy and inclusivity come to be mediated and shaped

* Senior Lecturer, Transitional Justice Institute, University of Ulster, m.orawe@ulster.ac.uk. BA (UKC First Class), Dip Dt. Fr., LL.M, Barrister-at-Law. The author is indebted to Professor Fionnuala Ní Aoláin for her assistance with this article and would also like to thank Professors David Bayley, Otwin Marenin, Eugene McLaughlin, Clifford Shearing and Ruti Teitel, as well as Maggie Beirne of the CAJ, for their comments at various stages. The author further wishes to acknowledge the research assistance of Elisabetta Nardi and Catherine Turner in the preparatory stages of this article.

¹ On the highly disputed nature of the Security Sector Reform concept, see Michael Brzoska (2003) *Development Donors and the Concept of Security Sector Reform* Geneva Centre for the Democratic Control of Armed Forces (DCAF) Occasional Paper No. 4, available at http://www.dcaf.ch/publications/Publications%20New/Occasional_Papers/4.pdf.

through police (security sector) reform in transitional societies. In focusing on the recourse to human rights and diversity training for police in a post-conflict context, and looking particularly at the recent experience of Northern Ireland in this regard, the article aims to concretise one element of the post-conflict construction of legitimate legal form and tease out some of its possible paradoxes.

INTRODUCTION

In an era where State and policing are increasingly decoupled,² transitional societies offer a particularly rich space to work through many fundamental questions about policing, law and the modern State.³ However, in many ways and in many societies, policing reform processes tend to eschew this potentially transformational stage, hastening to fix policing with 'traditional' tools and in 'traditional' ways.⁴ Even where human rights and community orientation are deemed to be at the forefront of the policing reform process, the result is generally a more (or less) reformed police structure delivered at the expense of transformed policing and new understandings of law.

This paper starts from the premise that, in transitional societies, policing change is, at its core, more about trying to rehabilitate law than organisational reform per se. By moving away from past rigidity and illegitimacy to prove itself a

² Compare David Bayley & Clifford Shearing, *The Future of Policing*, 30 LAW & SOC'Y REV. 585, 585 (1996) ("Policing is now being widely offered by institutions other than the state"), with Trevor Jones & Tim Newburn, *The Transformation of Policing? Understanding Current Trends in Policing Systems*, 42 BRIT. J. CRIMINOLOGY 129, 133-34 (2002) (acknowledging the "pluralization of policing" but finding its impact less significant than Bayley and Shearing suggest), and Lucia Zedner, *Policing Before and After the Police: The Historical Antecedents of Contemporary Crime Control*, 46 BRIT. J. CRIMINOLOGY 78, 78-79 (2006) ("suggesting an alternate reading that takes issue with the positions represented respectively by Bayley and Shearing and by Jones and Newburn" and "contend[ing] that contemporary trends in policing signify less a departure from historical practice than those who proclaim the arrival of a new epoch acknowledge.").

³ See, e.g., Charles T. Call & William Stanley, *Protecting the People: Public Security Choices After Civil Wars*, 7 GLOBAL GOVERNANCE 151, 152 (2001), available at <http://www.watsoninstitute.org/pub/CallGlobalGovArticle.pdf> (explaining why "the disruption of previous state institutions and ideas associated with post-civil wars and foreign interventions" creates special opportunities to carry out reforms and implement new security systems).

⁴ See Otwin Marenin, *Democracy, Democratization, Democratic Policing*, CHALLENGES OF POLICING DEMOCRACIES: A WORLD PERSPECTIVE 315 (Dilip K. Das & Otwin Marenin eds., Gordon and Breach Publishers 2000) ("What is missing from discussions of democracy and democratization is a theorized understanding of the police and their relations to the state and civil society.").

sufficiently flexible and dynamic filter for complex post-conflict realities, law hopes, by its usefulness, to secure itself a sufficient place in the sun from which to regulate and determine the new order. The policing that happens in that new order will be a partial determinant of the sustainability of the new regime and its ability to bed down an enduring peace.

Police organisations, therefore, prove a valuable site to begin an exploration of the extent to which law, as mediated most frequently, in transitional spaces, through injections of human rights and diversity training for police, can effect and affect the rehabilitation of law and law enforcement in a post-conflict setting. Because of the priority given to training over other police reform initiatives internationally, and because training represents a concrete manifestation of wider reform agendas, it is through this lens that broader questions will be examined.

Part I of the article will begin with consideration of what it might mean to legitimise policing in a transitional society, and develop the first theme seen as central to this legitimisation process—the role of law as an instrument of its own transformation. In this regard, human rights law, with its emphasis on minimum standards of legality, necessity, proportionality, accountability and non-discrimination, is interrogated for its legitimising potential when filtered into and through a police training environment. Part I will further consider how one jurisdiction, that of Northern Ireland, mirrors international complexities in terms of the attempt to inject human rights and diversity issues more fully into police training endeavours. In this context, the paper will explore whether and how the use of a human rights legal tool in reforming training might actually undermine its own potential to legitimise policing.

The article will then examine, in Part II, how human rights and diversity training interfaces with the second key strand for police legitimisation—community endorsement. In a fractured society, broad societal endorsement of the new policing arrangements is obviously vital for legitimisation purposes. This said, it would appear to be notoriously difficult for police in transitional societies to achieve and thereafter sustain broad acceptance within the general populace. Drawing again on the Northern Ireland and broader international experience, this section will begin to explore why dissonance might arise between

the stated transitional goal of human rights compliant, inclusive policing and what tends to happen in concrete post-conflict settings. The section considers why and to what extent government and police reticence may frustrate the contribution of civil society to a much broader ownership base for law and law enforcement.

Ultimately, the paper concludes that a State-centric framing of law and security, coupled with a police worldview of reform, inhibits the fostering of optimum conditions for new found respect for law and policing in many parts of the world. For this reason, the article questions the capacity of traditional police models to contain and effectively harness the challenges of human rights and pluralism in a period of transition.

The thematic lessons that emerge from this discussion go beyond Northern Ireland or human rights training per se, to ask deeper questions about the tools and processes currently employed to improve and legitimate the delivery of a State policing service. The discussion further serves to problematise the systemic investment of communities in State policing models in transitional societies.

NORTHERN IRELAND—A CASE STUDY IN LEGITIMACY AND INCLUSIVITY?

Throughout, the article will develop and concretise its central premise using recent examples of police human rights and diversity training initiatives in Northern Ireland. This choice of example is based on the fact that Northern Ireland is emerging from over thirty years of sustained violent political conflict and the Police Service of Northern Ireland (PSNI)⁵ has thus consequently been the subject and object of massive change. In this regard it has been aided by the report of an international and independent Commission on Policing⁶ (the Patten Report)

⁵ Formerly the Royal Ulster Constabulary (RUC). The name change took effect in November 2001. See *'New Era' as NI Police Change Name*, BBC NEWS, Nov. 4, 2001, available at http://news.bbc.co.uk/1/low/northern_ireland/1636780.stm. Both acronyms are used in the course of this article, depending on the time period being discussed.

⁶ See INDEPENDENT COMMISSION ON POLICING FOR NORTHERN ENGLAND, A NEW BEGINNING: POLICING IN NORTHERN IRELAND 1 (1999) [hereinafter PATTEN REPORT] (this Commission was formed following a negotiated multi-party agreement (the Good Friday Agreement) in 1998, which was subsequently endorsed in a referendum by 71% of the electorate in Northern Ireland); see also NORTHERN IRELAND ELECTIONS, THE 1998

aimed at ushering in a 'new beginning' to policing in Northern Ireland.⁷ As the beneficiary of a specific blueprint explicitly intended to focus all police action on human rights compliance, and coming, in some measure, from a sustained and well-resourced⁸ democratic tradition,⁹ the training challenges for police reformers in Northern Ireland might be viewed as less intractable than those presented by the experience of, for example, South Africa,¹⁰ El Salvador¹¹ or Iraq.¹²

In many respects, police in Northern Ireland have faced a less daunting reform prospect than that confronting police in other transitional societies where social index indicators speak to much higher levels of poverty, illiteracy and societal fragmentation. As such, the PSNI might legitimately be expected to be at the vanguard in terms of pushing reforms through and delivering results. The organisation itself, as well as a number of informed commentators,¹³ would certainly deem the PSNI to be at the

REFERENDUMS (2001), <http://www.ark.ac.uk/elections/fref98.htm>.

⁷ See PATTEN REPORT, *supra* note 6, at 1 (speaking of "a truly historic opportunity for a new beginning.").

⁸ See PATTEN REPORT, *supra* note 6, at 26 (noting considerable size of Northern Ireland police service's budget).

⁹ However, Northern Ireland can be viewed as somewhat of a paradox within the UK, as the Stormont regime, which governed the jurisdiction from its inception, set the baseline for an anti-democratic framework involving high levels of discrimination against the minority Catholic population. This legacy is being addressed in various ways within the current peace process. For a detailed examination of the "conflicted democracy" phenomenon, see Fionnuala Ní Aoláin & Colm Campbell, *The Paradox of Transition in Conflicted Democracies*, 27 HUM. RTS. Q. 172, 176 (2005).

¹⁰ See, e.g., MIKE BROGDEN & CLIFFORD SHEARING, *POLICING FOR A NEW SOUTH AFRICA* 113 (Routledge Press 1993) (explaining that police reform's focus is shifting from "police culture itself to the law that enables it to operate," and highlighting how restraint of the police can be accomplished by "tightening the legal regime within which the police operate so as to reduce the discretionary space available.").

¹¹ See, e.g., Charles T. Call, *Assessing El Salvador's Transition from Civil War to Peace*, in *ENDING CIVIL WARS: THE IMPLEMENTATION OF PEACE AGREEMENTS* 383 (Stephen John Stedman, Donald Rothchild & Elizabeth M. Cousens eds., Lynne Rienner Publishers 2002) (discussing demilitarization of society post-civil war).

¹² See Robert M. Perito, *WHERE IS THE LONE RANGER WHEN WE NEED HIM?: AMERICA'S SEARCH FOR A POSTCONFLICT STABILITY FORCE* 318 (USIP Press Books 2004) (stating "[u]nder Saddam Hussein, the INP had been militarized, and its doctrine, procedures, and weapons were completely unsuited to policing in a democratic society. Iraqis saw the INP as part of a cruel and repressive regime and described its officers as brutal, corrupt, and untrustworthy."); see also Robert M. Perito, *The Coalition Provisional Authority's Experience with Public Security in Iraq: Lessons Identified*, U.S. INST. OF PEACE SPECIAL REP. 137 (2005), available at <http://www.usip.org/pubs/specialreports/sr137.html> (discussing civil discord in Iraq following Saddam Hussein's collapse and lessons that can be learned regarding police recruitment and training).

¹³ See, e.g., NORTHERN IRELAND POLICING BOARD, *MONITORING THE COMPLIANCE OF THE POLICE SERVICE OF NORTHERN IRELAND WITH THE HUMAN RIGHTS ACT 1998: HUMAN RIGHTS ANNUAL REPORT 2005*, available at <http://www.nipolicingboard.org.uk/>

cutting edge of police reform. It further provides an instructive case study for other post-conflict societies in terms of transitional practice in the training arena and the broader questions the article seeks to address.

I. LEGITIMISING POLICE: TRADITIONAL THEMES AND TRANSITIONAL DIFFICULTIES

Whether or not policing reform initially exists explicitly in negotiated peace agreements,¹⁴ effective policing change is, or ultimately proves to be, organically and intimately connected to the broader societal project of regeneration in post-conflict societies, as demonstrated by Afghanistan,¹⁵ Iraq,¹⁶ Northern Ireland,¹⁷ and East Timor (Timor Leste).

A goal in all post-conflict situations moving away from violent conflict and inculcating respect for the rule of law is to create conditions whereby policing comes to be viewed more broadly as a public good, with local capacity sufficiently strengthened and sufficiently accepted to take on a legitimate policing role. Although transitional societies might differ in many important respects, the extent to which police legitimacy can be created and copper-fastened for the future would appear to be an important, universal benchmark in terms of assessing the success of any police reform project or broader peace process. Whatever the nuances of the particular society, experience suggests that this legitimacy will ultimately find its source in fair laws and

publications/hr_annreport.htm (evaluating the PSNI Human Rights Programme of Action).

¹⁴ See Charles T. Call & William Stanley, *supra* note 3, at 152 (stating "If police reforms are omitted from civil war settlements, these issues must be addressed later [as has been the case in Mozambique, Cambodia and Nicaragua], when it will be more difficult to find the political space and support for reorienting systems of security and justice."); see also INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, NEGOTIATING JUSTICE? HUMAN RIGHTS AND PEACE AGREEMENTS 41-47 (2006), available at http://www.ichrp.org/paper_files/128_p_02_Summary_English_for_web_jpeg_covers_.pdf.

¹⁵ See, e.g., Laurel Miller & Robert Perito, *Establishing the Rule of Law in Afghanistan*, U.S. INST. OF PEACE SPECIAL REP. 117 (2004), available at <http://www.usip.org/pubs/specialreports/sr117.html> (summarizing international efforts to enact police training programs in Afghanistan).

¹⁶ See, e.g., Robert M. Perito, *supra* note 12, at 137 (discussing how important of police control is in gaining popular support for an international intervention).

¹⁷ See Mary O'Rawe, *Transitional Policing Arrangements in Northern Ireland: The Can't and Won't of the Change Dialectic*, 26 FORDHAM INT'L L.J. 1015, 1023-24 (2003) (discussing the historical challenges Northern Ireland must overcome in order to professionalize the police).

community acceptance and endorsement of the policing venture.¹⁸

Situations vary significantly regarding practical arrangements to achieve this end. In some countries, the legitimacy chasm is too vast or the particular politics of conflict are too insufficiently geared to move directly to a situation of domestic policing. In such situations, international organisations¹⁹ occasionally deliver interim policing²⁰ or, more often, are heavily involved in training and supporting the development of a particular form of local capacity in this regard. In some jurisdictions old police forces are disbanded and new ones created.²¹ In others, policing reform happens while holding onto the policing structure that existed during the conflict.²² In some cases, it is deemed necessary that former combatants become part of new policing arrangements.²³ In others, they are excluded from joining.²⁴ Some jurisdictions have used lustration,²⁵ prosecution or other processes to weed out those within the police shown to have abused human rights during the period of conflict. Others have not undertaken such purging initiatives²⁶ or have invested in some form of amnesty²⁷

¹⁸ See Marenin, *supra* note 4, at 311 (stating “Democratic policing is a response to two pressures: it represents the adaptation and incorporation of universal standards of democratic behaviour to local policing conditions and needs.”).

¹⁹ Such as the United Nations Civilian Police (CIVPOL), whose official website is <http://www.civpol.org>.

²⁰ Examples include Haiti and East Timor (Timor Leste). See Marie Okabe, Deputy Spokesperson for the Secretary-General, United Nations, *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, SPOKESPERSONS’ NOON BRIEFING (Feb. 21, 2007), available at <http://www.un.org/News/briefings/docs//2007/db070221.doc.htm>.

²¹ Examples include El Salvador and South Africa.

²² Northern Ireland maintained the police organisation during the transformation. See O’Rawe, *supra* note 17, at 1020-21.

²³ *E.g.*, Phillipines, where normal police entry requirements were waived to accommodate former combatants; also Aceh, Indonesia. *see, eg.*, Public International Law and Policy Group, *Economic Reconstruction: Targeted Development Mechanisms* (Sept. 2006), available at <http://www.publicinternationallaw.org/areas/peacebuilding/PILPGEconomicReconstructionTargetedDevelopmentMechanisms9.8.2006.doc>.

²⁴ This is the case with Northern Ireland, though note that, while not permitted to join the police *per se*, former combatants can be elected politicians and sit on the Policing Board, in an oversight capacity. See O’Rawe, *supra* note 17, at 1044.

²⁵ This occurred in some Eastern European countries, such as Poland, Hungary, and Bulgaria, where the constitutional courts have had to struggle with issues of the past such as lustration. See Eric Stein, Note, *Briefer Notice: The Struggle for Constitutional Justice in Post-Communist Europe*, by Herman Schwartz, 95 AM. J. INT’L L. 267, 268 (2001).

²⁶ Northern Ireland has not had a drastic personnel change based on human rights culpability during its time of transition. See O’Rawe, *supra* note 17, at 1015.

²⁷ For example, the Truth and Reconciliation Committee in South Africa was given

as an appropriate solution.

Taking into account these various factors, it is clear that, in some places or around certain issues, reforms have been radical, while in other places, or concerning particular matters, a piecemeal approach has prevailed. Any and all of these variations and processes have the capacity to be unsatisfactory in terms of delivering legitimate, acceptable policing in a post-conflict reality. The purpose of this section is to explore something of why that might be.

A. *The Role of Law*

In many conflicted jurisdictions, the dysfunctional nature of law²⁸ and law enforcement has been a significant factor in the origins and exacerbation of violence.²⁹ In theory, law may be deemed to form an accepted regulatory framework for a given society, with law enforcement agencies bolstering this premise through their role as the repository of a monopoly of legitimate force.³⁰ Conflicted societies expose this relationship as much more complex and contested.³¹

In such societies, the State is viewed by (a proportion of) the population as illegitimate. The oppressive role generally played by policing agents and institutions in the protection of this contested, often authoritarian regime,³² effectively reinforces any initial legitimacy deficit in the conception of the State itself. In operationalising repressive legislation and policies in a

power to provide amnesty in cases where perpetrators gave testimony as to their previous wrongdoing during TRC hearings. See, e.g., Kevin Avruch & Beatriz Vejarano, *Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography*, 2 SOC. JUST. 47-108 (2001), available at http://www.trinstitute.org/ojpcr/4_2recon.pdf.

²⁸ Although at one level the notion of law can be dismissed as little more than a bourgeois political tool, which by its very nature tends to the protection of the elites and powerful in any society, there is something in the principles of accountability, certainty and equity which continues to be worth striving for and which requires, without seeking to reify the law, some level of normative framework which seeks to regulate conduct while respecting human dignity. It is in this sense and towards this end that the concept of the Rule of Law is privileged and utilised throughout this article.

²⁹ See, e.g., INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 14, at 41-47, 107.

³⁰ See MAX WEBER, *LAW IN ECONOMY AND SOCIETY* 29-30 (Max Rheinstein ed., Edward Shils and Max Rheinstein, trans., Harvard University Press 1954).

³¹ See generally RUTI TEITEL, *TRANSITIONAL JUSTICE* (Oxford University Press 2000).

³² See DAVID BRUCE & RACHEL NEILD, *THE POLICE THAT WE WANT: A HANDBOOK FOR OVERSIGHT OF POLICE IN SOUTH AFRICA* 15 (Alex Dodd ed., Centre for the Study of Violence and Reconciliation 2005), available at <http://www.justiceinitiative.org>.

discriminatory or arbitrary manner, police come to symbolise in a very visible, almost palpable, way much that is wrong with law and legal process during (and generally prior to) the period of conflict. Highly politicised, repressive and discriminatory policing results in out-groups in conflicted societies becoming increasingly alienated from any positive identification with forces of law and order. Other major organs of governance³³ also become tainted and unable or unwilling to deliver in terms of respect for the Rule of Law. In the fragile space created by a cessation of hostilities, law needs to engage with these realities in order to insert itself centre-stage at a crucial historical juncture.

Throughout history, law time and again has proven unfit to counter the tendencies outlined above. It appears unable to contain or end violent conflict for three interlinked reasons: first, how law operates in a divided society is often a salient factor in the eruption of the initial violence.³⁴ Here, law is characterised by reference to dominant elites and operates in a discriminatory and unfair manner to create and maintain out-groups and subclasses. Second, in failing to prevent governments' feeling justified in using the law to excess,³⁵ both the potential and the promise of the Rule of Law is further strained and distorted as a moderating concept for State behaviour. Here law can be seen, among other things, to provide a veneer of technical legality to illegitimate practice.³⁶ Finally, the endorsement of entire communities can be lost by the failure of law to effectively sanction illegitimate activity when it happens. In the process,

³³ Such as courts, penal institutions, and lawyers.

³⁴ See COMMISSION APPOINTED BY THE GOVERNOR OF NORTHERN IRELAND, DISTURBANCES IN NORTHERN IRELAND 1 (1969), available at <http://cain.ulst.ac.uk/hmso/cameron.htm> (referring to Northern Ireland's policy of discrimination against Catholics, which was legislated for at many levels, over several decades).

³⁵ For a recent example, see Vikram Dodd & Carlene Bailey, *Terror Law an Affront to Justice—Judge: Control Orders Breach Human Rights*, THE GUARDIAN (LONDON), Apr. 13, 2006, at 1 (discussing human rights' erosion: "At least eleven control orders have been issued, allowing the government to restrict the liberty and movement of people it claims endanger public safety because of their involvement in terrorism but who can not be tried in the courts").

³⁶ For example, the failure of any legal regime to render unlawful United States practice in setting up and running Guantanamo Bay as a detention centre is thereby complicit in its illegitimacy. The United States Supreme Court has recently delivered a limited judgment in respect of the specific issue of use of Courts Martial. See *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2756 (2006) (holding "president's practicability determination was insufficient to justify variances from the procedures governing courts-martial").

those legal channels which do exist domestically or internationally to regulate and render Executive action accountable are increasingly seen by those who view a given State's actions as illegitimate as part of a partisan, unduly conservative, impotent or moribund dynamic which erodes faith in legal form and substance still further as a satisfactory means of conflict resolution.³⁷

An end to internal conflict generally signals an acknowledged need to move beyond the old regime to create new political and legal structures founded on a basis of legitimacy and acceptability. As in the immediate past, policing institutions will command or seek to command³⁸ a privileged position in the new architecture of societal governance. As they do so, how they are seen to impact on and be shaped by notions of legitimacy and inclusivity has meaning beyond the institutions themselves.

B. The Legitimising Potential of Human Rights Law

Legitimising policing means many things and needs to contain a number of elements. Exactly what is required in terms of police reform or policing transformation may vary from society to society, but there are a number of underpinning principles that seem to command broad agreement—that any policing system should be fair, impartial, reflective of the society it serves, transparent, accountable, effective and free from partisan political control. Many of these underpinning principles are contained in international human rights law, and, as such, many transitional societies look to human rights to help shape new policing realities. The concept of Human Rights provides the basis of a framework that has been characterised as the core of democratic policing.³⁹ Many commentators deem the principles of

³⁷ See Colm Campbell, 'Wars on Terror' and Vicarious Hegemons: *The UK, International Law and the Northern Ireland Conflict*, 54 INT'L & COMP. L.Q. 321, 321 (2005); see also Oren Gross & Fionnuala Ní Aoláin, *To Know Where We Are Going, We Need To Know Where We Are: Revisiting States of Emergency*, in ANGELA HEGARTY & SIOBHAN LEONARD, HUMAN RIGHTS: AN AGENDA FOR THE 21ST CENTURY 79-114 (Cavendish Publishing 1999).

³⁸ For instance, where military supremacy has been a feature of the period of conflict, the process may be even more fraught in terms of reinserting a "civilian" authority in any description.

³⁹ See PATTEN REPORT, *supra* note 6, at 20 (recommending "a new oath to be taken individually by all new and existing police officers, expressing an explicit commitment to upholding human rights.").

legality, necessity, proportionality, accountability and non-discrimination to be key in the creation and maintenance of legitimate policing.⁴⁰ The United Nations and others⁴¹ have deemed human rights sufficiently important to policing to develop an increasingly sophisticated range of Principles, Declarations and other soft law standards relating directly to law enforcement activities and personnel.⁴²

At a very real level, improved policing is about the provision on the ground of a palpable degree of individual and community safety, operationalised and facilitated within that accountable, inclusive, fair and impartial human rights framework. It is within this context that a given society needs to make further choices as to how to make the promise of human rights real in its concrete policing endeavours. The society must consider a range of competing needs in this process, not least how to best ensure effective law enforcement which offers protection to the public during the reform period itself, possibly at a point when crime rates are spiralling and the society is in meltdown. Similarly, serious thought has to be given as to how to engage and facilitate the best contribution from police and civilians who may have huge distrust both for each other and the process of reform itself. It is in the context of how and why and which choices are made that the legitimating and transformative potential of human rights can equally be undermined.

Successful police (security sector) reform will, ideally, involve a range of disciplines⁴³ and realities to take on the broader governance challenges. Changes to other aspects of legal and criminal justice systems will be required to secure the imperatives of keeping communities safe within a legitimate

⁴⁰ See RALPH CRAWSHAW, BARRY DEVLIN & TOM WILLIAMSON, *HUMAN RIGHTS AND POLICING: STANDARDS FOR GOOD BEHAVIOUR AND A STRATEGY FOR CHANGE 1* (Kluwer Law International 1998) (arguing that the most difficult challenge facing police leaders and managers today is the inculcation of a culture of human rights at the heart of their organisations).

⁴¹ Others include the Organisation for Security and Cooperation in Europe (OSCE).

⁴² See UN BLUEBOOK, *THE ROLE OF THE POLICE*, <http://www.uncjin.org/Documents/BlueBook/BlueBook/english/bbecont.html>.

⁴³ See WILLIAM G. O'NEILL, *INTERNATIONAL PEACE ACADEMY, POLICE REFORM IN POST-CONFLICT SOCIETIES: WHAT WE KNOW AND WHAT WE STILL NEED TO KNOW* (2005), available at <http://www.ipacademy.org/pdfs/PolRefERpt.pdf> (discussing that the project is not just about police and human rights experts getting together, and that input is required from organisational and systems experts, anthropologists, psychologists, accountants, fiscal managers, and community groups to generate holistic processes and deliver results in terms of better policing on the ground).

legal framework. Similarly, in organisational terms, training reform is only one aspect of what should be a much broader corporate and transitional strategy. This said, improved police (and, to a lesser extent, judicial and penal service) training is frequently seen as the key human rights contribution to police reform. Human rights oriented police training is an obvious hook by which law can be, and be seen to be, in some measure rehabilitated. As such, it is often seized upon by governments, international actors and bilateral donors as an obvious thing to be done.

The tendency to invest training with huge practical and symbolic value in terms of its ability to usher in change⁴⁴ is evident internationally from an examination of various countries. For example, the experience of Afghanistan resonates with that of other jurisdictions in that: “[t]hough Afghan and international officials often refer to rule of law development as a high priority, the necessary measures are not being treated with urgency, except for police training.”⁴⁵

In transitional societies, expectations around training take on a heightened significance and urgency around issues of human rights and diversity, because these have historically been sites where legitimate State practice has been lacking, and where the Rule of Law has most obviously been manipulated to meet State ends. However, the significance accorded to police human rights and diversity training in terms of the rehabilitation of law may be misplaced, particularly in terms of the broader peace-building endeavour.

Clear costs are associated with investing too much store in the power of training to inculcate human rights compliance in policing—not least because this visible device may fail to deliver visible results, while in the process cementing or perpetuating not-so-visible realities and understandings of policing, conflict and the past which can stand in the way of progress. At some level, this is tied up with “the symbolic . . . dominance of the police . . . [as] an emblematic expression of state authority and

⁴⁴ See PATTEN REPORT, *supra* note 6, at ¶ 16.1 (stating “training, education and development of police officers and civilian staff will be critical to the success of this transformation.”).

⁴⁵ See Miller and Perito, *supra* note 15, at 1.

important justification for the very being of the modern state.”⁴⁶ For all the stated commitment to improved policing and human rights from governments and even international agencies, there are often unstated assumptions about the absolute need for strong state police forces.

However, as Skolnick has argued, police, better than any other institution, typify the tension between law and order.⁴⁷ This is particularly the case where the State itself lacks legitimacy and its conception of order is at variance with the needs, understandings and expectations of a diverse group of people being policed.⁴⁸ In conflicted spaces it is clear that police pull towards State notions of order and conformity at the expense of proportionality and legitimacy.⁴⁹ If then, in conflicted societies, the notion of the legitimacy of the State itself is contested, it is surely somewhat ironic that the symbolic and practical changes to policing during a period of transition might actually end up cementing a conception of State and law that is, of itself, inherently problematic.

A key question in transitional societies must be, having experienced at first hand the tendency of policing to become decoupled from effective legal restraint:⁵⁰ Can such organisations be successfully rehabilitated and brought to value principles of legality, necessity, proportionality, accountability and non-discrimination more completely? Can a “neutral” police organisation be created, and to what extent is that actually what

⁴⁶ Zedner, *supra* note 2, at 82.

⁴⁷ See JEROME SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY* 6 (Macmillan Publishing 1994) (1966).

⁴⁸ For example, in Northern Ireland, the Royal Ulster Constabulary (renamed Police Service of Northern Ireland (PSNI) in November 2001) was originally formed in the early 1920s to police the 6 northeastern counties of a partitioned Ireland. Historically, despite initial plans to have a proportion of Catholics within its ranks, the force has largely drawn its members from the Protestant community in Northern Ireland. This is linked in large part to its role as defender of a contested State that for many decades operated a governmental system that was overtly discriminatory against Catholics.

⁴⁹ Much evidence exists of RUC involvement, in partisan policing and human rights abuses, particularly directed against the Catholic/Nationalist community in Northern Ireland. See, e.g., PATRICK FINUCANE, *CORY COLLUSION INQUIRY REPORT* (2004), available at <http://cain.ulst.ac.uk/issues/collusion/cory/cory03finucane.pdf> (highlighting evidence of collusion between the security forces and paramilitary organisations and recommending public inquiries into 4 particular murders); POLICE OMBUDSMAN FOR NORTHERN IRELAND, *INVESTIGATIVE REPORT* (2007), <http://www.policeombudsman.org/Publicationsuploads/BALLAST%20PUBLIC%20STATEMENT%2022-01-07%20FINAL%20VERSION.pdf> (discussing circumstances surrounding Raymond McCord, Jr.’s murder, and finding high level collusion by the security apparatus in at least ten civilian murders).

⁵⁰ See SKOLNICK, *supra* note 47, at 12.

is required? Also, if reforms are not seen to deliver in public safety terms, will that cause disillusionment in the minds of the public and decrease any legitimacy the new dispensation might have initially inspired?

It is against this backdrop that assumptions and assertions made in many parts of the world about the power of training to effect real policing change need to be carefully questioned. The usefulness of human rights and diversity training as a legitimating strategy in transitional contexts is clearly predicated on what it is sought to legitimate and why. For example, a flurry of training-related activity ostensibly aimed at delivering effective, human rights compliant policing⁵¹ can form an important strand in the construction of a disingenuous or misguided discourse around the extent to which police transformation has happened or is under way. Within this narrative, the appearance of extensive change in training is posited as an unqualified good. However, this might serve a multiplicity of organisational and government agendas, which do not necessarily have anything to do with enhanced respect for human rights or the delivery of effective, respectful policing on the ground. The reality is that, for all the effort put into human rights training, unhelpful police attitudes, value structures and behaviour may actually change very little.⁵²

Whatever the rhetoric, neither glossy training manuals filled with human rights language, nor the fact of international or local involvement in the change process is sufficient in itself to ensure the legitimacy of policing. Recent strategies aimed at inserting human rights into the heart of police structures may leave police officers speaking the language of human rights, but without fully appreciating the usefulness of the tool or its expectations in relation to the whole range of policing activities.⁵³ Similarly, if

⁵¹ In many places, this is accompanied and bolstered by international input, whether from the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) or through the intervention of foreign state police personnel (via the UN International Civilian Police (CIVPOL) or otherwise) and entities such as the U.S. Federal Bureau of Investigation (FBI) and the U.S. State Department International Criminal Investigative Training Assistance Programme (ICITAP).

⁵² See Marenin, *supra* note 4, at 318 (“[Human rights] abuses occur for many reasons, not forgetfulness or neglect or insufficient training. Reform requires an understanding of the occupational norms of the job and its political nature and relations to society and the state. Merely changing the technical skills of the police . . . will not work”).

⁵³ For example, video recording equipment was recently introduced in parts of China in an effort to provide safeguards against torture and ill treatment of detainees during

officers receive training, but are still unable to protect the public, the tendency might be to dismiss the utility of human rights as an effective, underpinning policing strategy.

All too often international experience indicates that where human right training is delivered to police:

[T]here is no overall training concept, just a series of courses offered to meet short-term political or security objectives . . . there is often no serious attempt to modify course materials and course methodology to ensure that local culture is respected and adopted [and] in most cases there is no coordinated plan to ensure [appropriate and relevant] cooperation in the development and delivery of training.⁵⁴

This lack of a sufficiently holistic and coordinated approach is evident at a number of levels and in a whole range of contexts. In part, it speaks to a desire of those in power to hold onto particular organisational models, structures and frameworks that cement particular power bases within society. This need to fill power vacuums is felt particularly keenly by those seeking control in transitional societies. However, outside of short-term political agendas, the organisational structure is only as important as its ability to give effect to legitimate legal principles and to withstand the pull toward protection of hegemonies and arbitrary and unfair treatment of minorities. It should not therefore be the organisation that is the focus of reform, but the concept of policing itself.

A reform agenda based on or largely dependent upon improved training cannot begin to deal with this reality. Human rights training at this point is likely to be de-contextualised, narrowly conceived, or otherwise inappropriate to wider societal needs. A transitional police force may still be in deep denial about its own past wrongdoing. A newly created police force may be in denial about its own potential for future wrongdoing. A police contingent, whether international or local, may be very poorly equipped to assess what is needed and ultimately ensure its

interrogation. Anecdotal evidence would suggest that, ostensibly on financial grounds, a number of police have only been turning the equipment on to record the confession rather than to monitor the circumstances in which it was obtained.

⁵⁴ CHALLENGES PROJECT, *MEETING THE CHALLENGES OF PEACE OPERATIONS: COOPERATION AND COORDINATION* 132 (Elanders Gotab 2005), http://www.challengesproject.net/roach/images/pdf/phase_II_concluding_report.pdf.

delivery. At the same time, the same contingent may have a vested interest in being seen to deliver. Poorly conceived or inappropriately delivered human rights training at this stage is thus understandable, but also has the potential to impact negatively on the complex dynamics which operate around moving police from a problematic past to a more legitimate future. At a time when human rights values need to be firmly and fully embedded, inappropriate or insufficient human rights and diversity training might serve to engender complacency, cynicism or some other form of unhelpful backlash. Experience has shown that precisely at the time when it is easiest to make mistakes, there is almost no room for error. “[E]specially in the early days of police reform . . . getting off to a good start is vital, and generating early tangible results is crucial as well.”⁵⁵

This said, results should not be seen in terms of boxes to be ticked, and will only be truly valid if arrived at and measured by holistic strategies and inclusive processes. The Northern Ireland experience, as well as other international experiences, is indicative of the potential within civil society to provide meaning and significance to police reform strategies not being fully realised. If sufficiently harnessed, such endorsement could and should affect paradigm shifts in terms of what policing is and could be.⁵⁶

International experience instead evidences a tendency for training and other policing reform ventures not to sufficiently countenance what is needed to create conditions for truly legitimate, representative and inclusive policing to come about. Instead, police reformers in many contexts may impose a fairly linear police worldview,⁵⁷ which values the imposition of a narrow conception of order in the process at the expense of the legitimating effect of a high degree of inclusiveness. As Marenin

⁵⁵ See O'NEILL, *supra* note 43, at 5.

⁵⁶ See Call & Stanley, *supra* note 3, at 152 (stating “international actors need to engage in ambitious agenda setting during peace negotiations to help the parties to conflicts envision new ways of policing rooted in unrestricted human rights, ethnic tolerance, and citizen service and [that these imperatives go beyond the immediate concerns of peace making as traditionally understood.]”).

⁵⁷ See Marenin, *supra* note 4, at 317 (“The police will not stand idly by while their professional norms, political power and organisational priorities are challenged. They will seek to shape their job, mandate, policies, programmes, image and ideologies to suit their own conceptions of what is the problem they are asked to deal with and what needs to be done.”).

points out:

The inertia of police culture, especially if the police organisation must retain members who worked as police during discredited regimes . . . (such as in Estonia, Hungary or Russia), tends toward the promotion of order rather than rights and freedoms. This professional outlook imbues all police forces anywhere. But in transitional societies, in which demands for rights and freedom (which the police denied citizens under previous regimes) were precisely the reasons for agitation to overthrow the existing regime, this professional tendency is much more visible, controversial and harder to overcome.⁵⁸

Similarly, the difficulties of engaging with or capacity building within a traumatised and potentially hostile or divided public should not be under-estimated. It begins then to be clear why police forces in transitional societies end up on a reform continuum rather than a transformative trajectory. In concrete terms, and across police agencies, organisational human rights compliance is notoriously difficult to embed. Given all the obstacles that can stand in the way of effective understanding and learning in this area, it is spurious to suggest that police can effectively be “trained” in human rights and diversity—this for a number of reasons.

Human Rights and Diversity training might be resisted as being imposed from the outside and having a subtext which takes insufficient account of police expertise and know-how. This kind of law might be viewed as little more than a “criminal’s charter”—insufficiently concerned either for victims or police officers themselves. It might equally be viewed as another level of bureaucracy or discretion fettering which will get in the way of effective policing.

The “message” and impact of human rights is also likely to be skewed and distorted by standard police organisational processes and baggage.⁵⁹ Human rights training can lose traction

⁵⁸ Marenin, *supra* note 4, at 324.

⁵⁹ For example, in Northern Ireland, one police trainer commented, “Police have had training for the Human Rights Act yet it didn’t begin to train them in human rights. The organisation has assumed the training in this area was done. It wasn’t. It reinforced the idea that human rights are a criminal’s charter.” MARY O’RAWE & JIM MCMANUS, N. IR. HUMAN RTS. COMM’N, HUMAN RIGHTS IN POLICE TRAINING—REPORT FOUR: COURSE FOR ALL 51 (2004), available at <http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/>

particularly where there is any mismatch with officers' own experience of being treated with respect by their colleagues, their trainers and/or senior management. Any organisational contradictions and contra-indications as to the level of priority to be given to human rights will be seized upon to denigrate human rights as a useful strategy to be implemented. To allow the challenges of human rights to filter into the conscious and subconscious life of the organisation concerned, paradigm shifts are needed. Unless the organisation develops mechanisms to effectively human rights-proof existent or new policies and procedures, what is proffered as policy in a training environment may be undermined by other messages being given out by the organisation. The human rights-proofing of policies and procedures in respect of recruitment, transfer, promotion, operations, discipline, and grievance are particularly important in this regard. If the organisation is seen to be treating its own members unfairly, huge cynicism will attach to the "corporate message" of human rights.

The lack of a holistic approach can be compounded in the choice of trainers. Where external actors are used to deliver bits of training, the defensiveness engendered by outside intervention can raise specific problems. This can be the case particularly if such input is not attuned to contextual and cultural as well as organisational sensitivities as to how it might be received. For example, depending on the context, human rights training might be seen as part of a political agenda to unfairly criticise serving officers for poor past human rights practice. In other situations, the imposition of "Western" or "Northern" models and concepts⁶⁰ might be perceived at some level as a new form of colonialism.⁶¹

75/HRPolice4_Report.pdf.

⁶⁰ See Jeffrey Lever & Elrena van der Spuy, *Challenges Facing Democratic Policing in South Africa*, in CHALLENGES FOR POLICING DEMOCRACIES, *supra* note 4, at 208 ("Donor assistance to the SAPS [South African Police Service] has contributed to an increasing shift, particularly at the rhetorical level, of local policing ideas toward the internationally dominant Western norm However it cannot be assumed that the process of internationalization is a simple or internally consistent transfer of good things. Theories and practices imported from abroad may not prove effective when put to the test under vastly different policing conditions.")

⁶¹ See generally Arianit Koci, *Legitimation and Culturalism: Towards Policing Changes In The European 'Post-Socialist' Countries*, in POLICING AND CENTRAL AND EASTERN EUROPE: COMPARING FIRSTHAND KNOWLEDGE WITH EXPERIENCE FROM THE WEST (College of Police and Security Studies 1996), available at <http://www.ncjrs.gov/policing/leg219.htm> (noting social and political transformations happening in central and eastern Europe).

The use of internal police trainers can pose its own problems, some of which will be explored more fully below.

A human rights compliant service cannot be created in traditional ways, or delivered by training which revolves around the provision of particular time limited interventions, largely divorced from other aspects of organisational structure and processes. Even where there is a degree of interconnectedness at a strategic management level, there are still huge question marks as to the extent to which the traditional police model has the capacity to contain and bring to fruition human rights compliance within a command control, hierarchical, essentially male and bureaucratic framework. Some of these issues will be canvassed further in Part II.

What is required in any given society at a particular time should ideally be gleaned from a broadly drawn needs analysis—an outline of the problem in order to craft the appropriate solution for a given jurisdiction at a given time. Such a needs analysis rarely, if ever, happens in transitional spaces.⁶² If it did, it would need to make space for a broad range of questions and concerns. Some of these would be germane to particular forms and experiences of conflict; some would deal with how law has been shaped and manipulated in the process. Still others would deal with forms and models of policing per se, which have failed (and not just in conflicted societies),⁶³ but which are tenaciously clung to as the “given” in the change equation.⁶⁴

⁶² This phenomenon frequently thwarts international efforts. All too often, international police are dispatched to conflict zones where “an adequate assessment of the needs of the society in question has not been conducted These assessments should not only include what is needed from UNPOL, but should also include a background analysis of the conflict itself, the potential for reoccurring conflict, and what factors may influence an international policing mission Such assessments could be greatly improved if they were conducted by teams having a broad range of expertise—and not only in policing or security—particularly incorporating the expertise of regional organisations and NGOs.” See EIRIN MOBEKK, GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, IDENTIFYING LESSONS IN UNITED NATIONS INTERNATIONAL POLICING MISSIONS 14 (2005), available at http://www.dcaf.ch/_docs/pp09_united-nations-international_policing.pdf.

⁶³ “No police agency is meeting in full its duty actively to protect human rights.” See CRAWSHAW ET AL., *supra* note 40, at 2. Police organisations across the world also fail to measure up in a range of other important respects, not least, universally low rates of crime detection.

⁶⁴ As Otwin Marenin suggests: “It is as if state power and control were a natural, self-generated occurrence and not something done and achieved by personnel employed to create social order, control deviance and crime, and ensure the continuity of the state.” See Marenin, *supra* note 4, at 314.

One key area for societal discussion is the extent to which policing reform initiatives need to interface with the legacy of conflict. The potential of human rights training to de-legitimize rather than legitimate the transformative message of human rights law where it does not engage effectively with past police wrongdoing will now be explored.

C. The Legacy of the Past: The Significance of Historical and Legal Accuracy

Part of the rehabilitation of law lies in the ability of law enforcement agencies to face up to and grapple with what has been wrong with law (and by extension law enforcement) in the past. The significance of historical and legal accuracy and the shaping of the official conflict narrative to conform with or at least allow the experiences of those at the rough end of policing are undoubtedly necessary. The extent to which it is necessary might vary from society to society and be more or less appropriate at particular junctures. This subsection considers whether there are some generic principles that can be drawn from international law and married with the experience of policing reform processes to date in order to create some optimum indicators for successful policing transformation in terms of its engagement with the past.

Truth recovery, public acknowledgement of wrongdoing by all actors in the conflict and the extent to which a country needs to create a shared history are vexed and multi-dimensional issues necessitating degrees of frankness, mediation, and generosity of spirit that do not come easily in fractured societies. Many societies are split by opposing views on the degree to which truth needs to be told, when that needs to happen, and the extent to which a line should be drawn under the past to give a peace process the necessary degree of momentum to bypass flashpoints for return to violence. Even where there is consensus on the need to learn from history in order not to repeat it, the most appropriate vehicles to take this forward are equally hotly contested. In time, most societies come to an acceptance of the need to recognise what in the past might, if unaddressed or unsatisfactorily addressed, return to haunt the present or disturb

the future.⁶⁵ This might happen in informal ways, but there are clearly potential benefits to be gained by law in mediating the process more formally and ensuring that a broad range of voices come to be heard. Aogan Mulcahy argues, “[p]oints of crisis [in a peace process] are often categorised precisely by the emergence of these hidden transcripts onto the public stage. Focusing on these hidden histories may shed greater light on the dynamics of police-community relations by offering an oppositional reading of events that privileges the experience of the subordinate over the rhetoric of the dominant, and that questions the ‘consensual basis’ of authority in liberal-democratic societies.”⁶⁶

The State should facilitate the hearing of these histories through law in order for its own claim to be heard loudly that it disavows practices that were corrosive and corrupting of the Rule of Law in the past. This would appear to be a necessary means of ensuring that that same Rule of Law is inserted as an accepted good centre stage in the peace process.

In Northern Ireland, an international commission on policing (The Patten Commission)⁶⁷ put forward what has been hailed internationally as an important blueprint for policing change. The Commission’s solutions were highly contested precisely because the Commissioners had not outlined sufficiently what it was in current and past policing arrangements that necessitated change. As Mulcahy argues:

[T]he failure to examine the past—or even explain the differing interpretations of same—may, in large part have been at the root of continued institutional resistance within government and the police [to the reforms proposed by Patten]. With no justifications offered for the need for radical change, it is hardly

⁶⁵ An international Symposium on Challenges of Policing Democracies held in Onati in 1995 concluded: “[I]t can be shown that even countries born out of revolutions motivated by the desire to return political power to the people experienced discrepancies between what was promised by leaders and what actually occurred. Those responsible for overthrowing dictators often used their newly acquired power to attempt to control the police and courts in manners very similar to those used by the former regimes.” Peter C. Kratcoski, *Policing in Democratic Societies*, CHALLENGES OF POLICING DEMOCRACIES, *supra* note 4, at 39.

⁶⁶ AOGÁN MULCAHY, *POLICING NORTHERN IRELAND: CONFLICT, LEGITIMACY AND REFORM* 19 (William Publishing 2006).

⁶⁷ The Patten Report made 175 recommendations to change the nature and structure of policing in Northern Ireland and link it more comprehensively to human rights protection. See PATTEN REPORT, *supra* note 6, 107-22.

surprising that many wondered why it was at all necessary . . . Past controversies would, however, remain perhaps the dominant feature in public debate about the report's implementation.⁶⁸

The process by which some of the Patten recommendations have been implemented and others have not; the reason why some recommendations have been incorporated into legislation while others have not has been left largely in police and civil service hands. The privileging of particular framings of the past has influenced all decisions made. Why policing is still such a fraught and sensitive political issue in Northern Ireland⁶⁹ also relates to choices made by government to try to institute change to a force whose past it still praises with these choices contributing to dragging out the transitional reform process for much longer than necessary.

In other transitional societies, particularly where there is no regime change, or where a society remains locked in a state of "meta-conflict"⁷⁰ around what the conflict was about, a full definition of the extent of state liability for past wrong-doing can prove elusive. This calling to account for past abuse may, however, be a vital ingredient to foster trust in the peace and police reform process among previously marginalised and alienated communities. How this is done and the extent to which it must be done has proved highly problematic in practice with different jurisdictions embracing or rejecting a variety of truth recovery processes and mechanisms.⁷¹

Even where Truth Commissions and other truth recovery processes take place, often what is not rendered visible by such mechanisms is frequently as important as what is. It can be the

⁶⁸ MULCAHY, *supra* note 66, at 166.

⁶⁹ The High Council of the Sinn Féin (the majority nationalist party in Northern Ireland) passed a motion on January 28, 2007 (eight years after the Patten Report), to finally begin to cooperate with new policing arrangements, and consider taking up party seats on the civilian Policing Board, not because transformation had been achieved, but "to put manners on them" and "dismantle them from the inside brick by brick." See *Sinn Féin Votes to Support Police*, BBC NEWS, Jan. 28, 2007, available at http://news.bbc.co.uk/1/hi/northern_ireland/6308175.stm; see Tom Kelly, *Maybe Someone Needs to Put Manners on Sinn Féin*, IRISH NEWS, Feb. 5, 2007, available at http://www.nuzhound.com/articles/irish_news/arts2007/feb5_manners_SF_TKelly.php.

⁷⁰ See CHRISTINE BELL, *PEACE AGREEMENTS AND HUMAN RIGHTS* 15 (Oxford University Press 2000) (1967) (defining "meta-conflict" as "conflict about what the conflict is about").

⁷¹ See generally Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York Routledge 2001).

case that less formal processes bring information or experiences to light that official mechanisms are either unwilling to countenance or unable to assimilate satisfactorily into official versions of the truth about the conflict. Where this happens, the simple act of public and official acknowledgement of truths which have become part of the folklore of any given society may be precisely what is needed to allow the marginalised in that society to have faith that the reform process itself is to be trusted.

The United Nations' updated set of Principles on Impunity⁷² is clear that victims have a right to know what happened to their loved ones. As Christine Bell has argued, accountability is necessary "to provide new political arrangements with legitimacy," to combat revisionism and to foster conditions for reconciliation.⁷³ Dealing with the past is particularly crucial when it comes to institutional reforms aimed at establishing the rule of law. If the legacy of conflict is not sufficiently factored into mechanisms and processes aimed at ushering in a new, more legitimate era, this has implications for the stability, durability and ultimate effectiveness of any nascent peace process either where Truth Commissions have happened or in places like Mozambique, Cambodia and Northern Ireland, where they have not.⁷⁴

I would argue that, whatever the macro-level machinations around how and when and to what extent to recover truth, if past abuse by the State is ignored or goes unsaid in the police training arena, a vital legitimating tool is lost to the training programme and the broader change process. If, on the micro level, police training in human rights fails to acknowledge and engage with the *de facto* phenomenon of both the occurrence of (and continuing impunity for) human rights violations committed by police officers linked to a repressive regime during the conflict, it is difficult to see how such training can simultaneously be effective in ushering in human rights compliant, acceptable policing and the corollary of respect for the Rule of Law on the

⁷² U.N. Econ. & Soc. Council [ECOSOC], *Promotion and Protection of Human Rights*, [2005] 5-19, E/CN.4/2005/102/Add.1 (Feb. 8, 2005), available at <http://www.flghrwg.net/reports/UN2005/impunity.pdf>.

⁷³ See Bell, *supra* note 70, at 271.

⁷⁴ This is not to say that truth recovery processes have not taken place at different levels and to a greater or lesser extent within these societies in the absence of a formal expansive truth commission.

ground.

D. Where does this sit with the delivery of human rights and diversity training to police?

Essentially, police training can, within current models, take place without an effective needs analysis geared toward systemic and societal needs. It can equally take place in the absence of shared consensus about past conflict. Instead, narrowly perceived organisational imperatives can classically assume that transformation is possible without having to address, in some shape or form, the past legacy of policing during the period of conflict.

Consideration of human rights and issues of diversity tend not to fare particularly well within this framework. This does not mean that they are not being addressed. On the contrary, training documents and policies may overflow with references to such issues. However, problems arise where human rights and diversity issues are being mediated through the lens of a police worldview de-contextualised on a surface level from the legacies of conflict.

It is clearly understandable that a police organisation (such as the Royal Ulster Constabulary in Northern Ireland) that has come through the experience of violent conflict might be at pains to reassure itself that it performed well in the past, even in the face of enormous evidence that, in human rights terms, it was sadly lacking.⁷⁵ There is a profound need to articulate that “We’re all professionals in the room,” “Policing in the past was A1,” “We’ve been doing all this anyway,” and “Human rights is just about putting different words to our practice.”⁷⁶ This message is more likely to be reinforced where members of the same force deliver training, and will themselves wish to identify both with their colleagues, as well as former positive policing behaviour. This is why those chosen to design and deliver human rights and diversity training is so significant.

⁷⁵ See *supra* text accompanying note 49. This has also been documented in several of Amnesty International’s Annual Reports, up to and including its 2005 report. All reports available for purchase at <http://www.amnesty.org/ailib/aireport/index.html>.

⁷⁶ Comments made by Northern Ireland police trainers to their colleagues during author’s observation for the Northern Ireland Human Rights Commission of a 2003 PSNI course on the new Northern Ireland policing context (the “Course for All”).

While delivering the human rights message through internal trainers might be more comfortable for the organisation, and can be argued for in terms of the possibility of internal “on message” personnel acting as valuable change agents, it devalues the human rights message to have it delivered in this way. Where trainers themselves have insufficient knowledge or understanding of the human rights challenges for policing, they can end up shoring up unhelpful police mindsets with regard to human rights. Furthermore, in celebrating or repackaging a non-human rights compliant past, this approach dilutes the power of international human rights standards, particularly those against impunity for past wrongdoing.

If the training is given by agents not well versed in human rights and diversity issues, the results can be problematic. For example, in RUC/PSNI training events, course materials have been found to be dated and highly selective in terms of human rights case law from the European Court of Human Rights. Key judgments, if referred to at all in the delivery of courses, were at times given a police/government “spin” or inaccurately conveyed. For example, in 2003, one trainer referring to the seminal case of *Ireland v. United Kingdom*,⁷⁷ in which the Commission found that torture had occurred and the Court concluded that the five “deep interrogation” techniques used in Northern Ireland in the 1970s amounted to cruel, inhuman and degrading treatment, presented it thus:

In this case, the European Court of Human Rights said that we have never tortured our prisoners. They did suggest in their thousands of pages of summing up that some of our interview techniques maybe bordered on degrading treatment, hooding, sleep deprivation and all that stuff . . . these were never charged, never proved but the torture one was disproved in court.⁷⁸

Not only is this information inaccurate on many levels, it serves to feed the dynamic that there was nothing fundamentally wrong with policing in the past.⁷⁹ This is precisely the dynamic

⁷⁷ See 2 E.H.R.R. 25 (1980) (holding United Kingdom’s treatment of suspects was an “infringement of Art. 3 as a form of inhuman or degrading treatment”).

⁷⁸ O’RAWE & MCMANUS, *supra* note 59, at 49.

⁷⁹ See O’RAWE & MCMANUS, *supra* note 59, at 31. In the words of one trainer: “The RUC was the most efficient and effective counter-terrorist force in the world. Everything

that needs to change to usher in a new era, and a new culture in regard to the transition of policing and beyond. Countering skewed views of the past is something that requires a deep learning programme and skilled facilitation—often something that is lacking where police officers design and/or deliver human rights programmes.

The tendency to valorize and continue old patterns of behaviour is singularly inappropriate to the new context which policing must have a hand in shaping. This is perhaps most starkly borne out by findings of the Northern Ireland Human Rights Commission in respect of the use of force training provided to new PSNI recruits. Given the clear historical resonance around past experience of brutal policing and the decided lack of accountability of state agents, it would be vitally important in the context of any transitional society to confront these issues head on to ensure that bad practices are recognized and drawn back from.

However, PSNI training in the use of force highlights the difficulties of shaking old mindsets in the supposed move from paramilitary force to community service. In 2002, considering training given to the first batch of new recruits taken on after Patten, the NIHRC was concerned at the amount of time spent on demonstrating ways in which extreme forms of violence can be effective in dealing with an attack.

Trainer: In different situations you have to be quick and fast . . . Don't forget the groin stuff: squeeze, pull, tug as hard as you can; you may even end up with a good handful of DNA, which will help you to catch the person.

Trainer: I might decide that I'm going to smash his kneecap off. A flat-handed strike to the patella can remove it.⁸⁰

While aware that there are “circumstances where police officers could be perfectly entitled to use every physical means at

was A1. People came from all over the world to see how we did it.”

⁸⁰ MARK KELLY, N. IR. HUMAN RTS. COMM'N, AN EVALUATION OF HUMAN RIGHTS TRAINING FOR STUDENT POLICE OFFICERS IN THE POLICE SERVICE OF NORTHERN IRELAND 30-31 (2002) [hereinafter NIHRC 2002 REPORT], available at http://www.nihrc.org/index.php?page=res_details&category_id=30&Itemid=1.

their disposal in order to prevent severe injury to themselves or others,”⁸¹ Mark Kelly, the author of the NIHRC report, was left with the distinct impression that he had been witness to “fight training . . . as opposed to training in control and restraint techniques which might cause pain but are less likely to result in injury.”⁸² He concluded, “[m]ore generally, it should be possible to teach professional police officers to deploy anti-violence techniques which are far more sophisticated than grabbing testicles, smashing kneecaps and poking eyes.”⁸³

These further statements by trainers in 2002 serve to illustrate that, far from retreating from such techniques, aggressive behaviour was arguably being facilitated and compounded by student officers being trained in the art of saying the “right” thing rather than doing the right thing. They further indicate a lack of appreciation as to how macho and unhelpful behaviour by police officers can, over the course of even one short incident, operate to destroy a community’s fledgling faith in the reformed policing arrangements.

Trainer: Nowhere in the written legislation will you find a requirement to use the minimum force, so don’t say that you used minimum force.

Trainer: If you are challenged on your use of force, remember to always use the phrase ‘it was my perception and honestly-held belief.’

Student: (during a session on ground defence techniques): Can you give him [the assailant] a kick on the way out?

Trainer: That’s up to you. It depends on your ‘honestly held belief and perception.’ What you wouldn’t want is for it to be seen on video that you’d gone and kicked him after bringing him down.⁸⁴

More than a year later, and despite the concerns iterated by the NIHRC report, very similar statements were still being made

⁸¹ NIHRC 2002 REPORT, *supra* note 80, at 31.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 30.

to probationer PSNI constables:

Trainer: If you hit a person fairly softly four or five times, that can create four or five bruises. So from our point of view, when they go to a doctor or solicitor there will be more medical evidence that can be used against us. So, it's far better, if you do use physical force against someone, to hit them [sic] as hard as you possibly can. Because, if you think about it, has any machine been invented which can be wheeled into Court and used to prove your actual force, and whether you used all of it, or only 50%?⁸⁵

NIHRC's 2004 report further picked up on the presence of certain written notices in some training venues: "You fought the good fight—now write it right" and "To win the real fight we need to adopt an offensive mind-set."⁸⁶ These sentiments run completely counter to the type of ethos that needs to be injected by training to effect a transformation in policing practice on the streets. Instead, they speak to a deeper police subculture persisting even in light of clear training improvements and massive changes throughout the organisation.

NIHRC's 2004 report further demonstrates that, on top of this, probationers of "questionable proficiency" were being deemed to have satisfactorily completed their course of training when they were clearly not ready to police the public. The report provides an example of one probation officer who was seen on at least two successive occasions misapplying handcuffs to a colleague, causing that colleague "considerable pain." Although trainers attempted to intervene, they were unable to correct the actions of the person concerned. This same person was later recorded on video,

striking a completely unjustified blow with a (practice) baton to a role player . . . who was not to be regarded as a potential assailant. Although this shortcoming was highlighted by a trainer in the subsequent debriefing session, no formal assessment was made of

⁸⁵ MARK KELLY, N. IR. HUMAN RTS. COMM'N, HUMAN RIGHTS IN POLICE TRAINING – REPORT THREE: PROBATIONER CONSTABLES AND STUDENT OFFICERS 24 (2004) [hereinafter NIHRC 2004 REPORT], available at http://www.nihrc.org/index.php?page=res_details&category_id=30&Itemid=1.

⁸⁶ *Id.*

the performance of any of the probationers who participated in the course. On the following day, all of the probationers observed were issued with real batons and, one working day later, they took up their functions in District Command Units throughout Northern Ireland.⁸⁷

While some of NIHRC's 2002 recommendations were taken on board by the PSNI, the inevitable conclusion of the 2004 report was that the PSNI had still not adopted a holistic approach to human rights training delivery.

NIHRC defined the situation in terms of the PSNI "continu[ing] to deny itself the means to ensure that learning events reach, and maintain, a uniformly high standard."⁸⁸ The broader question might be whether police can be sufficiently opened up to the very different realities and imperatives mandated by ideals of human rights and diversity. If it is so difficult to manipulate human rights concepts to make them fit naturally within the strictures of traditional police training and organisational models, perhaps the question should be whether the organisations must materially change to provide a better fit for human rights.

At the other end of the spectrum, nascent and emergent governments and police organisations may not deal effectively with the past for other reasons. They may not yet feel ready to flex muscles too quickly in terms of categorically denouncing the past, particularly where the erstwhile power maintains a continuing presence.⁸⁹ Equally, the police mindset might be focused more tactically than strategically, and there may not seem that there is much to be gained by looking backwards.

With "all new" forces, a different, but no less problematic, dynamic operates where training fails to engage with the past. In considering themselves to be more reflective of society or morally superior to their predecessors in other ways, new police forces may feel there is no danger that they, in their turn, will commit human rights abuses. This might seem reason enough

⁸⁷ *Id.* at 26.

⁸⁸ *Id.* at 41.

⁸⁹ For example, consider the experience in post-Pinochet Chile, where laws giving blanket amnesty to state actors were allowed to remain on the statute books for a considerable period of time.

not to worry too deeply about past wrongdoing by other police. However, the ability of unhelpful police organisational cultures and subcultures to re-form and re-group, even in “new” bodies, means that “all new” bodies may be equally at risk of drawing and repeating in some measure inappropriate lessons from the past.⁹⁰ Heaping opprobrium totally onto the shoulders of past policing can, therefore, serve to divert from what needs to be firmly challenged in the development of the new.

There is obviously a degree of self-protection and political sagacity in all of these “unwillingnesses” to interrogate the “hard stuff” about the past. To poke and prod and worry at it, particularly in early retraining initiatives, might seem suicidal in policing terms, especially given the need for some degree of police functioning to be ongoing while new training and other reforms settle in. However, it is often a short-term political agenda that eschews creating safe spaces in the training arena to really grapple and come to terms with what was wrong with the past. In being geared simply to build for the future, de-contextualised human rights training may, wittingly or otherwise, cement an untenable or partial view of the past while seeming to allow that impunity for past abuse can be countenanced in human rights terms. This myopic approach may have an initial appeal, but is ultimately likely to jeopardise the legitimising project in the longer term.

The continuing lack of sufficient human rights awareness among police trainers and the failure to involve trainers from outside the police in any comprehensive way can compound a tendency to emphasise “the lawful authority for police action to the detriment of fully considering its human rights implications.”⁹¹ This emphasis on legal powers rather than human rights is generally one of the main deficiencies in policing during periods of conflict. In Northern Ireland, the NIHRC commented that to continue with such an approach post-conflict “could have pernicious consequences in a jurisdiction such as Northern Ireland, where very broad legal powers have been granted to the police.”⁹² This point is well made. Indeed, one might go further and suggest that there is something important

⁹⁰ Such was the experience of El Salvador in this regard.

⁹¹ NIHRC 2004 REPORT, *supra* note 85, at 19.

⁹² *Id.* at 17.

to be unpicked in the continuing failure to realign training more fully toward human rights processes and outcomes.

E. The Northern Ireland Training Experience – A Case Study in Legitimacy?

In terms of Northern Ireland, the legitimating potential of human rights was recognised. Patten placed Human Rights squarely in the centre of policing reform. The Patten blueprint for change in policing ranged much wider than just training. However, in the midst of 175 recommendations, thirty-five related directly to training, education and development, while many other recommendations had training implications of one sort or another. The bulk of these focused specifically on the need to integrate a human rights dimension into every aspect of the training process.⁹³ Thus, it is useful to look at how the Patten implementation process has played out in respect of training in terms of engaging the transformation of law and the inclusion of disaffected communities.

The emphasis on human rights marks a very clear break from a security-focused model and the RUC/PSNI clearly attempted to incorporate this framework into its training programmes and initiatives following Patten. However, over a number of years, it failed to do so.⁹⁴ In the case of Northern Ireland, the local police force, made up of a fairly unrepresentative sample of the population, maintained a high degree of control over the design and delivery of training.⁹⁵ In the late 1990s, the RUC embarked on a programme of massive change at a time when neither the organisation nor the British government viewed its own past actions as coming within the category of serious human rights abuse. Change took place in a context where criticism of the police had historically been viewed as emanating from necessarily unpalatable and anti-police agendas.

⁹³ See, e.g., PATTEN REPORT, *supra* note 6, at 20 The Patten Report recognised that “[t]raining was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel” and specifically recommended training in the “fundamental principles and standards of human rights and the practical implications for policing.”

⁹⁴ See generally *id.*

⁹⁵ This was further established in a series of interviews in 2005 with external trainers contributing to PSNI programmes in which they indicated that they had little sense of how their individual contributions fitted into the overall police-training context.

Those managing the process chose to sidestep important legitimacy questions at the interface of building a human rights compliant police service on a legacy of past human rights abuses by police officers. The Northern Ireland experience, thus, resurfaces a central transitional justice dilemma, which appears to pit human rights demands for truth and justice against perceived local peace-building imperatives.

Because training in Northern Ireland tended to be compartmentalised and divorced to some extent from the broader imperatives of policing in a post-conflict reality, key issues of institutional sectarianism, racism, and sexism were insufficiently tackled in its programmes. For example, while issues around sectarianism and the legacy of partisan policing are objectively among the most pressing facing police officers in a post-conflict setting, time and again training in Northern Ireland has missed or bypassed these issues altogether. This is evidenced on a number of levels and can be traced through from the beginning of the change process to the time of writing.

In 2002, the Northern Ireland Human Rights Commission found that, far from being facilitated to grapple with the daunting realities of attempting to police a fraught transitional space, the first intake of trainees post-Patten had been given very little in the way of Northern Ireland-specific material with which to engage. At a critical transitional moment, student officers were steered away from the very issues (for example, sectarianism) that would make their policing on the street more difficult. The inability of training to prepare student officers for this reality provides evidence of a lack of willingness to confront deeper issues around the extent of police responsibility for their own unacceptability in certain geographical areas and within certain communities.

When reviewed again by the NIHRC in 2004, the PSNI training approach was still seeking, for a variety of reasons, to avoid the hard issues that police human rights training must face if it is to have any real effect. In doing so, it ignored the potential of the interplay between policing transformation and broader societal reform, which might be liberated by the honest tackling of issues on the ground that continue to thwart broad acceptance of policing arrangements. In Northern Ireland terms, if training did not impact to challenge the hegemony of the British,

Unionist, male, securocratic culture within the organisation, the prognosis for real change in policing, and the reshaping of law could not be good.

Unhelpful approaches to human rights and diversity can be justified on the basis that questions of past policing are too fraught, too raw and too divisive to warrant training engaging with these issues. However, this unwillingness to venture where “there be dragons” is also, at a very basic level, about the old guard holding onto power and unwilling to map its own part in past wrongdoing onto an explosive transitional space.

The first report commissioned by the Northern Ireland Human Rights Commission in 2002,⁹⁶ evaluating the human rights aspects of the new post-Patten twenty-one week Student Officer Training Programme (SOTP), found deficiencies in the “content and contextual basis of the core lessons,”⁹⁷ which mitigated against the mainstreaming of human rights. The report made the point that “[a]lthough fairly frequent reference was made to human rights during the learning events observed, discussion of human rights tended to remain at a very superficial level.”⁹⁸

The report was at pains to point out that:

[S]incere efforts were being made by all of the PSNI trainers observed to incorporate human rights elements into . . . learning events . . . [but] they were the first to admit that they did not consider themselves particularly knowledgeable about human rights issues [T]he human rights elements of the training . . . given to PSNI trainers [had] not been sufficient fully to equip them for the difficult task of rendering human rights principles meaningful to student police officers.⁹⁹

In this failure to give police trainers the skills necessary to sufficiently incorporate human rights into the heart of learning events or to look elsewhere for that expertise, the dangers of applying a “police” mindset or simply reformulating training

⁹⁶ NIHRC 2002 REPORT, *supra* note 80. Among the groups observed was the first-ever intake (forty-eight students) to graduate as constables of the new PSNI in April 2002.

⁹⁷ *Id.* at 22.

⁹⁸ *Id.* at 24.

⁹⁹ *Id.* at 26. The report also expressed concerns as to lack of communication and sharing of information and best practice among trainers within the PSNI.

within traditional parameters and frameworks were thus concretised.

The NIHRC's follow-up report, published in April 2004,¹⁰⁰ and based on further observation and evaluation of training of both student officers and probationer constables during 2003, concluded that trainers had still not been "placed in a position to respond in an authoritative manner to pertinent questions about human rights issues which may be raised by probationer constables."¹⁰¹

I witnessed this myself in the course of conducting a further evaluation for the NIHRC in respect of the PSNI Course for All, which was delivered to every member of the organisation, from Chief Constable to gardener, during 2003. On occasion, participants displayed sexist, racist, and/or sectarian attitudes. Generally, tutors did not intervene to explore or challenge such comments. Instead, far from intervening creatively with such dynamics, certain tutors themselves occasionally made inappropriate remarks such as "[r]emember those days when you had your Michelin calendar and whatever else—then the women came in—well girlie calendars were out,"¹⁰² and "[i]f your super's on your back and you're a lazy arab, you might get together with some friends and make a malicious call."¹⁰³

Again, there was no sense of a coherent and comprehensive approach having been adopted in terms of training trainers for this task. Instead, many trainers, when questioned, did admit to feeling "pushed off the deep end," with one trainer stating: "There was no real training for trainers on this course."¹⁰⁴ So, a year later, it appears that the powers that be had still not seen the urgency or significance of revisiting their approach in this area—in itself indicating the need for a fuller and sharper focus on the importance of external rather than simply internal police legitimisation.

The NIHRC's 2004 report did find that a number of improvements had been made,¹⁰⁵ and several previous

¹⁰⁰ NIHRC 2004 REPORT, *supra* note 85.

¹⁰¹ *Id.* at 19.

¹⁰² O'RAWE & MCMANUS, *supra* note 59, at 39.

¹⁰³ *Id.* at 50.

¹⁰⁴ *Id.* at 48.

¹⁰⁵ *See generally id.* The improvements include effective usage of problem solving approaches in many instances.

recommendations had been taken on board. However, many of the same issues and key concerns were raised once again, the bulk of these relating to the appropriateness of the training and the manner of its delivery.

In practice, a failure to meet the demands of international human rights law at the moment of transition can taint the transition with condoning impunity for past wrongdoing or otherwise devaluing the potential of human rights to impact radically on policing experience. Allowing human rights training to take place in the context of ongoing impunity for past wrongdoing de-legitimises the very messages that human rights and diversity programmes are trying to send at the very moment when they most need to be heard in their totality.

II. TRANSFORMING POLICING: DIFFERENT VOICES AND TRANSITIONAL OPPORTUNITIES

Part of having these messages heard in their totality is to develop and harness human rights and diversity-friendly means to roll out reform. The answer as to why human rights issues do not find their way sufficiently into training programmes may well lie in how training needs are initially conceived and ultimately developed. This means the focus for training, as for other change initiatives, must be on process as much as on outcomes. This section will consider how easily this notion sits with traditional police thinking, and explore some of the issues involved in creating transformative processes within a hierarchical, essentially male, security driven organisation.

A. The Role of Law

If the law has operated unfairly and been seen to belong to and protect one section of society over another, it is incumbent on those managing the change process to address this deficit. As such, reform needs to engage fully with the mistrust that a previously alienated or disenfranchised section of the population has traditionally felt in respect of law and policing.

Again, this endeavour is multi-faceted. The role law can play is to facilitate the development of mechanisms and processes to involve the hard edges of civil society, either in terms of specific

equality legislation, the creation of particular accountability mechanisms and bodies or in providing guiding principles to shape more closely conditions for a healthy Rule of Law to flourish. Whether or not consensus can be achieved on what was wrong with the past, there tends to be a reasonable degree of agreement that police organisations should be fair, representative, accountable and respectful of human dignity. These principles can and should be explicitly enshrined in policing legislation to be cascaded out throughout the various manifestations of reform.

Beyond these broad principles, it is rare that societies move to a position of consensus on what policing means in practice—what do we want from our police, what would that look like, what would need to happen in order to make that happen, how would we know when it has happened? The needs analysis mentioned in Part I again comes to the fore as something that would be extremely useful at the beginning of a transition process in order to secure the views of as many different levels of society as possible. In encouraging broad ownership of the policing reform project, law should help ensure that what is eventually created is actually what is required by that society, broadly understood. Different spaces need to be created to encourage such thinking. Law, as well as facilitating others to arrive at a vision of policing is also an area where vision will need to be developed and where specific laws and guiding principles will ultimately require drafting. Law is also one area where there can be a rush to judgment on what is needed, and what develops there can finish by reflecting the views of a very narrow band of people. What appears in legislation is important, not because it will ultimately happen as intended in practice, but because it very clearly can add to the creation of a hegemonic or more pluralist view of policing, depending on the route taken.

In terms of transition, legal responses to policing must be examined as to the extent they truly reflect the will of the community. In the first instance, particularly where reform is contested, and where there is continuity in terms of regime and/or policing structure, it cannot simply be assumed that legal or other changes brought in will be either sufficient or appropriate to the challenge of producing new and broadly acceptable policing arrangements on the ground. As Mulcahy

argues, “in the absence of a shared narrative of legitimacy, the police may turn inwards and focus instead on internally derived measures. Ultimately though, these measure organisational activity rather than public acceptance, and it is the latter rather than the former that is the most significant dimension of the legitimation process.”¹⁰⁶

The internal referencing system adopted by police, locally, and often internationally, generally means that sufficiently inclusive strategies and processes remain undeveloped, when they, in and of themselves, might be key to unblocking lines of communication necessary for trust to develop between police and the policed.

On the ground, it can often happen that legal change or lack of it, as a subset of the police change process, may serve to compound organisational belief systems aimed at perpetuating a state and/or police-centric view of what the conflict was about and what policing is. This can lead to the maintenance of control over the process and the privileging of a security driven government and/or police agenda. Rather than community realities and experiences, it is instead police imperatives that will filter into training just as in other areas of the police change process.

The interests of the state or police management cannot be conflated with those relating to human rights protection or community involvement. In ways, these may even be contradictory aims. This dissonance must be explored and addressed, with the involvement of disparate and different communities and voices key to unpacking what is required from policing in a post-conflict setting. Law should facilitate this in dynamic and creative ways.

Where tight official control is kept of the police training agenda,¹⁰⁷ the opportunities for linking into different realities and needs are diminished. Even where some or all responsibility for policing or police training is in the hands of international experts or external organisations,¹⁰⁸ a broad analysis of policing

¹⁰⁶ MULCAHY, *supra* note 66, at 196.

¹⁰⁷ For example, in certain places, tight control is evidenced by a tendency to bestow an unwarranted degree of virtuousness on police training being largely developed and delivered by police.

¹⁰⁸ As has happened in Eastern Europe and certain Latin American countries where the involvement of the Council of Europe, the UN, the FBI and other international or foreign agencies has been pivotal to the change process.

or training needs tends not to happen.

Eirin Mobekk makes the case in identifying lessons from UN peacekeeping missions that “international police forces have been notoriously poor at consulting civil society on any issue.”¹⁰⁹ Charles Call makes this same point in relation to his work on policing change in Central America. “National police forces remain resistant to the introduction of any local participation in the selection of police officers . . . or the influence of outside voices in the definition of citizen security priorities. All too often ‘community policing’ is interpreted to mean enlisting the population in identifying and informing on suspicious activity by neighbors. While such vigilance can serve some crime prevention ends, it does not signify the genuine participation of citizens in the definition and implementation of . . . security policies.”¹¹⁰

There is a clear need, in terms of the creation of acceptable policing, for previously alienated sections of the community to be brought on board and encouraged to have faith in the new dispensation as being different from the old. This will only happen where legitimating strategies are inclusive and effective.

The assimilation of discordant voices is a measure of the effectiveness of law in ensuring new levels of inclusivity and accessibility. The extent to which a sufficient degree of inclusivity is achieved may, in turn, point to further deficiencies or opportunities in law to secure the support of previously subordinated groupings in society.

Where this does not happen, a failure to render visible experiences of the conflict which have been unacknowledged by the dominant male, security-driven, state-centric, paradigm, can compound and exacerbate the sense of alienation and frustration felt by those who did not trust the police during the period of violent conflict. If this happens at the very moment when such people most need to be brought on board, the entire process, however well-intended, may be set back.

If the law continues to operate “as normal” in transitional societies, a suspicious population (or section thereof) is unlikely

¹⁰⁹ MOBEKK, *supra* note 62, at 25.

¹¹⁰ CHARLES T. CALL, SUSTAINABLE DEVELOPMENT IN CENTRAL AMERICA: THE CHALLENGES OF VIOLENCE, INJUSTICE AND INSECURITY 60 (Hamburg Institut für Iberoamerika-Kunde 2000), available at http://ca2020.fiu.edu/Themes/Charles_Call/Call.pdf.

to be convinced that a sufficiently robust framework is in place to ensure that the history of past abuse will not reoccur. The human rights framework comes into its own here, but only if it is, and is seen to be, internalised by those operating the law. This will require a strong level of partnership with civil society, and will be evidenced by the process, substance and extent of engagement with the community in the police and legal change project. Here again, training provides a key site for assessment of how partnership approaches are developed and operationalised.

B. The Legitimizing Effects of Human Rights Law

Human rights law is clearly underpinned by principles of equality and fairness. A key element in the building of legitimacy is to use these human rights underpinnings to ensure that policing is accountable to the communities it serves. The Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of the Child and a raft of other international measures concerning the protection of minorities aim to prevent discrimination.¹¹¹ In their broadest sense, such documents are also concerned with facilitating access on an equal playing field to the full range of activities and rights necessary for the full development of the human person.

Policing is one area in which the strength of non-discrimination and equality principles can be put to the test in practice. In many societies, policing has traditionally been a male and fairly homogenous profession in terms of race and class. These distinctions are felt particularly keenly in conflicted societies where policing often operates in an arbitrary and discriminatory way. A test of whether policing has really changed, post-conflict, is the extent to which police forces are both more open and accountable to the community at large, and the extent to which that openness and accountability is reflected in police training in this area.

¹¹¹ See generally S.C. Res. 1325 on Women, Peace and Security (2000); See Laura A. Donner, *Gender Bias in Drafting International Discrimination Conventions: The 1979 Women's Convention Compared with the 1965 Racial Convention*, 24 CAL. W. INT'L L.J. 241, 241 (1994).

C. Building for the Future: The Significance of including the Community

Timely and effective reforms, supplemented by training, can help anchor the peace only if they change previously marginalised people's experience of being policed.¹¹² By the same token, any perceived lack of good faith in this area or any hint of reversion to the past can have an effect in transitional societies seemingly out of proportion to the act or omission itself. In Northern Ireland, the Patten Report recommended the establishment of District Policing Partnerships (DPPs), local fora that would have access to a budget to be spent on local policing initiatives, broadly conceived. Twenty-six DPPs were ultimately set up. However, they were deliberately not allocated the power to raise funds to spend on their own local initiatives. Patten had intended these bodies to take democratic participation in policing to the most local of levels, and to give ordinary citizens a say in how community safety should be facilitated in their areas. While depriving these bodies of spending power, the Government separately established Community Safety Committees, as a result not of Patten but of a parallel Criminal Justice Review. The existence of these two sets of bodies attests to the continuing desire of Government to keep issues compartmentalized and not to cede too much control to civil society. The Northern Ireland Office (NIO) retains much more control of the latter process—and it is here that funds have been made available to spend on community safety initiatives approved by the powers that be. Behind the façade of democratic accountability and inclusivity, the old guard thus ultimately maintains control of both the process and the purse strings. A recent assessment of attendance of the public at DPP meetings has shown no more than a handful turning up at meetings, while the cost of DPPs has exceeded £12 million since they were first established in 2003.¹¹³ A recent Review of Public Administration now seeks to

¹¹² "Local ownership of the entire process of training and reforming local forces is essential [C]ivil society must be consulted and must feel that they own these processes that are so crucial for the long-term stability of their country [I]f they are not [consulted] . . . the local police . . . will not have legitimacy." See MOBEKK, *supra* note 62, at 24.

¹¹³ See Jonathan McCambridge, *Policing Farce Goes On*, BELFAST TELEGRAPH, June 15, 2006, at 1 (noting that £12 million is representative of a very small part (0.5%) of overall policing budget allocation and it is certainly possible that DPPs would be much

reduce the numbers of such bodies. Thus a potentially valuable opportunity to democratise policing and input into police training has potentially been squandered.

The transformational imperative, faced with a steep learning curve, should be to develop appropriate and inclusive tools and systems and to make real use of the expertise and experience civil society could bring to the process. Human rights and diversity training initiatives are among those tools, but must be used holistically.

Lack of inclusiveness in how training programmes are conceived, designed and delivered can de-legitimate the policing change process and any limited results will be simply reformative of police rather than transformative of policing. Unfortunately, experience shows that training and other reform ventures rarely sufficiently countenance the need for a broad re-conceptualisation and understanding of community endorsement and acceptability.

This plays out in a number of ways. First, an openness to sufficiently accommodate or even see broader community concerns is often lacking in police attempts to grapple with issues of diversity. Eugene McLaughlin concluded in the wake of the Stephen Lawrence enquiry¹¹⁴ in England that the police officers involved “had a woefully inadequate understanding of how racial discourses were embedded in and constitutive of police work.”¹¹⁵ This is particularly the case where there is no societal consensus on the nature or extent of wrongs suffered at the hands of the police. The Lawrence enquiry¹¹⁶ exposed the Metropolitan police and, by implication, other forces, to the stark accusation of “institutional racism.”¹¹⁷ While the inquiry continued, many senior police officers openly refused to accept that police racism was a real issue in the case and dismissed the label as unwarranted. When the official verdict of the enquiry confirmed

more effective public accountability fora if they were set up and resourced as recommended by Patten).

¹¹⁴ The Stephen Lawrence Enquiry considered the racial connotations of the policing of the investigation into the murder of a black teenager in London. See generally WILLIAM MACPHERSON, *THE STEPHEN LAWRENCE INQUIRY* (The Stationery Office 1999).

¹¹⁵ Eugene McLaughlin, *The Search for Truth and Justice*, CRIM. JUST. MATTERS, Spring 1999, at 35.

¹¹⁶ See MACPHERSON, *supra* note 114.

¹¹⁷ See MACPHERSON, *supra* note 114, at 6.6-6.10 (stating that racism is apparent in some officers' behavior).

that “institutional racism” did exist, there were immediate ramifications for training. These had already been set in motion when it became clear that this was the direction the tribunal was heading. A change in the language and emphasis of the training models delivered to police forces in England and Wales led to the term “anti-racist” training taking the place of the previously more comfortable “community race relations.”¹¹⁸ The context contributed to a certain degree of negativity and suspicion around the training,¹¹⁹ resulting in a backlash against the very tool aimed at changing behaviour in this area. This is certainly something that must be guarded against in order to render training effective. However, the tendency of police to use comfortable and unchallenging language, particularly in a transitional society, is even more problematic. In terms of the past legacy of human rights abuse in Northern Ireland, that same blindness continues to affect how PSNI officers engage or fail to engage with the need to move beyond institutional sectarianism or sexism. In Northern Ireland, initial attempts dating back to the early 1990s to engage with views of the police other than the dominant one were styled as a Community Awareness Programme (CAP) in order to head off controversy.¹²⁰ The folly of this was soon clear when officers began referring to the course as the “Campaign Against Protestants.”¹²¹ Trying to deal with racism or sectarianism under the rubric of “community

¹¹⁸ See David Denney, Tom Ellis & Ravinder Barn, *Race, Diversity and Criminal Justice in Canada: A View from the UK*, INTERNET J. OF CRIMINOLOGY 2006, at 14-15 (noting that anti-racism term has been “recently reintroduced” and that it took Stephen Lawrence’s murder and The Macpherson Report to notice institutional racism).

¹¹⁹ See Michael Rowe & Jon Garland, *Have You Been Diversified Yet? Developments in Police Community and Race Relations Training in England and Wales*, 13 POLICING & SOC’Y 399, 404 (Dec. 2003) (citing Marlow & Loveday, *After MacPherson: Policing after the Stephen Lawrence Inquiry* (RUSSELL HOUSE, LONDON AND ROWE, 2002)); Michael Rowe, *Policing Diversity: Themes and Concerns from the Recent British Experience*, POLICE QUARTERLY, Dec. 2002, Vol. 5, no. 4, 424, 424. Choice of language was also a factor in terms of ICITAP (International Criminal Investigative Training Assistance Program) training, for example, in a number of countries in Latin America where “human dignity” was felt to be less alienating than “human rights.” See also Rachel Neild, *Themes and Debates In Public Security Reform: A Manual for Civil Society—Police Training*, WASH. OFF. LATIN AMERICA (1999).

¹²⁰ See James Drennan, *The Challenges of Leadership in a Divided Society: Policing in Northern Ireland*, THE CAN. REV. POLICING RES. (2005), available at <http://crpr.icaap.org/index.php/crpr/article/viewArticle/34/30> (stating “transition in thinking had to occur quickly” in Ireland so that police forces could be more “community-centred and community-driven”).

¹²¹ See Drennan, *supra* note 120 (noting that the previously predominantly Protestant police force was now forced to have equal amounts of Catholic officers).

relations” belies the reality of the problem. How training is conceived, named, shaped and delivered in the broad area of diversity is crucial, and problems will clearly arise if training allows human rights to be viewed as a “dirty word” or simply leaves sectarianism, racism, or inherent police sexism off the agenda. These diversionary techniques simply put off the time in which underlying issues will need to be engaged. Capacity must be built among monitoring organisations and projects to take account of, and not be afraid to, delve into this reality.

The processes by which various groupings in society are deemed to be stakeholders and partners in the change process are also worthy of exploration. Often, in transitional societies, these are considered purely in terms of a narrow view of the conflict. In Northern Ireland the archetypal groupings, which must be, in some measure, accommodated by the peace process, have been deemed to be Catholics and Protestants, officially. For example, in seeking to redress the balance of an organisation that was 92% drawn from the Protestant community, Patten’s recommendations resulted in the legal institution of a 50:50 recruiting policy, by which recruiting would consist of half those selected at each intake being Catholics.¹²² The reductionist “two tribes” view taken by Patten in this respect has implications beyond its ability or otherwise to meet the needs and expectations of a previously marginalised and excluded group. In attempting to create “parity of esteem” between these two groupings, without regard for the needs of a whole range of other groupings, this policy has the potential to perpetuate sectarianism, by virtue of its very exclusiveness.

A number of Protestants who would traditionally have been assured of a job in the police are more likely not to be selected

¹²² The Patten Report proposed that the 50:50 recruitment policy reflects the demographic breakdown of people who will reach the age of recruitment during a ten-year period. See PATTEN REPORT, *supra* note 6, at 83. There are valid arguments that using the designations “Catholics” and “Protestants” is problematic in that the conflict in Northern Ireland was essentially based on political and class views around the constitutional status of that part of Ireland rather than religious convictions. Increasing the number of Catholics in the police organisation will not necessarily guarantee that a reasonable percentage of nationalists or republicans join the ranks. The number of possible republicans joining will be further reduced by legal strictures on those who have served prison sentences. An interesting recent phenomenon is that an increasing percentage of Catholic recruits to the PSNI are actually Polish rather than N. Irish. See Marcus Leroux, *Poles Help Ulster Police to Meet Quota of Catholics*, THE TIMES, Jan. 12, 2007, available at http://www.timesonline.co.uk/tol/newspapers/sunday_times/britain/article1292159.ece.

under the new system. The fallout from this must be sensitively addressed. More than this, however, this framing of the post-conflict scenario in black and white terms factors out of the equation (or at least puts below the radar screen) a range of other differences and voices that have equal rights to participation in policing.

When positing solutions to the conflict, construed and framed narrowly, other potential stakeholders are bypassed altogether. These will have also been rendered invisible by the dominant conflict paradigms to date, both in the explanations of the conflict and in the solutions put forward for its resolution. These other discourses might themselves hold the beginnings of very new understandings of what policing needs to look like and what community safety is really about.¹²³ Among the constituencies generally overlooked in conflict-driven policing are women.¹²⁴ Women also tend to be overlooked in the framing of transitional solutions. This might be part of the reason why male policing models tend to be reinserted and revalidated in post-conflict scenarios.

Fionnuala Ní Aoláin is among a growing group of feminists pointing out the invisibility and marginalisation of a gendered experience in peace processes. Because the conduct of war/conflict is seen in male terms, and because the protagonists on all sides tend to be largely male, it is essentially males who negotiate the peace, write the peace agreements and implement the transitional reforms.¹²⁵ As such, a male bias and a

¹²³ For instance, Patten failed to engage effectively with the issue of gender in respect of both its assessment of the problems and its proposals for the future of policing. The loss to the transitional process of a range of concealed yet key organising principles equally capable of framing or contributing visibly to the discourse on solutions is further explored in the Northern Ireland context by Eilish Rooney, *Women's Equality in Transition: Intersectionality in Theory and Place* (forthcoming) (paper delivered at Transitional Justice Institute Seminar Series, University of Ulster, on March 9, 2006).

¹²⁴ Domestic violence was simply not a policing priority during the period of conflict in Northern Ireland. Although many women were being seriously injured, and even killed, in their homes by violent partners, the resources were simply deemed unavailable when faced with the imperative of policing the "real" conflict. Sixty percent of the women interviewed for research by McWilliams and McKiernan had experienced violence during pregnancy and thirteen percent had lost their babies as a result. This marginalisation of women's experiences and needs is reflected in many other conflicted societies. See generally MONICA MCWILLIAMS & JOAN MCKIERNAN, BRINGING IT OUT IN THE OPEN: DOMESTIC VIOLENCE IN NORTHERN IRELAND: A STUDY COMMISSIONED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES (N. IRELAND) (1993).

¹²⁵ See Fionnuala Ní Aoláin, *Political Violence and Gender in Times of Transition*, 15 COLUM. J. GENDER & L. 829, 830 (2006) (stating that "conduct of violence and war is

disinclination to see the true extent of gendered experiences and needs can come to dominate the transitional experience. Ní Aoláin argues, “when violence is understood in specific and narrow ways, it affects broader understandings of which concerns become issues for negotiation and mediation purposes.”¹²⁶

Because policing, irrespective of conflict, is still viewed as a largely male purview, the need to guard against masculinised views of how to build for the future is doubly important. The Patten Commission, for all its forward and enlightened thinking, unwittingly provides further evidence of the “policing as male” and “transition as male” phenomena in its radical 50:50 recruiting system for Catholics and Protestants. While this was pushed through in the face of great controversy, very little creative thinking went into recommendations to change the problematic, gendered reality of police institutions. Although there were two women on the Patten Commission, one from a police background and another from the business sector, their presence did not impact significantly on gendered understandings and needs. Gender was simply not “a meaningful point of reflection or inclusion in [this as in other] transitional legal and political landscapes.”¹²⁷

The evidence would therefore suggest that the attention paid to open, inclusive and transparent processes in terms of the design and delivery of training strategies and events is generally minimal. The corollary of this must inevitably be that the perceptible change that such initiatives are intended to inspire and evidence will also be minimal.

Rather, the internal police sense that certain aspects of police training require being accomplished in certain ways and that the police are experts in creating safer societies continues. This is clearly unsustainable where police have contributed to the erosion of the fabric of society and the rule of law during the period of conflict. It is also problematic where international police personnel are brought in to frame solutions. Meanwhile, “the underlying social and psychological dimensions of a conflicted society that have supported the resort to violence, and the elevation of particular forms of masculinity that accompany

predominantly male, leading to a male bias in negotiations.”).

¹²⁶ See Ní Aoláin, *supra* note 125, at 831.

¹²⁷ Ní Aoláin, *supra* note 125, at 846.

it, are not in any sense undermined or addressed by a formal disarmament process,"¹²⁸ or by these police framings of problems and solutions. Basically what is being put in place to cement the peace can end up being essentially the same failed policing models with a greater degree of accountability and community friendly rhetoric attached.¹²⁹ In transitional contexts particularly, "the assumption that . . . improvements in internal management will eventually increase the capacity of the police to meet the objectives for which police agencies were created [is flawed] The relationship is not that clear and direct and is increasingly being questioned."¹³⁰

A gendered analysis of transitional solutions and resolutions may substantially contest what is posited as transformative in the "gender-neutral" transitional moment. "Reflection on security in a transitional context should make us consider the extent to which an emphasis on ending or containing political violence per se constitutes a full and thorough response to the multitudes of harms that both accompany and survive past the ending of formal political and military hostilities between factions."¹³¹ Broader conceptions of harms need to be configured into the debate as to how best to keep people safe from these harms. Similarly, broader conceptions of how women's experience can be brought to bear on policing problems needs to be considered.

In transitional societies we need to expand our conceptualisation of security and of policing and of how to create and underpin peaceful societies. This might mean recognising that the essentially male, force-driven models that have been created may not be the most effective means of preventing harm or keeping communities safe. Rather than reform within these models, transitional spaces should open up an opportunity to measure what such models have achieved in the past and can generally be expected to achieve in more or less peaceful societies, based on the experience of more established and stable democracies. This conversation might show current models to be

¹²⁸ Ní Aoláin, *supra* note 125, at 846.

¹²⁹ The experience of Croatia and Hungary speaks to this point.

¹³⁰ Herman Goldstein, *Improving Policing: A Problem Oriented Approach*, 25 CRIME & DELINQ. 236, 237 (1979).

¹³¹ Ní Aoláin, *supra* note 125, at 847.

ineffective at a range of levels—and the difficulties experienced in terms of recruiting, retaining and valuing women and ethnic minorities may be symptomatic of an inbuilt inability of current models to achieve the core functions police organisations are ostensibly set up to fulfill.

Very often transitional societies, or at least the “main” transitional actors, seem to not want to have these conversations. Instead, much effort is devoted to producing training events that appear to engage with human rights and diversity issues while failing fully to do so. To be effective, training must be based upon: (1) the cultural and gendered realities and sensitivities of a given society, (2) an initial societal conversation about what policing should look like, and (3) an organisational and political awareness of what might stand in the way of achieving that reality. Without this expansive view of what is required, important phases in a potentially transformative process can be overlooked.

Deeper questions as to which community a police force serves or should serve in a post-conflict reality, how that service can most appropriately be undertaken and measured, or more radically, the extent to which a state police model is redundant or overblown in such societies tend to remain subservient, as I have argued elsewhere,¹³² to this managerial and masculinised framework which has more than its fair share of performance indicators and boxes to tick—but little room for standing back and initiating meaningful open-ended dialogue.¹³³ Thus the maintenance of police ownership and an essentially male understanding of the agenda are perpetuated to the detriment of new thinking and transformative action in respect of policing.

D. The Training Experience in Northern Ireland – A Case Study in Inclusivity?

The Royal Ulster Constabulary (now PSNI) for many decades shored up a governmental system that was overtly

¹³² See Mary O’Rawe, *Human Rights and Police Training in Transitional Societies: Exporting the Lessons of Northern Ireland*, 27 HUM. RTS. Q. 943, 943-68 (2005) (discussing human rights training in transforming police practices in transitional societies).

¹³³ See MOBEKK, *supra* note 62, at 26 (specifying in-depth knowledge of the conflict, culture, history, laws and community policing as a necessity for international police training).

discriminatory against Catholics. Much evidence exists of RUC involvement, in partisan policing and human rights abuses, particularly directed against the Catholic/Nationalist community in Northern Ireland.¹³⁴ It has always had a breadth of repressive powers contained in continually renewed “emergency” legislation. Its agents have been involved and protected in acts of collusion with paramilitaries up to and including murder. As such, there has always been a clear organisational subtext that national security is the ultimate goal, and that the nationalist community is suspect in its lack of allegiance to the State.

i. Including the Community?: Lessons for Design and Delivery

One of the key themes in this section is the extent to which the design, delivery and monitoring of new RUC/PSNI training has been able to move from the security driven, closed, paramilitary model isolated from the community to a comprehensive and inclusive partnership framework. Part of the answer will clearly be influenced by the extent to which police managers continued to see themselves as the sole and rightful owners of the change process. One of the realities of a transition phase, so clearly played out in the Northern Ireland context, is that the development of an effective and holistic training model cannot be left to chance, good will or a police view of what is appropriate. Unless clear strategies are put in place and carefully monitored, it is inevitable that police will maintain a tight control of arrangements, and opt for reforming rather than transforming solutions, often without first truly recognizing or characterizing the extent of the problems faced. The challenge of creating new and broadly acceptable policing arrangements requires a holistic and integrated human rights strategy. The extent of the challenge is underestimated, undervalued and rendered ineffectual where first, too much is laid at the door of training and second where police insufficiently countenance the need to create and develop effective mechanisms for external legitimation. That this can happen even where massive commitment is displayed by police and a huge volume of change

¹³⁴ For the latest in a long line of publications, see POLICE OMBUDSMAN FOR NORTHERN IRELAND, *supra* note 49; see also FINUCANE, *supra* note 49, which highlights evidence of collusion between security forces and paramilitary organisations and recommends public inquiries into four particular murders.

is undertaken is demonstrated by the Northern Ireland experience.

During the Course for All in 2003, a session devoted to policing with the community, while extolling the virtues of PSNI commitment to policing in partnership, made no attempt to raise awareness and understanding of the obstacles standing in the way of partnership. Had a partnership approach been adopted in the development of a course intended to underscore the importance of partnership in policing this, in itself, could have sent valuable signals in terms of how committed management really was to embedding this concept firmly at the heart of the organisation. In some respects, such a process might have proved somewhat unwieldy and posed its own logistical difficulties—but it would have been a learning process in itself—and something which could have been of immeasurable benefit to the organisation, not just in terms of providing a training course, but in building partnerships and learning to police *with* the community at a key stage of the transition process. This approach simply did not fit with a police view of how things should be done.

Instead, the police decided for themselves¹³⁵ both the format and content of the course choosing what to put in and what to leave out. Although intended to instruct the full body of employees as to the new constitutional and policing issues post-Patten, the assumption was made at an early stage that human rights were not a central component of this course.¹³⁶ Neither was the issue of sectarianism within the police force itself raised as a potential issue for inclusion. In failing to address some of these questions, the Course missed the crucial first stage in building partnership with the community. From that point, a very clear message came through in the training sessions I observed: “If they [that is, the public] don’t want [this new partnership approach]—we go back to old style policing—it’s up to them.” There was no recognition as to the importance of realising that many communities—whether republican, ethnic,

¹³⁵ Letter from Roy Fleming, Senior Officer, Police Service of Northern Ireland, to the Committee on the Administration of Justice (CAJ) (Feb. 26, 2003) (on file with author) (“Public views were not sought on the Course for All due to the fact that the contents were largely prescribed in the Report of the Independent Commission on Policing.”).

¹³⁶ Personal Communication with PSNI Inspector Alan Montgomery, Central Organiser, Course for All, in Belfast, N.Ireland (Apr. 2003).

youth, working class etc. would clearly not want to engage with the police—and that part of policing with the community actually involves being proactive about working with the marginalisation and alienation which exists to bring people to a point where partnership seems like an option not to be totally discounted. It is easy to exclude, unwittingly or otherwise, those who are not in a position to mobilise effectively around their interests—or whose interests appear to threaten the status quo. However, a police force that fails to engage other than in an enforcement role with those who are politically marginalised or socially disadvantaged will reap what it sows in terms of increased alienation and disaffection at a time when the opposite is required.

To date, in Northern Ireland, despite Patten,¹³⁷ the establishment of a Learning Advisory Council, continued exhortations from the Police Oversight Commissioner¹³⁸ and the fact that the PSNI Training, Education and Development Strategy document has been approved by the civilian Policing Board,¹³⁹ there has been no proper needs analysis in terms of what local communities want and need from policing and what the police, and other actors, might be in a position to provide.¹⁴⁰ Notably this has all occurred at a point when many institutions in a post-conflict context acknowledge the need to consult with the communities they serve. Even a managerial indicator such as reports provided by Her Majesty's Inspector of Constabulary

¹³⁷ See PATTEN REPORT, *supra* note 5, at ¶ 16.7 (noting that needs analysis is the first step in formulating new training).

¹³⁸ Established by the British government on the basis of a further Patten Recommendation that an eminent overseas person should be appointed for a period of five years to oversee the implementation of the Patten recommendations. To date, despite signaling significant PSNI rights compliance with the vast number of Patten recommendations, it is in the area of human rights training that the Commissioner has continued to report ongoing concerns. See H. ALAN HUTCHINSON, REPORT OF OVERSIGHT COMMISSIONER (2006), available at <http://www.oversightcommissioner.org/reports/pdfs/june2006.pdf>.

¹³⁹ This body has statutory responsibility under the Police (NI) Act 2000 for ensuring the effectiveness and efficiency of the force. It has recently published an externally commissioned strategy document relating to auditing compliance of the PSNI with the European Convention of Human Rights, as incorporated by the UK-wide Human Rights Act 1998. See KEIR STARMER & JANE GORDON, N. IR. POLICING BOARD, MONITORING PSNI COMPLIANCE WITH THE HUMAN RIGHTS ACT 1998 UNDER THE STATUTORY DUTY IN S.3(3)(B)(II) OF THE POLICE (NORTHERN IRELAND) ACT 2000 (2003), available at <http://www.nipolicingboard.org.uk/hr.pdf>. According to this document, its reach into the realm of training will not extend very far.

¹⁴⁰ Bearing Point Consultants did conduct a form of Training Needs Analysis for the PSNI in 2004, but a number of relevant issues were not sufficiently considered.

(HMIC)¹⁴¹ has attested to the need to “establish[] ongoing (equal) partnerships with communities” and the fact that PSNI systems and processes were unlikely to properly take society’s needs into account.¹⁴²

The Course for All showed how difficult it is for a police organisation in a jurisdiction like Northern Ireland to really take this message on board, despite having signed up for it in theory. It took others outside the policing family to point out the shortcomings below the surface and look for ways to address the problems identified.

That the pattern is continuing is evidenced by a workbook accompanying a new flagship diversity programme recently delivered to PSNI and Garda personnel in the Border counties of Ireland. The workbook has been produced to a high specification. It is glossy, user-friendly and features a CD-ROM. However, it includes minimal reference to sectarianism—what it does say is clearly in passing and buried among a host of other issues. The treatment accorded indicates a clear attempt to limit the focus on this issue to something of marginal concern.

ii. The PSNI Learning Advisory Council – Lessons in Partnership

A Learning Advisory Council (LAC) was set up by the PSNI in 2003 to attempt to respond to deficits that had been pointed out in respect of taking community views on board in the training arena. For the first time, decisions about police training claimed to be made in partnership with the community, signifying an important departure from past ways of doing things. In theory, this sixty-strong body was to provide a pivotal interface with various strata of the community in Northern Ireland and to

¹⁴¹ See, e.g., HER MAJESTY’S INSPECTORATE OF CONSTABULARY, INSPECTORATE REPORT, TRAINING MATTERS (2002), http://inspectorates.homeoffice.gov.uk/hmic/inspect_reports1/ptd/thematic/training-matters/tmreport.pdf?view=Binary [hereinafter TRAINING MATTERS]; HER MAJESTY’S INSPECTORATE OF CONSTABULARY, INSPECTORATE REPORT, DIVERSITY MATTERS (2003), http://inspectorates.homeoffice.gov.uk/hmic/inspect_reports1/ptd/thematic/diversity-matters/dmreport.pdf?view=Binary [hereinafter DIVERSITY MATTERS]; see also HER MAJESTY’S INSPECTORATE OF CONSTABULARY, INSPECTORATE REPORT, BEST VALUE REVIEW OF POLICE TRAINING 15, ¶ 10 (2005), http://inspectorates.homeoffice.gov.uk/hmic/inspect_reports1/ptd/bvr-ptd/bvrtpsni05.pdf?view=Binary [hereinafter BEST VALUE REVIEW] (concluding the Service still needed to develop a robust strategy for effectively engaging communities in all aspects of the training cycle).

¹⁴² DIVERSITY MATTERS, *supra* note 141, at 19.

provide the means for societal engagement with the PSNI training project. However, the inclusiveness of this body was tempered by the fact that participation was by invitation of the police, and, the space, although nominally there,¹⁴³ was not properly created for grassroots community involvement either in the body itself or in its agenda. Part of the Council's mandate was to ensure that training took account of community needs.¹⁴⁴ However, none of the community representatives actually under contract to provide training inputs to the PSNI were to have either a place or voting rights on the Council itself.¹⁴⁵

The Terms of Reference for the Learning Advisory Council were drawn up within the PSNI and framed in the clinical, conflict-divorced language of providing "an independent perspective . . . linked to the continuous improvement and business planning process within Training Education and Development (TED)."

By and large, issues were dealt in managerial terms with minutes of the Council's meetings as significant for what was not discussed at meetings as for what was. This proves that the setting up of an oversight body can never be viewed as itself an indication that oversight or partnership has, in fact, been achieved.

The role and function of the Learning Advisory Council (now Police Learning Advisory Council) was subsequently reviewed by a management consultancy firm in 2005.¹⁴⁶ This report, although it failed to situate the Council in the context of what might be required in a post-conflict setting, made a number of important points. Almost half of the members reported that they understood neither the role of the LAC nor their role on it, with a "significant minority" viewing the PSNI training and

¹⁴³ In the original terms of reference accepted at the LAC meeting of September 12, 2003, business and learning professionals and community representatives were to have equal numbers on the Council. However, there were clearly communities that PSNI would not have any reach into, and the fact that expenses to facilitate attendance would not be provided demonstrated a lack of insight into the arrangements that might need to be put in place to ensure meaningful participation by many working at community level.

¹⁴⁴ See PATTEN REPORT, *supra* note 6, at ¶ 2.2.

¹⁴⁵ See PSNI TED LAC Terms of Reference and Operating Protocol, Version 0.4 (June 25, 2003), *reprinted in* POLICE SERVICE OF N. IRELAND, LEARNING ADVISORY COUNCIL EVALUATION REPORT 11, T. 3.1 (Deloitte MCS Ltd, Belfast 2005) [hereinafter LAC REPORT].

¹⁴⁶ *Id.* at 11.

development section as having “undue influence.”¹⁴⁷ While many felt the body was having a positive impact on training, education and development, again “significant minorities felt it was having no impact, whilst another body of members said they did not know what impact it was having.”¹⁴⁸ One recommendation of the review was that the “connection between what the LAC is trying to do and how it contributes to wider policing objectives needs to be revisited, discussed, understood” with a clear need to “establish processes that provide more meaningful engagement than at present.”¹⁴⁹ The report pointed specifically to the need to engage loyalist, republican and ethnic minority voices, something that one might have expected to be factored into the process from day one, but clearly indicative of a continuing shying away from hard issues.

The PSNI, like many other police organisations, is clearly speaking the language of consultation and partnership, without seeming to understand the implications of actually following this through, or the consequences for the organisation’s standing among alienated communities if seen to say one thing and do another. The assumption that the police already know what is deliverable and how best it might be delivered relegates consultation and partnership to two levels—one an exercise of form in which the public is viewed by the police as requiring to be educated or informed, and the second an exercise in smoke and mirrors where selected conversations take place with those chosen by the police themselves as appropriate and suitable consultees/partners.¹⁵⁰ Transitional processes require more than this if law and policing are to be legitimated in reality.

¹⁴⁷ *Id.* at 4.

¹⁴⁸ *Id.*,

¹⁴⁹ *Id.* at 6.

¹⁵⁰ For example, the police have continued to maintain strong links with traditional partners, including particular individuals at the University of Ulster with whom they have worked over several decades. Mediation Northern Ireland is the only locally based NGO to have had any kind of real input into training, but much of its work is not in the public domain and much of it no longer continues.

iii. Peace II¹⁵¹ Diversity Programme – Lessons in Consultation

The process by which the PSNI's most recent diversity training venture has come about is also instructive here. The project was much vaunted as linking into community needs in holding an initial three-day focus group¹⁵² session to which a range of community activists, as well as certain members of the PSNI and An Garda Síochána (the Police Service for the rest of Ireland) were invited. Though participants came from a range of groups and organisations and reflected a wide range of special interests, there were certain voices not present or represented. The most notable of these gaps was that no one from a republican or loyalist background had been invited to raise the difficult and challenging areas of both social class and sectarianism as bars to effective policing. On top of this, the fact of trying to create a "one size fits all" diversity programme to adequately meet the needs of two separate police forces, coming from different histories and traditions was going to be inherently problematic. The PSNI notion that sectarianism could receive marginal attention in a broader diversity framework, or that the issues could be meaningfully developed in a class where half the participants had no experience of what it had meant to be an RUC officer during the conflict or the legacy left for PSNI officers currently, very much belied the reality on the ground. The fact that those who would most meaningfully raise such issues at the early stages of this process were not even invited to do so again showed scant regard for the need to really bring communities on board or to listen to disparate and dissonant needs. Instead what went on to happen in the course of this three day process serves to provide an example of different agendas and needs being co-opted into the dominant paradigm rather than being factored into the discourse in their own right.

At a point over the three days, community invitees began to

¹⁵¹ See Department of Finance and Personnel, Peace II Funding, <http://www.dfpni.gov.uk/index/finance/european-funding/eu-peace-2.htm>. (last visited Feb. 28, 2007). The EU Programme for Peace and Reconciliation (2000-2006) was intended to address economic and social issues in the specific context of Northern Ireland's transition to a more peaceful and stable society. The spending of such money on such a project is itself open to debate.

¹⁵² The three-day session was facilitated by an independent organisation. Dubbed "Future Search," this process was intended to give a stamp of validity to the process and involve key stakeholders from the beginning in the design of this training development initiative.

articulate a range of issues not specifically on the police agenda. They mentioned the “elephants in the room” that were being shied away from. They also pointed to a huge range of training materials and programmes already developed in respect of diversity training and began to ask whether the focus, rather than developing another training programme, might better be on the real factors at a systemic and organisational level that might actually thwart the diversity agenda going forward. The main session in which this happened was a very powerful one with a clear consensus from community representatives that the development of a new training programme was not what was needed at this point. Undaunted, the police continued to develop the programme in line with their original intentions.

This example illustrates why mainstreaming human rights and diversity cannot be allowed to remain the domain of a police organisation or international police actors who continue a policy of splendid isolation while surrounding themselves with “partners” considered acceptable in the process.¹⁵³

iv. The Importance of the Right Type of Oversight

The PSNI is very quick to point out that it is the most scrutinised police force in the world. By extension, the organisation makes the case that it is therefore the most accountable. This is not necessarily so. The complete effectiveness of new oversight or partnership initiatives established in a transitional context is something which cannot be taken as a given. They need to be capable of and facilitated to ask the right questions and get the necessary answers in terms of ensuring that increased scrutiny actually results in increased accountability.

In Northern Ireland, without the independent evidence provided by hands on monitoring initiatives such as those commissioned by the Northern Ireland Human Rights Commission, there would be little to dispel the notion that all

¹⁵³ McLaughlin and Murji describe this phenomenon of pulling “the debate back within the organisation” as “a classic police move.” Where this is permitted to happen, “[c]onsultation and change will happen . . . on terms laid down by the force.” See J. Eugene McLaughlin and Karim Murji, *After the Stephen Lawrence Report*, 19 CRITICAL SOC. POL’Y 371, 379 (August 1999).

was fine in respect of police training.¹⁵⁴ Independent oversight of the human rights elements of a police training programme can, therefore, provide a useful and often undervalued litmus test in terms of organisational commitment to real, effective and lasting change. Where such oversight engages with confronting and exploring the tensions between organisational and societal imperatives that may jeopardise the change process, it can point to areas where extensive rethinking and capacity building may be required.

Independent oversight¹⁵⁵ can serve to bring a level of insight and transparency beyond the police view of what is happening. However, its real merit lies in the extent to which its focus is on the difficult transitional realities and in developing understanding by looking behind and beyond the dictates of managerialism, modernisation and cost-effectiveness, as narrowly understood. Even where oversight succeeds in pointing up possible ways forward, it must also have some possibility of ensuring that the implementation of these is effective and process-centred. In Northern Ireland, this would be the purview of the Policing Board established in November 2001¹⁵⁶ as a statutory body with a duty to ensure police effectiveness and efficiency.¹⁵⁷ In terms of training, the Policing Board did very little prior to the appointment of a human rights consultant in February 2003. It is entirely possible that without the insights garnered by the Human Rights Commission, the schema for

¹⁵⁴ Human rights "auditing" carried out by the PSNI, in terms of monitoring the integration of human rights into Student Officer learning events, was exposed by the NIHRC as essentially a paper exercise of form rather than substance, with those charged with the internal auditing function having received no specific training in this regard.

¹⁵⁵ For example, oversight carried out by experts outside the police or broader governmental framework, who have a grounded knowledge of human rights and human rights education in a policing context, an awareness of the organisation and its past, a sensitivity to the jurisdictional context in which they are working and an understanding of transition and management of change issues.

¹⁵⁶ The process by which the body came into existence, the length of time it took to set up, the composition of the Board, its systems, workings and priorities all have their own story to tell. There is not scope in this article to begin to engage with this. For a detailed discussion, see COMM. ON THE ADMIN. OF JUSTICE, COMMENTARY ON THE NORTHERN IRELAND POLICING BOARD (2003), <http://www.caj.org.uk/Commentary%20by%20CAJ%20on%20the%20Northern%20Ireland%20Policing%20Board%20pdf.pdf>.

¹⁵⁷ By virtue of the Police (NI) Act 2000, the Board is under a duty to ensure that the police are efficient and effective. POLICE (NORTHERN IRELAND) ACT 2000 (2000), ch. 32, § 3(2). In carrying out this function, the Board is under a further duty to monitor the performance of the police in complying with the Human Rights Act 1998. *Id.*, at § 3(3)(b)(ii). In doing so it should have regard to the need to co-ordinate its activities with those of other statutory authorities and co-operate with such authorities. *Id.*, at § 3(4)(d).

monitoring police compliance with the Human Rights Act 1998 would still not be in place.¹⁵⁸ Since then, further human rights consultants have been commissioned by the PSNI specifically to audit the human rights aspects of their training and an in-house human rights lawyer was recruited in 2006 to advise solely in respect of training.

Although these moves might be welcome, they come faced with clear evidence of an organisation's failure to appreciate the degree to which human rights training poses real challenges to the way things have been done in the past and the need to effectively measure progress in this regard. It would seem that compliance with administrative rather than substantive goals has ultimately been viewed as the benchmark, when police are left to conduct such exercises themselves. Recent moves by the Policing Board¹⁵⁹ and PSNI may well help alleviate matters in this regard and signal the beginning of the paradigm shift necessary to mainstream human rights concerns—but the fact remains that unnecessary ground has already been lost in this endeavour and it will be difficult to make this up where cynicism of the wider disaffected populace has already begun to set in.

It could be argued, particularly given the Oversight Commissioner's decision in its most recent report to sign off on all other aspects of Patten apart from training, that it took "other eyes" apart from those coming from a "police" background or framework to see beyond the formal appearance of change. Where oversight focuses on administrative compliance or an internal police sense of what is right, this may disguise a deep-rooted (and perhaps subconscious) inertia or structural inability to engage with the degree of change necessary to meet the

¹⁵⁸ The plan is for the Policing Board to "evaluate all the training material used for PSNI human rights training . . . [and] the effectiveness of the protocol for auditing and reviewing human rights training . . . from February 2003 onwards." In respect of what has gone before, the plan is for the Board to "draw on the previous research already conducted by the Northern Ireland Human Rights Commission and the PSNI as important background material of relevance to current training." The Policing Board will consider the PSNI's own arrangements for monitoring the actual delivery of human rights training and keep itself informed of the work of the Advisory Council on Training. KEIR STARMER & JANE GORDON, N. IR. POLICING BOARD, MONITORING PSNI COMPLIANCE WITH THE HUMAN RIGHTS ACT 1998 UNDER THE STATUTORY DUTY IN S.3(3)(B)(II) OF THE POLICE (NORTHERN IRELAND) ACT 2000, 4 (2003), available at <http://www.nipolicingboard.org.uk/hr.pdf>; see *supra* text accompanying note 139.

¹⁵⁹ For further discussion of the framework of indicators for monitoring human rights compliance from 2004 onwards set out by the PSNI, see *id.*

human rights challenges faced by a society seeking to leave its troubled past behind.

Stringent criticism is still viewed as emanating from an anti-police agenda. This in itself is made possible by the dishonesty of an official discourse that fails to acknowledge the part of the past in shaping the present and dictating the future. It appears that certain bodies are deemed “acceptable” to deliver certain types of criticism in certain contexts. Anything that goes beyond this purview is something to be either ignored or vilified as damaging to police morale or destabilising of the peace process itself. However, it is precisely the hard-to-stomach critique which may contain the seeds of a more fruitful attempt to effect transformation. Thus, the wheel turns full circle—to be truly effective, changes in police training (and in other key organisational aspects) cannot be built on foundations that do not countenance the role the police have historically played in the conflict.

Beyond this, the more basic conclusion remains—training on its own, no matter how stratified, monitored, in tune with community needs and able to engage with difficult issues can actually amount to an appropriate vehicle for the delivery of institutional transformation. Many of the issues raised by this paper have as much to do with systems, structures and belief systems which require to be challenged and changed in and of themselves in order to be consistent with the messages sought to be delivered by effective human rights training. It is to drawing some of these issues together that the conclusion now turns.

CONCLUSION

Effective police change processes require the coherent and thought-through translation of well-conceived notions of legitimacy and inclusivity into transitional imperatives and reforms. If these difficult concepts do not sufficiently shape and guide the process by which police training and other reform efforts are developed, policing reform may well be insufficient to garner the necessary respect for a supposedly chastened and rehabilitated Rule of Law in a society where the legacy of conflict will still be playing out.

As I have argued elsewhere, in many ways, the dilemmas

posed by training mirror and upfront some of the very issues that prevent broader societal peace-building from gaining ground.¹⁶⁰ They also help unpack something of the process of legitimation of policing and of law and why it can be so difficult in transitional societies. It would appear that key legitimating strategies such as human rights and inclusivity are not being used to best effect in policing reform processes around the world.

Chan makes the point that “radical change, though politically risky and unpopular, can be more successful in transforming organisational directions than incremental change, which requires a long period of sustained organisational and political commitment to produce effects.”¹⁶¹ In transitional societies, there is clearly a window of opportunity to take such transformative and radical measures. However, when stripped down, many measures, claiming to be innovative and transformative, can prove merely to have painted old ways of doing things with a human rights and diversity gloss.

Where this is allowed to happen, the legacy of conflict coupled with the insertion of inappropriate or insufficient change mechanisms into a fragile transitional space, may serve a number of agendas but will, ultimately not ensure faith in and respect for the Rule of Law.

Rather than pumping money into police human rights and diversity training, resources should be used to create capacity for societal thinking about what it means to succeed in changing the experience of policing in traumatised societies and how that might be achieved. A “lessons learned” approach should be adopted to the development of new partnerships and processes which will create space to include more than “traditional” actors and stakeholders and capacity to think beyond traditional responses. Reconceptualisations of policing, legitimacy and the public good might then be intimately stitched into the change process in a way that has not happened in transitional police/security sector reform processes to date.

Training and oversight of that training are important to the extent that they are attuned to the concrete difficulties of making human rights and diversity “fit” within traditional models of

¹⁶⁰ See O’Rawe, *supra* note 132, at 943-68

¹⁶¹ JANET B. CHAN, *CHANGING POLICE CULTURE 1* (Cambridge University Press 1997).

policing. We have already seen that the “fit” is difficult. In transitional contexts, the specific legacies of conflict and the cultural landscape into which change is ushered, must also be factored into the equation, so that change is able to engage coherently and inclusively with previously alienated or devalued communities. This review of training initiatives has helped expose the extent to which potentially key framing narratives are being rendered invisible by both discourse around the conflict and the process of change. This makes the need all the more evident for an initial, more inclusive societal conversation in terms of what policing is about, what policing change might actually mean in practice, how to craft a holistic strategy and process and how to measure the effectiveness of change in more than “male” or “police” ways.

If these processes were subjected to meaningful evaluation¹⁶² and review, training and, more significantly education in its broadest sense, could form a potentially important part of the transformation jigsaw—one which may well show that real transformation lies beyond what state policing is able to deliver.

All of this necessitates exploration of whether, if human rights cannot be made to fit into the extant organisational paradigm, it is not just new training or management tools which are necessary but a very different conceptual framing of what policing means and should mean in a post-conflict setting. The paradox is that precisely when a society has been so conflicted, and when it is so difficult and sensitive to move forward, there opens for a short time a window of opportunity to reframe the debates, render concealed narratives visible and effect a transformation in thinking which has implications far beyond institutional reform.

Whether, as Shearing and Bayley suggest,¹⁶³ we are at the dawn of a new policing era where the State no longer holds sway, or whether Jones and Newburn¹⁶⁴ are correct to see continuity in discontinuity, or even if what we are witnessing globally is simply policing moving back into historical spaces and paradigms

¹⁶² See THE CHALLENGES PROJECT, *supra* note 54, at 127 (noting that at an international level, it is this area of evaluation of the utility and validity of international training or other interventions which is most frequently ignored).

¹⁶³ See Bayley & Shearing, *supra* note 2, at 585.

¹⁶⁴ See Jones & Newburn, *supra* note 2, 133-34.

as Zedner¹⁶⁵ posits—transitional societies and processes are ideally placed to provide useful seed beds for very different conceptions of policing, law and State. However, these need to be envisioned and practically constructed in legitimate and inclusive ways if they are to be the harbinger for more legitimate and inclusive realities in power-based societal relationships.

¹⁶⁵ See Zedner, *supra* note 2, at 78-79.

