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# A CIVIL RIGHTS MOVEMENT IN NORTHERN IRELAND AND THE UNRESOLVED LEGACY ISSUE

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## I. Introduction

In his First Inaugural Address, President Abraham Lincoln said: “Wherever [the people] shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember and overthrow it.”<sup>1</sup> These insightful words provide an apt description of a tumultuous period (1968-72) in Northern Ireland’s history. It was the start of “the Troubles.” This four-year period began with the Northern Ireland nonviolent civil rights movement calling for government reform. It ended with the rise of the Irish Republican Army (IRA) and Northern Ireland on the verge of civil war.

The article focuses on the history of the Northern Ireland civil rights movement and an unresolved human rights issue - addressing the legacy of the Troubles - that festers in society today and thwarts communal reconciliation. The U.S. civil rights movement is presented first, because the civil rights movement in Northern Ireland was modeled on the effort led by Dr. Martin Luther King, Jr. in the U.S. South. Like Dr. King, civil rights activists in Northern Ireland sought equal rights and government reform through peaceful protest and nonviolent direct action. This section is followed by Northern Ireland’s civil rights experience: what activists did, how the government responded, how paramilitary violence grew and what caused the movement’s demise.

Next, the article looks at the long-delayed Stormont House Agreement (SHA), which proposes truth recovery mechanisms aimed at addressing the legacy of the Troubles and fostering reconciliation in a divided society. It also considers the South Africa Truth and Reconciliation Commission (SATRC), which provides a successful model for truth recovery. For family members of those killed during the Troubles,

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<sup>1</sup> President Abraham Lincoln, United States Capitol, Washington, D.C. (March 4, 1861).

learning the truth about how a loved one died and gaining justice against the perpetrator is a human rights issue. That is what the SATRC process was about, and it offers lessons on how to bring people together and move society forward into a shared future.

Discrimination and inequality in the treatment of Northern Ireland's Catholic minority community existed for decades prior to the civil rights movement. When the British Parliament passed the Government of Ireland Act in 1920, Northern Ireland was created. Six counties in Ireland's north-east formed their own government. The government was described during a parliamentary debate by the statelet's first Prime Minister, James Craig (Lord Craigavon), as "a Protestant Parliament for a Protestant State."<sup>2</sup>

One prominent example of this political "ethos" was the electoral representation on the Derry City Council.<sup>3</sup> The 1961 census showed Catholics (nationalists) in Derry outnumbered Protestants

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<sup>2</sup> Northern Ireland Hansard (House of Commons), Vol 16, Col. 1091.

<sup>3</sup> The city is called "Derry" by nationalists and "Londonderry" by unionists. It holds a special place in unionist lore. In 1689, "apprentice boys" closed gates to the city in the face of Catholic King James' army, which led to the city's successful defense during the three month siege of Derry. THOMAS BARTLETT, *IRELAND*, 135 (CAMBRIDGE UNIVERSITY PRESS 2010). A year later, William of Orange defeated King James in the battle of the Boyne. *Id.* at 135-36. Every year on August 12 an Orange Order march along Derry's old city walls commemorates the apprentice boys. The Orange Order was formed in 1795 to defend the Crown from the United Irishmen organization and protect the Protestant Ascendancy. Orange Order marches are held throughout the year, but mainly during the summer, to pay homage to Northern Ireland's Protestant heritage. Marchers wear orange sashes and bowler hats, and parade with fifers and drummers.

(unionists) by a two-to-one margin. But the “numerical superiority was turned into a minority on the Council by an exercise in gerrymandering,” resulting in unionists holding a 12-8 majority of Council seats.<sup>4</sup>

Council control meant unionists controlled the allocation of housing; and, “because only householders could vote,” it meant they controlled who was eligible to vote.<sup>5</sup> In Northern Ireland, “to give a person a house was to give them the vote.”<sup>6</sup> In 1965, “there were only a handful of unhoused Protestants” in Derry, while “2,000 Catholic families [were] on the city’s waiting lists.”<sup>7</sup> This type of political manipulation and discrimination was ingrained in society. Members of the Stormont government embraced the system and maintained it in order to retain power. By the late 1960’s, however, the nationalist community began to question the status quo, making a clash inevitable.

Education reform in Great Britain after World War II grew the number of students who received a higher education.<sup>8</sup> The 1947 Education Act “enabled children from working-class backgrounds to access free education.”<sup>9</sup> In Northern Ireland, a new generation of highly educated young Catholics came of age in the 1960’s. They sought to reform

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<sup>4</sup> TIM PAT COOGAN, *IRELAND IN THE TWENTIETH CENTURY*, 306 (PALGRAVE MACMILLAN 2003).

<sup>5</sup> MAURICE FITZPATRICK, *JOHN HUME IN AMERICA* (IRISH ACADEMIC PRESS 2017) [hereinafter FITZPATRICK].

<sup>6</sup> *Id.*

<sup>7</sup> TIM PAT COOGAN, *THE TROUBLES*, 67 (Roberts Rinehart Press 1996).

<sup>8</sup> “[C]ompulsory state-funded secondary education for all” was part of the reform. PAUL ROUTLEDGE, *JOHN HUME*, 27 (Harper Collins Publishers 1997). [Hereinafter ROUTLEDGE].

<sup>9</sup> FITZPATRICK, *supra* note 5.

Northern Ireland's apartheid-like society.<sup>10</sup> In doing so, they looked to Dr. Martin Luther King, Jr's civil rights movement in the United States for inspiration.

## II. U.S. Civil Rights Movement

Dr. Martin Luther King, Jr. wrote that his "formal training" led him to conclude that Mahatma Gandhi had it right: "nonviolent resistance was one of the most potent weapons available to oppressed people in their quest for social justice."<sup>11</sup> As pastor of the Dexter Avenue Baptist Church in Montgomery, Alabama, Dr. King put this philosophy into action during the 1955-56 Montgomery bus boycott. He organized and led a successful economic boycott of the city's segregated bus system. "We can no longer lend our cooperation to an evil system," he

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<sup>10</sup> Northern Ireland's sectarian division was maintained through political control, segregated education and segregated living. KITTY HOLLAND, *BERNADETTE MCALISKEY: I AM ASTOUNDED I SURVIVED, I MADE MAD DECISIONS*, IRISH TIMES (Sept 22, 2016); <https://www.irishtimes.com/life-and-style/people/bernadette-mcaliskey-i-am-astounded-i-survived-i-made-mad-decisions-1.2798293>.

<sup>11</sup> MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM*, XVII (BEACON PRESS (1958)).

said.<sup>12</sup> In a mass protest, the black community stopped riding buses until the company agreed to integrate them.<sup>13</sup>

Passage of the Voting Rights Act came nine years later. It is considered to be Dr. King's "most politically significant victory [of] the entire Civil rights Movement."<sup>14</sup>

The 1965 Voting Rights Act was the culmination of a multi-year effort to achieve voting rights ("One Man, One Vote") in the South.

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<sup>12</sup> *Id.* at 39. Dr. King joined the technique of "non-violent resistance" with the ideal of love. *Id.* at 71-72. He said, "[W]e must meet the forces of hate with the power of love; we must meet physical force with soul force (redemptive suffering)." *Id.* at 74. Dr. King's concept of love came from the Greek word "agape." It meant love for the community. For him, nonviolence was a transformative, "powerful and just weapon. . . It [was] a sword that heals," and brings about the "Beloved Community." See also MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT, 18-19 (BEACON PRESS 1963). As for resistance, Dr. King also drew on Thoreau's message in his essay on civil disobedience. HENRY DAVID THOREAU, "CIVIL DISOBEDIENCE" (1849). In 1880, during the land war aimed at gaining ownership rights for Irish tenant farmers, Charles Stewart Parnell called on tenants to have nothing to do with land proprietors, including withholding rent payments and refusing to harvest crops. BARTLETT, *supra* note 3, at 320. The first victim of this strategy was Captain Charles Boycott, who was a landlord in County Mayo. *Id.* From his name came the term "boycott."

<sup>13</sup> Dr. King, worried about an elderly lady who he thought was too old to keep walking and should return to taking buses, asked her "aren't your feet tired?" She responded, "Yes, my feet is tired, but my soul is rested." HOWELL RAINES, MY SOUL IS RESTED, PUTNAM AND SONS, inside cover (1977); KING, *supra* note 9.

<sup>14</sup> BRUCE HARTFORD, THE SELMA VOTING RIGHTS STRUGGLE, 165 (WEST-WIND WRITERS 2014).

Attempts to register black voters were blocked by discriminatory rules on literacy tests and poll taxes, and recalcitrant voting registrars. Registration efforts were also met with violence and murder. These obstacles were overcome through nonviolent civil rights protest. Dr. King described the challenge in the following way: “[W]e are engaged in a social revolution, and while it may be different than other revolutions, it is a revolution just the same. It is a movement to bring about certain basic structural changes in the architecture of American society. This is certainly revolutionary. My only hope is that it will remain a nonviolent revolution.”<sup>15</sup>

During the struggle for voting rights, Dr. King penned his famous “Letter from a Birmingham Jail” in which he set forth the rationale for nonviolent direct-action. He argued that all of America had a stake in this struggle by noting that “[i]njustice anywhere is a threat to justice everywhere.”<sup>16</sup> He also argued that black people could no longer wait for equality because “justice too long delayed is justice denied.”<sup>17</sup> Therefore, he said, we have no alternative but to “present our very bodies as a means of laying our case before the conscience of the local and national community. . . . Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue.”<sup>18</sup>

Quoting St. Augustine, Dr. King noted that “an unjust law is no law at all” and “any law that degrades human personality is unjust.”<sup>19</sup>

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<sup>15</sup> *Id.* at 31.

<sup>16</sup> KING, *supra* note 9, at 87.

<sup>17</sup> *Id.* at 91.

<sup>18</sup> *Id.* at 88-89.

<sup>19</sup> KING, *supra* note 10, at 95.



He concluded that one has a moral duty to confront such laws with acts of nonviolent civil disobedience. He wrote, "I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to rouse the conscience of the community over its injustices, is, in reality, expressing the very highest respect for the law."<sup>20</sup> The ideals expressed in this letter guided his leadership of the boycotts, sit-ins, and mass marches that were part of the U.S. civil rights movement.

Voting rights activism during those years produced intense emotions of anger and hatred in those opposed to change. Many of those opposed, often with state and local government support, responded to protesters with violence. One case involved a peaceful voting rights protest in Marion, Alabama. Protesters knelt in the street and prayed when authorities stopped their march. A mob savagely attacked them.<sup>21</sup> Jimmie Lee Jackson was shot to death while defending his mother from state troopers who were beating her.<sup>22</sup>

The rejoinder to the killing came from James Bevel. He called for a peaceful march on the state capital in Montgomery to demand voting rights, and justice from Alabama Governor George Wallace for Jackson.<sup>23</sup> Dr. King endorsed Bevel's proposal, resulting in the Selma-Montgomery voting rights march.<sup>24</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> HARTFORD, *supra* note 14, at 70.

<sup>22</sup> JOHN LEWIS, WALKING WITH THE WIND 329, (Harcourt Brace and Company, 1st ed. 1999).

<sup>23</sup> HARTFORD, *supra* note 14, at 74.

<sup>24</sup> *Id.*

An injunction was issued prohibiting the protest march. Nevertheless, six hundred protesters led by Hosea Williams and John Lewis marched after leaving church. They expected to be arrested, and had received training for how to respond with nonviolent resistance.<sup>25</sup>

At the Edmund Pettus Bridge at the Selma city line, marchers were viciously attacked, clubbed and tear-gassed by “troopers, deputies, posse-men and thugs” amidst chants of “Get ’em! Get the n\_\_\_\_\_s!”<sup>26</sup> This deplorable spectacle of malicious racial hatred and wanton violence was broadcast across the nation in televised news reports. One hundred marchers were hospitalized for injuries.<sup>27</sup> The infamous event is known as “Bloody Sunday.”

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<sup>25</sup> Reverend Jim Lawson described the “purpose” of nonviolent resistance in the following way: “By appealing to the conscience and standing on the moral nature of human existence, nonviolence nurtures the atmosphere in which reconciliation and justice become actual possibilities.” LEWIS, *supra* note 22, at 189. Recruits received training at workshops on nonviolence and direct-action techniques in order to answer questions: “Are you able to accept blows without retaliating? Are you able to endure the ordeals of jail?” Dr. Martin Luther King, Jr., *Letter from a Birmingham Jail*, in *WHY WE CAN’T WAIT*, *supra* note 11, at 58; LEWIS, *supra* note 22, at 189. Protesters were called upon to “present [their] very bodies as a means of laying our case before the conscience of the local and national community. . . [s]o we decided to go through a process of self-purification.” KING, *supra*. They had to commit their “body and person” to the nonviolent movement and to pledge, among other things, “to refrain from the violence of fist, tongue or heart.” KING, *supra*, at 69.

<sup>26</sup> HARTFORD, *supra* note 21, at 84; LEWIS, *supra* note 22, at 340.

<sup>27</sup> HARTFORD, *supra* note 21, at 84.

The peaceful marchers, however, won something historic. They “turned a brutal beating into a nonviolent victory.”<sup>28</sup>

Shortly thereafter, Federal District Court Judge Frank Johnson lifted the injunction.<sup>29</sup>

He ordered Governor Wallace to protect the marchers, and the federal government to provide whatever assistance the state needed.<sup>30</sup> In the interim, President Lyndon Johnson presented a voting rights act to Congress. He also delivered a televised address to 70 million Americans, saying: “Rarely in any time does an issue lay bare the secret heart of America itself. . . . The issue of equal rights for American Negroes is such an issue . . . Their cause must be our cause too, because it is not just Negroes, but really it is all of us who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.”<sup>31</sup>

Two weeks after Bloody Sunday, Dr. King led 3,000 marchers out of Selma across the Edmund Pettus Bridge. They sang the civil rights anthem, “We Shall Overcome,” at the start of a 54 mile walk along the highway to Montgomery.<sup>32</sup> At its completion, Dr. King delivered his “Our God Is Marching On” speech on the steps of the Alabama capital building to a crowd of 25,000.<sup>33</sup>

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<sup>28</sup> *Id.* at 167.

<sup>29</sup> *Id.* at 142-43.

<sup>30</sup> *Id.* at 144.

<sup>31</sup> LEWIS, *supra* note 22, at 353. It was reported that civil rights leaders, like Dr. King, were emotionally moved by President Johnson’s speech.

<sup>32</sup> Freedom songs were an integral part of the civil rights movement.

<sup>33</sup> LEWIS, *supra* note 22, at 159. In part, Dr. King told the crowd: “Let us therefore continue our triumphant march to the realization of the American

Four and half months later, in what has been called the “nova of the civil rights movement,” President Johnson transformed the nation by signing the 1965 Voting Rights Act into law.<sup>34</sup>

In Northern Ireland, youthful civil rights activists impressed by Dr. King’s victory, emulated his tactics to gain freedom. Thirty-five years after the civil rights movement, Irish President Mary McAleese described what Dr. King meant to her in a speech at Emory University. She said: Dr. King “was the person who characterized for me the choices I could make as a teenage in a place heading down open rebellion and violence and definitely civil war. . . . I had to make a choice between violence and non-violence and Martin Luther King was the person who

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dream . . . The only normalcy we will settle for is the normalcy that allows justice to run down like waters, and righteousness like a mighty stream . . . How long [will it take]? Not long.” HARTFORD, *supra* note 21, at 161-62.

<sup>34</sup> LEWIS, *supra* note 22, at 361. Within a week; however, the Watts riots began over issues related to poverty, housing, jobs and police brutality. The Watts riots were soon followed by “explosions of violence” in Chicago, Cleveland, New York, Jacksonville and South Bend. LEWIS, *supra* note 22, at 363.

Dr. King recognized that “[o]ppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself.” KING, *supra* note 16, at 99. Things were changing in the movement. A philosophy of “Black Power” took hold when Stokely Carmichael became chairman of Student Nonviolent Coordinating Committee, known as SNCC. He was replaced as chairman by H. Rap Brown who made headlines by claiming “[v]iolence is as American as cherry pie.” LEWIS, *supra* note 22, at 395.

said it very simply that non-violence was the way.”<sup>35</sup> Others felt the same about Dr. King.<sup>36</sup>

### III. Northern Ireland Civil Rights Movement

#### A. Early Months

The civil rights movement in Northern Ireland sought to win equality for the minority community and reform Northern Ireland’s government by following Dr. King’s philosophy of nonviolent resistance and direct-action protest. According to Michael Farrell, a member of the Northern Ireland Civil Rights Association Executive and one of the founders of the Peoples Democracy group, “[p]eople who had watched Martin Luther King on television now turned to his tactics.”<sup>37</sup>

In 1964, Dr. Conn McCluskey and his wife Patricia, both Catholics, formed the Campaign for Social Justice (CSJ) and began to collect data on gerrymandering and discrimination in electoral practices, housing allocation and public employment.<sup>38</sup> CSJ also began to organize the minority community against the Stormont government’s discriminatory policies related to housing, jobs, and voting. A few years later, the

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<sup>35</sup> Mary McAleese, Emory University, Atlanta, Georgia (2007).

<sup>36</sup> In accepting the Nobel Peace Prize, John Hume called Dr. Martin Luther King “one of my great heroes of this century,” and ended his speech with the words “We Shall Overcome.” (Oslo, Norway 1998). Former Sinn Fein Stormont Assemblyman Mitchel McLaughlin said the civil rights movement was “[i]nspired by the bravery and determination of the black civil rights movement in the USA.” Anthony Neeson, *Ireland on Verge of a Seismic Shift*, IRISH ECHO (Aug. 22, 2018), <https://www.irishecho.com/2018/08/ireland-on-verge-of-a-seismic-shift/>.

<sup>37</sup> Michael Farrell, *Civil Rights 40 Years On*, JUST NEWS, June 2008, at 7.

<sup>38</sup> COOGAN, *supra* note 7, at 27.

nonviolent and non-sectarian Northern Ireland Civil Rights Association (NICRA) was established.

NICRA urged Stormont to enact laws to prohibit discrimination in public employment and housing, redraw electoral districts to reflect the number rather than the identity of voters, end gerrymandering, institute a one-person-one-vote system, repeal the Special Powers Act and disband the Ulster Special Constabulary (B Specials) force.<sup>39</sup>

NICRA's demands focused on enacting constitutional reforms to ensure equality throughout society, rather than provocative changes like independence from Great Britain or a united Ireland. The demands "were simply for a fair deal" by granting "British rights" to British citizens in Northern Ireland.<sup>40</sup>

In 1968, the Dungannon Rural Council awarded a house in Caledon to an unmarried 19-year old employed by a unionist politician; the Council also awarded the house next door to a Protestant.<sup>41</sup> "In making

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<sup>39</sup> DAVID MCKITTRICK AND DAVID MCVEA, MAKING SENSE OF THE TROUBLES, 38 (New Amsterdam Books 2002). The B Specials were an all Protestant, armed, quasi-military, reserve police force called out in periods of emergency. It was formed in 1920 during the Irish War of independence. JONATHAN POWELL, GREAT HATRED, LITTLE ROOM: MAKING PEACE IN NORTHERN IRELAND, 81 (Random House 2008).

<sup>40</sup> Farrell, *supra* note 37.

<sup>41</sup> FREYA McCLEMENTS, *HOW AUSTIN CURRIE'S 1968 HOUSING PROTEST IGNITED NI'S CIVIL RIGHTS MOVEMENT*, IRISH TIMES (June 15, 2018). <https://www.irishtimes.com/news/Ireland/irish-news/how-austin-currie-s-1968-housing-protest-ignited-ni-s-civil-rights-movement-1.3531022>. Hundreds of Catholic families were on the housing list; many of them had been waiting "patiently and uselessly" for a house for more than ten years. COOGAN, *supra* note 7, at 30.

the awards, a Catholic family of five was evicted by police - Royal Ulster Constabulary (RUC) - from one of the houses.<sup>42</sup>

Austin Currie, a nationalist member of Stormont was unsuccessful in raising the matter with the Council and in Stormont.<sup>43</sup> Despite the failures of these appeals, he remained determined to confront the housing problem. He decided to engage in an act of civil disobedience by staging a “sit-in” in the house awarded to the 19-year old.<sup>44</sup>

Currie’s sit-in copied the direct-action tactic used to integrate white only lunch counters across the U.S. South.<sup>45</sup> It was “a seminal moment in Northern Ireland history,” and the start of the Northern Ireland civil rights movement.<sup>46</sup>

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<sup>42</sup> Freya McClements, *NI Civil Rights: We Did Get a Letter, Get Out or Be Burned Out*, IRISH TIMES (June 18, 2018), [irishtimes.com/news/ireland/irish-news/ni-civil-rights-we-did-get-a-letter-get-out-or-be-burned-out-1.3533832](http://irishtimes.com/news/ireland/irish-news/ni-civil-rights-we-did-get-a-letter-get-out-or-be-burned-out-1.3533832). The RUC was a mainly Protestant police force. Over 90 percent of its members were Protestant. As part of the reforms called for in the 1998 Belfast/Good Friday Peace Agreement, the RUC was replaced by the Police Service of Northern Ireland. *Id.*

<sup>43</sup> DAVID MCKITTRICK & DAVID MCVEA, *MAKING SENSE OF THE TROUBLES* 40 (New Amsterdam Books ed., 2002) [hereinafter MCKITTRICK AND MCVEA].

<sup>44</sup> McCLEMENTS, *supra* note 41.

<sup>45</sup> LEWIS, *supra* note 22, at 91-92 (“The sit-in movement in the U.S. South began on February 1, 1960, when four students at North Carolina A&T College attempted to integrate a whites-only Woolworth’s lunch counter in Greensboro, North Carolina.”).

<sup>46</sup> MCKITTRICK AND MCVEA, *supra* note 43, at 40.

Currie and two local men smashed a back window to enter the house and barricaded themselves inside.<sup>47</sup> They squatted for a few hours before the RUC forcibly removed them. The protest was viewed as a success because it was reported by BBC News in London. It was the first time a major media outlet covered housing discrimination in Northern Ireland.<sup>48</sup> Currie was prosecuted, and the trial judge dismissed the case. But the dismissal was reversed on appeal. He was convicted in a second prosecution and paid a five pound fine.<sup>49</sup>

After the sit-in, Currie urged another nonviolent demonstration against the Council's housing decisions.<sup>50</sup> NICRA responded by organizing the first Northern Ireland civil rights march two months later.<sup>51</sup> It went off peacefully, but resulted in no changes to government policy. Bernadette Devlin described a "holiday atmosphere" among marchers until they were blocked from entering Market Square in Dungannon by "a police cordon across the road."<sup>52</sup> At that point, marchers sang the U.S. civil rights song "We Shall Overcome" and dispersed before

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<sup>47</sup> McCLEMENTS, *supra* note 41.

<sup>48</sup> *Id.*

<sup>49</sup> RTE ARCHIVES, AUSTIN CURRIE IN CALEDON PROTEST 1968 (RTE Eyewitness Program 1979).

<sup>50</sup> McCLEMENTS, *supra* note 41.

<sup>51</sup> BERNADETTE DEVLIN, *THE PRICE OF MY SOUL*, 91 (Chaucer Press 1969) [hereinafter DEVLIN].

<sup>52</sup> DEVLIN, *supra* note 51, at 92.



completing the march.<sup>53</sup> That evening, NICRA decided that it would hold another march, this one in Derry.<sup>54</sup>

On October 5, 1968, a march organized by the Derry Housing Action Committee and NICRA was held.<sup>55</sup> The Derry march was marred by police brutality. The day's events were a "defining moment" in Northern Ireland's descent into the Troubles, and many consider them to be the spark that "lit a fire that burned for almost 30 years."<sup>56</sup>

After the civil rights march was scheduled, the Apprentice Boys announced they would hold their own at the same time, on the same day and along the same route as the civil rights protesters.<sup>57</sup> This provided Northern Ireland's Home Affairs Minister, William Craig, an excuse under the public order act to ban the marches.<sup>58</sup>

The civil rights march, like the movement, was non-sectarian. Ivan Cooper, a Protestant, and Eamonn McCann were two of the

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<sup>53</sup> Freya McClements, *The Lost Story of Northern Ireland's First Civil Rights March*, IRISH TIMES (Aug. 24, 2018), <https://www.irishtimes.com/news/politics/the-lost-story-of-northern-ireland-s-first-civil-rights-march-1.3605463>. Marchers also sang rebel songs, like "A Nation Once Again." DEVLIN, *supra* note 51, at 95.

<sup>54</sup> McClements, *supra* note 53.

<sup>55</sup> COOGAN, *supra* note 7, at 61.

<sup>56</sup> George Jackson, *The Day Police Brutality Sparked a Fire That Raged for Nearly 30 Years*, IRISH TIMES, Oct. 5, 1998, at 7 [hereinafter Jackson]. Some consider the response to this Derry march to be the start of the Troubles.

<sup>57</sup> COOGAN, *supra* note 7, at 61.

<sup>58</sup> *Id.* During the 1960's, public officials throughout the U.S. South employed a similar strategy of banning civil rights demonstrations and calling them illegal. *Id.*

organizers.<sup>59</sup> McCann, seeking as much publicity as possible for the housing policy protest, was instrumental in selecting an “inflammatory” route through unionist areas, across Craigavon Bridge and into city center.<sup>60</sup> The RUC asked Cooper to call the march off, but he refused.<sup>61</sup>

Approximately 400 nonviolent protesters ignored the public order ban and lined up on Duke Street in Derry for the march.<sup>62</sup> The RUC positioned themselves in-front-of and behind the demonstrators, hemming them in.<sup>63</sup> When the organizers concluded their speeches, the RUC moved in before the march began.<sup>64</sup> The RUC indiscriminately attacked protesters and observers with baton charges. Fleeing people, including women and children, were struck by baton blows from a gauntlet of policemen.<sup>65</sup> Water cannons were used for the first time in Derry.<sup>66</sup> People, including John Hume, were shot down by a firehose

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<sup>59</sup> JACKSON, *supra* note 56.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> SEAN O’HAGAN, *NORTHERN IRELAND’S LOST MOMENT: HOW THE PEACE PROTESTS OF ’68 ESCALATED INTO YEARS OF BLOODY CONFLICT*, *The Guardian* (April 22, 2018) <https://www.theguardian.com/politics/2018/apr22/lost-moment-exhibition-northern-ireland-civil-rights-troubles-1968-what-if>.

<sup>63</sup> *Id.*

<sup>64</sup> COOGAN, *supra* note 7, at 61.

<sup>65</sup> *Id.*

<sup>66</sup> COOGAN, *supra* note 7, at 62.

of water.<sup>67</sup> Using a blackthorn stick instead of a baton, the District Police Inspector Ross McGimpie joined in the beatings.<sup>68</sup>

In describing what happened, Cooper said it “was a completely non-violent march. All of the violence was used against the marchers.”<sup>69</sup> Dozens were injured and hospitalized, including Members of Parliament (MP’s) in Westminster.<sup>70</sup> Labor MP Gerry Fitt brought three MP’s to the march. They planned to report back to the Prime Minister. Fitt was in “the front line when the police moved in.”<sup>71</sup> He was one of the first “to have his skull cracked” and be struck down.<sup>72</sup> He was held by two police officers while a third repeatedly hit him in the head. An Irish RTE newsman captured the bloody incident on camera, and the scene was broadcast world-wide.<sup>73</sup> Television magnified the

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<sup>67</sup> *Id.*

<sup>68</sup> ED MOLONEY, A SECRET HISTORY OF THE IRA 354 (Norton and Company 2002). The conduct was eerily similar to the malevolence exhibited in Birmingham, Alabama during the 1960’s by Police Chief Eugene “Bull” Connor. *Id.* [hereinafter MALONEY].

<sup>69</sup> Claire Barnes, *Landmark Civil Rights March Recalled in Derry*, IRISH ECHO, 2008.

<sup>70</sup> MCKITTRICK AND MCVEA, *supra* note 43, at 41.

<sup>71</sup> *Id.*

<sup>72</sup> MOLONEY, *supra* note 68, at 354.

<sup>73</sup> COOGAN, *supra* note 7, at 62.

impact of the event far beyond Northern Ireland, as images of the march in Derry were broadcast worldwide.<sup>74</sup>

Craig praised the RUC behavior.<sup>75</sup> Others involved in the march were highly critical of RUC misbehavior. Hume said he would never forget the hate he saw in the faces of the police.<sup>76</sup> McCann said “a howl of elemental rage was unleashed across Northern Ireland. . . . We indeed set out to make the police overreact. But we hadn’t expected the animal brutality of the RUC.”<sup>77</sup> In recalling the day, Devlin said “[i]t was my first realization that the police hated us.”<sup>78</sup>

Dermie McClenaghan described how police “beat people to the ground viciously,” in order to teach them a lesson.<sup>79</sup> For us, he said, “it was about civil rights. [W]ell they were showing us they thought we had no right to exist. They were doing it with an arrogance that could have only come from the state.”<sup>80</sup> The real lesson for the minority community was they had no right to equality, and no right to demand

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<sup>74</sup> *The Civil Rights Campaign – a Chronology of Events*, CAIN (Oct. 5, 1968). <https://cain.ulster.ac.uk/events/crights/chron.htm> [hereinafter *Civil Rights - A Chronology of Events*].

<sup>75</sup> COOGAN, *supra* note 7, at 63.

<sup>76</sup> *Id.* at 62.

<sup>77</sup> COOGAN, *supra* note 7, at 62-63.

<sup>78</sup> Sean O’Hagan, *Northern Ireland’s Lost Moment: How the Peaceful Protests of ’68 Escalated into Years of Bloody Conflict*, GUARDIAN (April 22, 2018), <https://www.theguardian.com/politics/2018/apr/22/lost-moment-exhibition-northern-ireland-civil-rights-1968-troubles-what-if>.

<sup>79</sup> Claire Barnes, *Landmark Rights March Recalled in Derry*, IRISH ECHO, 2008.

<sup>80</sup> *Id.*

constitutional reform. It was beginning to look like winning reform would require more than nonviolent resistance and mass civil disobedience.

Derry's Catholic Bogside had its first riots on the night of the march.<sup>81</sup> Residents fought the RUC for two days. Nonetheless, interest in the nonviolent civil rights movement remained strong.<sup>82</sup> A non-sectarian Derry Citizen's Action Committee (DCAC) was formed under Cooper and Hume.<sup>83</sup> Also, Queens University students in Belfast formed the Peoples Democracy (PD) civil rights group; Devlin and Farrell were two of its founders.<sup>84</sup>

But something fundamental to Northern Ireland's future happened on Duke Street. The government's response to the civil rights movement was set. The solution was security force violence and brutality. The RUC made abundantly clear that the sentiment undergirding Prime Minister Craig's famous boast that Northern Ireland has "a Protestant Parliament and a Protestant State" was incontestable.<sup>85</sup>

British Prime Minister Harold Wilson summoned Stormont Prime Minister Terence O'Neill to London.<sup>86</sup> Wilson pressured O'Neill into accepting some of the reforms sought by the civil rights

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<sup>81</sup> COOGAN, *supra* note 7, at 62.

<sup>82</sup> *Id.*

<sup>83</sup> ROUTLEDGE, *supra* note 8, at 68.

<sup>84</sup> DEVLIN, *supra* note 51, at 117-18.

<sup>85</sup> Northern Ireland Hansard (House of Commons), THE STORMONT PAPERS Vol 16, Col. 1091, <https://web.archive.org/web/20160303190258/http://www.ahds.ac.uk/stormontpapers/pageview.html?volumeno=16&pageno=1095#text>.

<sup>86</sup> MCKITTRICK AND McVea, *supra* note 43, at 42.

movement. The reforms included a promise to end the Special Powers Act, develop a new system for allocation of public housing, institute certain voting rights reforms and appoint an ombudsman to investigate complaints about government services.<sup>87</sup>

O'Neill announced the reforms a month later.<sup>88</sup> The package did not include everything civil rights activists sought. Significant changes like one-person-one-vote and the abolishment of the B Specials were missing.<sup>89</sup> So the activists continued to press for full reform.

In November, the DCAC scheduled a protest march that would take place along the same route as October's march.<sup>90</sup> Craig banned this march also.<sup>91</sup> Dr. King recognized "there is nothing wrong with an ordinance which requires a permit for a parade, but when the ordinance is used to preserve segregation and deny citizens the First Amendment privilege of peaceful assembly and peaceful protest, then it becomes unjust."<sup>92</sup> And, he said, it is morally right to disobey unjust laws.<sup>93</sup>

15,000 peaceful marchers showed-up in Derry to take part in an act of mass civil disobedience.<sup>94</sup> Hume, mirroring Dr. King, told the crowd: "I am not a law-breaker by nature, but I am proud to stand here

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<sup>87</sup> MCKITTRICK AND McVEA, *supra* note 43, at 46-47.

<sup>88</sup> MCKITTRICK AND McVEA, *supra* note 43, at 46.

<sup>89</sup> COOGAN, *supra* note 4, at 488.

<sup>90</sup> COOGAN, *supra* note 7, at 64.

<sup>91</sup> *Id.*

<sup>92</sup> KING, *supra* note 11.

<sup>93</sup> *Id.*

<sup>94</sup> ROUTLEDGE, *supra* note 8, at 72.

with 15,000 Derry people who have broken a law which is in disrepute. I invite Mr. Craig to arrest the lot of us.”<sup>95</sup>

After the marchers crossed Craigavon Bridge, they halted at police barricades set-up on the other side.<sup>96</sup> There, four pre-selected leaders climbed over the barricades.<sup>97</sup> The police withdrew instead of making arrests.<sup>98</sup> Protesters then continued to city center, known as “the Diamond.”<sup>99</sup> The march was completed. It was seen as a big success. Nationalists were hopeful the civil rights movement could deliver necessary reforms. This optimism was premature. Future events at Burntollet Bridge in Claudy made that abundantly clear.

Frederick Douglas said “power concedes nothing without a demand.”<sup>100</sup> He meant those who remain passive cannot expect anything to change, because real change requires courageous assertiveness. This astute observation applied to the situation in Northern Ireland, because those who were set on maintaining the status quo were about to dig in.

After announcing the package of reforms, O’Neill’s cabinet abandoned him. Craig was sacked after publicly condemning O’Neill for “acting under pressure” from Wilson.<sup>101</sup> Craig said “the civil rights movement is bogus and made up of ill-informed people who see in

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<sup>95</sup> ROUTLEDGE, *supra* note 8, at 72-73.

<sup>96</sup> ROUTLEDGE, *supra* note 8, at 72.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> FITZPATRICK, *supra* note 5, at 8.

<sup>101</sup> MCKITTRICK AND McVEA, *supra* note 43, at 47.

unrest a chance to renew the campaign of violence.”<sup>102</sup> In expressing the view of unionists who fervently opposed any changes, he called the movement “a creature of the IRA.”<sup>103</sup>

A march in Armagh, two weeks after the DCAC civil rights march, was halted by the RUC.<sup>104</sup> After it commenced, Reverend Ian Paisley and Major Ronald Bunting took over the city center with a caravan of cars loaded with men armed with clubs and stones.<sup>105</sup> They were prepared to resort to violence and hold a counter-demonstration. This tactic was successful in putting an end to the march that was in progress, and it worked when used again the following month at a march in Dungannon. Craig banned all marches and counter-demonstrations except for the traditional Orange Order parades.<sup>106</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> According to David Trimble, who would go on to lead the Ulster Unionist Party and share a Nobel Peace Prize with John Hume for the Belfast/Good Friday Agreement, unionists viewed the civil rights movement “as being unnecessary and as being something that opened the door to violence.” FITZPATRICK, *supra* note 5, at 12.

<sup>104</sup> COOGAN, *supra* note 4, at 488.

<sup>105</sup> COOGAN, *supra* note 4, at 488. Paisley and Bunting were jailed the following year for organizing this illegal counterdemonstration. They were released when Prime Minister Major James Chichester-Clark granted amnesty for all offenses associated with demonstrations after October 5, 1968. *Id.*

<sup>106</sup> *Civil Rights -- A Chronology of Events* (November 13, 1968) <https://cain.ulster.ac.uk/events/othelem/chron/ch68.htm>. In a veiled threat to civil rights activists, Craig said: “One of these days, one of these marches is going to get a massive reaction from the population. . . It is not just Mr. Paisley.” COOGAN, *supra* note 4, at 488.



O'Neill attempted to calm the tense situation and win support for reform by delivering his "Ulster at the Crossroads" speech.<sup>107</sup> He said: "For more than five years now I have tried to heal some of the deep divisions in our community. I did so because I could not see how an Ulster divided against itself could hope to stand. . . . Unionism armed with justice will be a stronger cause than Unionism armed with merely strength."<sup>108</sup> Unfortunately it was strength - not justice - that prevailed.

In his speech, O'Neill asked: "What kind of Ulster do you want? A happy and respected province in good standing with the rest of the United Kingdom? Or a place continually torn apart by riots and demonstrations and regarded by the rest of Britain as a political outcast?"<sup>109</sup> These questions would resonate for 30 years as Northern Ireland descended into the Troubles.

NICRA reacted positively to O'Neill's speech and placed a temporary moratorium on marches. The PD, however, decided to continue them. Farrell said one-person-one-vote was a crucial demand and we must keep building "momentum" toward it.<sup>110</sup>

The PD scheduled a four-day march from Belfast-to-Derry commencing on January 1<sup>st</sup>. It was planned as a Six County version of the American civil rights march from Selma-to-Montgomery.<sup>111</sup> The 73-mile route was intended to be provocative by taking marchers through

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<sup>107</sup> COOGAN, *supra* note 4, at 488.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> O'Hagan, *supra* note 78.

<sup>111</sup> COOGAN, *supra* note 7, at 67.

Protestant areas in Counties Antrim and Derry.<sup>112</sup> Civil Rights leaders, fearing violence, criticized the decision to hold it.<sup>113</sup>

During the first three days, marchers were sporadically blocked and harassed.<sup>114</sup> The number of participants, however, grew from 40 at the march's start to a few hundred by its fourth and final day.<sup>115</sup> Seven miles from the end, at Burntollet Bridge, marchers were attacked by an organized mob of 300 loyalists, including off-duty members of the B Specials.<sup>116</sup>

First, projectiles - "stones, bricks and milk bottles" - rained down from higher ground, bringing the march to a halt; then "hordes of screaming people wielding planks of wood, bottles, lathes, iron bars, crossbars and cudgels with nails" descended and beat marchers.<sup>117</sup> Approximately 80 members of the RUC were present but did nothing to intervene. Eighty-seven people were taken to the hospital.<sup>118</sup>

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<sup>112</sup> *Id.* at 68.

<sup>113</sup> *Id.*

<sup>114</sup> COOGAN, *supra* note 7, at 68.

<sup>115</sup> *Civil Rights – A Chronology of Events* (Jan 4, 1969), <https://cain.ulst.ac.uk/events/pdmarch/chron.htm>

<sup>116</sup> FREYA MCCLEMENTS, ATTACK ON BURNTOLLET MARCH IN DERRY OCCURRED 50 YEARS AGO TODAY, IRISH TIMES (Jan. 4, 2019); <https://www.irishtimes.com/news/ireland/irish-news/attack-on-burntollet-march-in-derry-occurred-50-years-ago-today-1.3746978>.)

<sup>117</sup> DEVLIN, *supra* note 51, at 139.

<sup>118</sup> DEVLIN, *supra* note 51, at 141.

Devlin was one of the marchers.<sup>119</sup> She described protecting herself from attackers by rolling-up “in a ball on the road.”<sup>120</sup> She said she tucked her knees and elbows and covered her face with her hands.<sup>121</sup> She was clubbed on her back and head, and two nails on a plank protruded into one of her hands.<sup>122</sup> She, along with other bloodstained survivors, completed the march into Derry, where a rally was held in the Diamond until it was broken up by the RUC.

Four days of rioting in Derry followed, and a slogan was painted on a gable wall at an entrance to the Catholic Bogside. It read: “You Are Now Entering Free Derry.”<sup>123</sup>

The unionist position against granting rights to the minority community hardened and “shattered” prospects for O’Neill’s modest reform program.<sup>124</sup> Nationalist impatience grew, and NICRA announced its marches would resume.

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<sup>119</sup> DEVLIN, *supra* note 51, at 137.

<sup>120</sup> DEVLIN, *supra* note 51, at 139.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Freya McClements, *You Are Now Entering Free Derry: 50 Years On*, IRISH TIMES (Jan 4, 2019, 1:00 AM) <https://www.irishtimes.com/news/ireland/irish-news/you-are-now-entering-free-derry-50-years-on-1.3747984>. The words on the gable were those of Eamonn McCann. He said its purpose was to stick two fingers at police and say: “You are not coming into our territory and beating us whenever you feel like it.” *Id.* The wall with its famous slogan still stands at the entrance to the Bogside, as a memorial to struggles of the past and “a focal point for campaigns of the present and future.” *Id.*

<sup>124</sup> O’Hagan, *supra* note 78, at 8.

O'Neill responded by setting-up an official inquiry into the causes of civil unrest at the Derry march on October 5<sup>th</sup> and at Burntollet on January 1<sup>st</sup>.<sup>125</sup> He appointed a Scottish Judge Lord Cameron to chair it.<sup>126</sup> After O'Neill announced the inquiry, two of his cabinet members resigned including Deputy Prime Minister Brian Faulkner.<sup>127</sup> O'Neill called for a general election, described as "the crossroads election," to shore-up political support.<sup>128</sup> He did not strengthen support.

In the election, O'Neill held his seat by narrowly defeating Paisley.<sup>129</sup> O'Neill had hoped to marshal public opinion in favor of reform,

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<sup>125</sup> Cameron Commission on the Disturbance in Northern Ireland

<sup>126</sup> When the Cameron Commission issued its report in September 1969, it found: the allocation of housing was "unfair;" there was "discrimination" in making local government appointments; and, significantly, that the police handling of the October 5th demonstration "was in certain respects ill coordinated and inept" and that "police forces did not provide adequate protection to Peoples Democracy (PD) marchers at Burntollet Bridge." The Honorable Lord Cameron, *Report on the Disturbances in Northern Ireland*, CAIN Ch. 16 (Aug. 16, 1969). The report also criticized the PD as an unnecessary adjunct" to NICRA and a means for "politically extreme and militant elements . . . to invite and incite civil disorder," and blamed Reverend Paisley and Major Bunting for "organized interventions" at marches that "were a material contributory cause" of violence. *Id.*

<sup>127</sup> COOGAN, *supra* note 7, at 70.

<sup>128</sup> ALEX KANE, HISTORY REPEATING ITSELF AS THE UNION ITSELF STANDS AT THE CROSSROADS, IRISH TIMES (Feb 25, 2019), <https://www.irishtimes.com/opinion/history-repeating-as-the-union-itself-stands-at-the-crossroads-1.3803845>.

<sup>129</sup> KEN BLOOMFIELD, *STORMONT IN CRISIS*, 105 (Blackstaff Press 1994). Paisley went on to have a long career in politics. He formed the

but that did not happen. He completely misread the unionist mood, and gained only “a bare majority.”<sup>130</sup> Yet, despite his political impotency, “[i]n a final irony, just before he left office O’Neill managed to push one-person-one-vote through the cabinet,” when his Unionist Party voted to introduce universal adult suffrage in local elections.<sup>131</sup> This resulted in another cabinet member’s resignation, Major James Chichester-Clark, who was O’Neill’s cousin.<sup>132</sup>

O’Neill resigned a few months after the election.<sup>133</sup> He was succeeded by Chichester-Clark.<sup>134</sup> As O’Neill left office, Bernadette Devlin won a Mid-Ulster by-election and a seat in the House of Commons.<sup>135</sup> The civil rights leader was the youngest woman ever elected to the British Parliament.<sup>136</sup>

Devlin’s experience at Burntollet had radicalized her.<sup>137</sup> In what was described as a “brilliant” maiden speech to Parliament, she

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Democratic Unionist Party, served in the British House of Commons and European Parliament, and ultimately became First Minister of Stormont.

<sup>130</sup> MCKITTRICK AND McVEA, *supra* note 43, at 49.

<sup>131</sup> MCKITTRICK AND McVEA, *supra* note 43, at 50.

<sup>132</sup> COOGAN, *supra* note 4, at 492.

<sup>133</sup> *Id.*

<sup>134</sup> MCKITTRICK AND McVEA, *supra* note 43, at 53. Paisley quipped that he had “brought down a captain [O’Neill] and could bring down a major as well.” COOGAN, *supra* note 7, at 72.

<sup>135</sup> COOGAN, *supra* note 7, at 72.

<sup>136</sup> *Id.*

<sup>137</sup> Burntollet “stimulated the process of radicalization” for many. Peter McDermott, *Battle of the Bogside*, IRISH ECHO (Aug. 17, 2004

challenged MP's: "The question before the House, in view of the apathy, neglect, and lack of understanding this House has shown to these people in Ulster whom it claims to represent, is how in the shortest space it can make up for fifty years of neglect, apathy and lack of understanding."<sup>138</sup> And she warned: "if British troops are sent in, I should not like to be either the mother or sister of an unfortunate soldier stationed there."<sup>139</sup> These words were prophetic. More than 500 soldiers were killed during the Troubles.<sup>140</sup>

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<https://www.irishtimes.com/news/ireland/irish-news/you-are-now-entering-free-derry-50-years-on-1.3747984>). According to Liam MacNiallis, "young men and young women had had enough negotiation with people who didn't listen." *Id.* Leaders had more difficulty in controlling protests. High school student Dolours Price was one of the marchers at Burntollet Bridge. PATRICK RADDEN KEEFE, *SAY NOTHING: A TRUE STORY OF MURDER AND MEMORY IN NORTHERN IRELAND*, 22 (Doubleday, 2019). She saw "hate" in the eyes of the person who attacked her *Id.* At that moment she knew "her fantasy of peaceful resistance was naïve," and concluded "I'm never going to convert these people." KEEFE, *supra* note 85, at 40. She joined the IRA two years later and participated in the 1973 bombing of the Old Bailey Courthouse in London. Price was also involved in the 1972 abduction of Jean McConville - one of "the Disappeared" - who was labeled an informer and executed by the IRA. KEEFE, *SAY NOTHING*, *supra* note 85, at 306-09. In later life, Price came to regret her involvement in the Disappeared cases, calling the conduct a "war crime." KEEFE, *supra* note 85, at 305.

<sup>138</sup> COOGAN, *supra* note 7, at 74.

<sup>139</sup> *Id.*

<sup>140</sup> DAVID McKITTRICK, SEAMUS KELTON, BRIAN FEENEY, CHRIS THORNTON AND DAVID McVEA, *Lost Lives* (Mainstream Publishing 2007).

In her speech, Devlin presciently called for consideration of “the possibility of abolishing Stormont and ruling from Westminster,” noting “there can be no justice while there is a Unionist Party because . . . they will by their gerrymandering control Northern Ireland and be the government of Northern Ireland.”<sup>141</sup> Three years later, Great Britain dissolved Stormont and imposed direct rule.<sup>142</sup>

Devlin’s speech caused uproar in Parliament. The veracity of her words was ignored. Reform was coming to Northern Ireland too slowly and begrudgingly. Small changes failed to keep up with events on the ground, and were not having an impact on lessening the communal divide. Burntollet put one more nail in the coffin of any type of peaceful transition. Feelings of alienation were growing in the minority community; distrust was etched in society; and hatred was building for some.

Devlin’s comments gave voice to the nationalist mood, and it gave notice of things to come. Sadly, British and unionist leaders were not listening. At that point, no one foresaw the tragic misery on the horizon. The Ulster Volunteer Force, a loyalist paramilitary organization, committed three sectarian murders in 1966.<sup>143</sup> There were no

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<sup>141</sup> COOGAN, *supra* note 7, at 74.

<sup>142</sup> MCKITTRICK AND McVEA, *supra* note 43, at 81.

<sup>143</sup> 1966 was the fiftieth anniversary of the Easter Rising in Ireland. The Rising was a failure, and its leaders were executed after courts-martials. Nevertheless, it has been called “the true beginning of Irish independence” from Great Britain. TIM PAT COOGAN, 1916: THE EASTER RISING, back Cover, Orion Books (2005). Gusto Spence, a devoted follower of Rev. Ian Paisley in 1966, re-established the loyalist paramilitary Ulster Volunteer Force (UVF). The gang styled itself on the UVF citizen army “whose activities had helped establish the state of Northern Ireland in 1921.” MCKITTRICK, et al, *supra* note

Troubles-related killings since then, which gave leaders a false sense of confidence that the situation could be managed. That was about to change, and more than 3660 lives would be lost during the Troubles.<sup>144</sup>

### B. Descent into the Troubles

The Apprentice Boys parade is held on the old city walls in Derry, annually on August 12, to commemorate the “no surrender” defiance of 13 apprentice boys who closed the city gates to defend against troops of Catholic King James during the “Siege of Derry” in 1689.<sup>145</sup> In 1969, copying a “Paisleyite” tactic, MP Bernadette Devlin and Eamonn McCann organized a civil rights march at the old city walls as a “counter-demonstration” to the Apprentice Boys parade.

Skirmishes between the marchers were triggered when nationalists threw stones and bottles as the parade passed near a Catholic area

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140, at 25. The UVF targeted Catholics. They shot and killed two Catholic men; a Protestant woman was killed in a fire when the UVF firebombed a Catholic pub. *Id.* at 25-28. Some consider these sectarian murders to be the start of the Troubles. In 1994, Spence was selected to read the announcement of a ceasefire by the Combined Loyalist Military Command, representing the Ulster Defense Association, Ulster Freedom Fighters, UVF and Red Hand Commando loyalist paramilitary groups. COOGAN, *supra* note 4, at 670. Spence came to detest Paisley. In later years, he expressed “abject and true remorse to the loved ones of innocent victims” of the Troubles. *Id.* When he died, a former IRA adversary noted his dedication to peace and reconciliation in later life and credited his “influence in drawing loyalism away from sectarian strife.” Gusty Spence, *Former UVF Leader Dies in Hospital*, BBC News Northern Ireland (Sept. 25, 2011), <https://www.bbc.com/news/uk-northern-ireland-15051920>.

<sup>144</sup> MCKITTRICK, ET AL, *supra* note 140, at 13.

<sup>145</sup> BARTLETT, *supra* note 12, at 13.



and Protestant marchers threw pennies upon the Bogside.<sup>146</sup> After two hours of clashes, the RUC “decided a baton-charge was in order and made a run into the Bogside.”<sup>147</sup> Tensions were running high already, as Samuel Devaney had died a month earlier from internal injuries he suffered in a police beating.<sup>148</sup> The RUC’s aggressive conduct ignited the two-day “Battle of the Bogside.”<sup>149</sup>

The RUC used CS (tear) gas for the first time.<sup>150</sup> Devlin led the resistance to the police charge by organizing “the manufacture of petrol bombs” and used a loud speaker to urge the defenders “to throw them hard and straight.”<sup>151</sup> Teen-aged Martin McGuinness threw stones at the police.<sup>152</sup> When John Hume attempted to mediate, the police shot

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<sup>146</sup> MCDERMOTT, *supra* note 137, at 26.

<sup>147</sup> DEVLIN, *supra* note 51, at 201.

<sup>148</sup> COOGAN, *supra* note 7, at 74. Police were chasing a group of stone throwing youth engaged in what was called “hooliganism.” The police thought some of the youth were hiding in Devaney’s house. They “burst” in and beat him and his family.

<sup>149</sup> Devlin, *supra* note 51, at 202.

<sup>150</sup> COOGAN, *supra* note 7, at 75.

<sup>151</sup> Devlin, *supra* note 51, at 203. She would spend six months in prison for throwing bricks at the RUC. *Id.*

<sup>152</sup> COOGAN, *supra* note 7, at 75-76. Martin McGuinness was the IRA O/C (officer-in-charge) in Derry and IRA chieftain, who went on to become the Deputy First Minister of Stormont. Peter Taylor, *Martin McGuinness*, BBC NEWS NORTHERN IRELAND (Jan. 21, 2017). Along with Gerry Adams, he helped persuade the IRA to declare a ceasefire; he was part of Sinn Fein’s negotiating team in discussions with George Mitchell that led to the Good

him “in the chest with a gas cartridge at point-blank range.”<sup>153</sup> “[E]xhausted and demoralized,” the RUC and B Specials were unable to quell the violence.<sup>154</sup>

British Prime Minister Harold Wilson sent-in the British army “to prevent a breakdown of law and order” and restore peace.<sup>155</sup> The army quelled the violence. But barricades set-up by residents made the nationalist Bogside and Creggan “no-go” areas for police by preventing them from entering.<sup>156</sup>

For Devlin, the Battle of the Bogside was a resounding victory for the Catholic residents of Derry. She described the significance of the result in her book, *The Price of My Soul*, as follows: “In fifty hours we brought a government to its knees, and we gave back to a downtrodden people their pride and the strength of their convictions.”<sup>157</sup> She called it a “turning point in Irish history.”<sup>158</sup> Nationalists were now going to stand up and fight for their rights. She wrote: “The people have made their situation clear. We will fight for justice. We will try to achieve it by peaceful means. But if it becomes necessary, we will simply make it impossible for an unjust government to govern us. We

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Friday Agreement; and he is credited with fostering reconciliation between the unionist and nationalist communities. *Id.*

<sup>153</sup> COOGAN, *supra* note 7, at 75.

<sup>154</sup> McDermott, *supra* note 137, at 27.

<sup>155</sup> Routledge, *supra* note 8, at 88.

<sup>156</sup> Devlin, *supra* note 51, at 204-05.

<sup>157</sup> Devlin, *supra* note 51, at 205.

<sup>158</sup> Niall O’Dowd, *How Martin Luther King Inspired a Northern Ireland Uprising*, IRISH CENTRAL NEWS (Jan. 2018), <https://www.irishcentral.com/opinion/niallodowd/how-martin-luther-king-inspired-north-uprising>.

will refuse to have anything to do with it.”<sup>159</sup> She was not spurring-on the IRA. She was calling for total non-cooperation with Stormont authorities.

The Battle of the Bogside was a turning point in another sense also. Events were going to rapidly spiral downward.

As Derry quieted, riots spread to Belfast. 650 Catholic families were burned-out of their homes.<sup>160</sup> A mob burned Bombay Street in the Catholic Clonard District to the ground.<sup>161</sup> The RUC stood aside and watched the mayhem. Thousands were left homeless.<sup>162</sup> It was

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<sup>159</sup> Devlin, *supra* note 51, at 206.

<sup>160</sup> COOGAN, *supra* note 7, at 78. The IRA had its first “Troubles” martyr when a 15-year-old member of its youth wing - Na Fianna - was shot and killed by a Protestant sniper while helping Catholics evacuate their homes. COOGAN, *supra* note 7, at 89.

<sup>161</sup> ED MOLONEY, VOICES FROM THE GRAVE 14 (Faber and Faber 2001); COOGAN, *supra* note 7, at 94. “I Ran Away,” referring to the IRA’s failure to defend the community, was painted on walls in the Catholic neighborhoods of Belfast. Within 6 months, the politically-minded Official IRA would split into two factions and a new group, the Provisional IRA who believed in a militant physical force tradition of republicanism, was formed. Their goal was “to force the British to remove Stormont and introduce direct rule, which they reasoned would inevitably lead to a united Ireland.” COOGAN, *supra* note 7, at 94. The Provisional IRA traced its roots to the Irish Republican Brotherhood and Irish Volunteers who fought for Irish freedom in the 1916 Easter Rising and Irish War of Independence (1919-21). The IRA Army Council claimed its authority derived from the Second Irish Dail (Irish Parliament).

<sup>162</sup> COOGAN, *supra* note 7, at 78. Another inquiry was conducted into the cause of these riots. MCKITTRICK AND MCVEA, *supra* note 43, at 30-31. It was headed by Lord Justice Scarman. The Scarman Report exonerated Paisley

estimated that 1500 Catholic families and 315 Protestant families were driven from their homes in Belfast during the summer.<sup>163</sup> “[M]ore than 5 percent of all Catholic households in Belfast were displaced.” (changed to a quotation with citation)<sup>164</sup>

British troops were sent to end that violence. Now, more than 6,000 British soldiers were stationed in Northern Ireland, twice the number of regular officers in the RUC.<sup>165</sup>

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from taking part in acts of violence and criticized the RUC for deploying B Specials into Catholic area while absolving the RUC of acting like “a partisan force co-operating with Protestant mobs to attack Catholic people. GOVERNMENT OF NORTHERN IRELAND REPORT OF TRIBUNAL INQUIRY, VIOLENCE AND CIVIL DISTURBANCES IN NORTHERN IRELAND IN 1969, 16-23 (1972).

<sup>163</sup> COOGAN, *supra* note 7, at 78. It was Europe’s largest forced population movement since World War II. *Id.* Today, there are 116 so-called “peace walls,” which divide Catholic and Protestant communities and help make Belfast the most residentially segregated city in Europe. Peter Geoghegan, *Stormont Needs to Take a Leaf out of Scotland’s Book to Eradicate Sectarianism*, IRISH TIMES, (Nov. 16, 2012, 1:00 P.M.), <https://www.irishtimes.com/opinion/stormont-needs-to-take-a-leaf-out-of-scotland-s-book-to-eradicate-sectarianism-1.12347>. In 2013, the Stormont government set a ten-year target for all peace walls to be taken down as part of the government’s vision for a “shared future.” *Will NI’s Peace Walls Come Down to Meet 10 Year Target*, BBC NEWS NORTHERN IRELAND, (May 3, 2018).

<sup>164</sup> MCKITTRICK AND McVEA, *supra* note 43 at, 59.

<sup>165</sup> WILLIAM BEATTIE SMITH, *THE BRITISH STATE AND THE NORTHERN IRELAND CRISIS 1969-73* 66 (U.S. Institute of Peace, 2011).

The Provisional IRA (Provo's) rose out of the ashes of this period.<sup>166</sup> The Provo's, modeled on the "Irish physical force tradition" of the Irish Republican Brotherhood and Irish Volunteers, re-emerged and claimed the mantle of defender of the minority community.<sup>167</sup> In time, the Provisional IRA grew in terms of numbers and arms. The paramilitary group became capable of taking the offensive against authorities as part of a "Brits-out" strategy.<sup>168</sup>

Initially, "British troops were well received in nationalist areas."<sup>169</sup> Nationalists believed troops were there to protect them, and greeted soldiers with cups of tea and gratitude.<sup>170</sup> Within a year,

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<sup>166</sup> The term "Provos" was a reference to the 1916 Rising leaders and their declaration of a "provisional government." See COOGAN, *supra* note 7, at 96. The Provisional IRA symbol was a phoenix rising out of the ashes. Members of the Official IRA were called "Stickies," because they gummed Easter lily emblems to their lapels at Easter rather than use pins as the Provos did. *Id.* The two IRA factions - Stickies and Provos - would fight and kill each other as well as security forces.

<sup>167</sup> See COOGAN, *supra* note 7, at 96-97. "Force was essential to the achievement of republican goals." RICHARD ENGLISH, *ARMED STRUGGLE: THE HISTORY OF THE IRA* 342 (Oxford University Press, 2003).

<sup>168</sup> TOMMY MCKEARNEY, *THE PROVISIONAL IRA – FROM INSURRECTION TO PARLIAMENT*, 201 (Pluto Press 2011). One objective of the Brits-Out strategy was to force the British to abolish the Stormont government and impose direct rule from Westminster. See COOGAN, *supra* note 7, at 94. The IRA mistakenly believed the British would ultimately abhor direct rule and end it by cutting ties with Northern Ireland. Once that happened, the goal of a united Ireland was supposed to be achieved.

<sup>169</sup> PAUL BEW, *THE POLITICS OF ENMITY* 497 (Oxford University Press, 2009).

<sup>170</sup> See COOGAN, *supra* note 4, at 104.

however, they were seen as another enemy. In April 1970, when soldiers escorted an Orange Order parade through the Catholic Ballymurphy area in Belfast, there was “intense rioting that lasted several days.”<sup>171</sup> Fighting continued throughout the summer, and Ballymurphy become “one of Ireland’s most heated hotbeds of militant republicanism.”<sup>172</sup>

As a “guerilla army” and defender of the minority community, the IRA was fighting back. They “shot and killed three Orange gunmen.”<sup>173</sup>

In July, Reginald Maulding was appointed Home Secretary for Northern Ireland under a new Conservative government.<sup>174</sup> Within days, the British army took part in the Falls Road curfew operation, known by nationalists as “the rape of the Lower Falls.”<sup>175</sup> Homes were

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<sup>171</sup> ED MOLONEY, VOICES FROM THE GRAVE, 71 (Faber and Faber, 2010).

<sup>172</sup> See COOGAN, *supra* note 4, at 546. Although he denies it, Gerry Adams was the IRA OC (officer-in-charge) in Ballymurphy. See Moloney, *supra* note 68, at 322-323. During a three-day period in August 1971, 11 civilians, including a priest, were killed in Ballymurphy by members of the British Parachute Regiment. Carmel Quinn, *For the Families*, IRISH ECHO, (Jan. 15, 2019). Known as the “Ballymurphy Massacre,” it happened during Operation Demetrius (internment). Family members say the massacre has never been properly investigated and have asked members of the U.S. Congress for support in their search for truth and justice. *Id.* A Coroner’s Inquest into the 11 deaths is ongoing. *Id.*

<sup>173</sup> See COOGAN, *supra* note 4, at 546.

<sup>174</sup> KEN BLOOMFIELD, STORMONT IN CRISIS, 127 (BLACKSTAFF PRESS 1994) [hereinafter BLOOMFIELD].

<sup>175</sup> See COOGAN, *supra* note 7, at 108.

raided and ransacked.<sup>176</sup> In the process, “[h]ouses were torn apart, holy pictures were torn up, crucifixes thrown into lavatories.”<sup>177</sup> This tactic came out of the army’s playbook on “low intensity conflict” used in

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<sup>176</sup> Paddy Devlin joined the Social Democratic Labor Party (SDLP) that year. Gerry Fitt was the SDLP’s leader and John Hume its Deputy Leader. (One of the SDLP’s first victories was its successful push for proportional representation in elections). In describing the curfew operation, Devlin said: “The British Army are now behaving like a conquering hero of medieval times . . . General Freeland is reverting to the type of general that Irish people read about in their history books.” See COOGAN, *supra* note 7, at 110.

<sup>177</sup> See COOGAN, *supra* note 4, at 547.

counter-insurgency operations in Kenya, Cyprus and Malaya during the post-colonial era.<sup>178</sup> IRA recruiting soared as a result.<sup>179</sup>

During rioting in the Clonard District in early 1971, the IRA shot and killed Ensign Robert Curtis. He was the first soldier to die in the Troubles.<sup>180</sup> The next day, Prime Minister Chichester-Clark announced:

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<sup>178</sup> FRANK KITSON, *LOW INTENSITY OPERATIONS* (Faber & Faber, 2010). The counter-insurgency strategy resulted in a “dirty war” being waged between security officials and the IRA. In his book, General Kitson argued that non-military forms of action - law, police, judiciary and media - must be part of the army’s operational plan, so that every government action is coordinated to serve a single purpose. *Id.* at 7. In this case that purpose would be defeat of the IRA. One example he offered pertained to the legal system. Kitson said, “[t]he law should be used as just another weapon in the Government’s arsenal and in this case it becomes little more than a propaganda cover for the disposal of unwanted members of the public. *Id.* For this to happen efficiently, the activities of the legal services have to be tied into the war effort in as discreet a way as possible.” *Id.* at 69. In Northern Ireland, special powers and special laws were enacted, and special courts were created to deal with the IRA. Non-jury Diplock courts had special rules that permitted the trial judge to draw an inference of guilt when a person remained silent during police questioning; access to counsel was delayed for 48 hours and could be extended to seven days by the Secretary of State under the Prevention of Terrorism Act. Edward M. Neafsey, *In Belfast, Confession Is Good for the Crown*, 133 *NEW JERSEY L.J.* 1401 (April 12, 1993). Police relied on high pressure interrogation tactics over the course of multiple days to extract confessions. *Id.* In eighty-five percent of the cases, an uncorroborated confession was the only evidence of guilt against the accused; yet the conviction rate was approximately 95 percent. *Id.*

<sup>179</sup> COOGAN, *supra* note 7, at 109.

<sup>180</sup> *Id.* at 112.



“Northern Ireland is at war with the Irish Republican Provisionals.”<sup>181</sup> A month later, the IRA shot three soldiers to death.<sup>182</sup> Chichester-Clark resigned. He was replaced as Prime Minister by Brian Faulkner, who had served as O’Neill’s deputy prime minister before resigning in protest. He promised to run a “law and order” administration.<sup>183</sup>

Faulkner told the British government that internment - indefinite detention without trial - must be instituted. At first, The British Army Commander, Lieutenant General Harry Tuzo, was opposed to internment. He believed “saturating Catholic districts with troops” could contain the IRA.<sup>184</sup> But when the IRA set-off two tons of bombs in late July and early August, General Tuzo changed his position in favor of internment.<sup>185</sup>

The army helped the Stormont government prepare for internment by instructing members of the RUC’s Special Branch on how to conduct deep interrogations.<sup>186</sup> A prison, World War II airfield and ship were “readied for internees.”<sup>187</sup> Internment went into effect on August

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<sup>181</sup> *Id.*

<sup>182</sup> MCKITTRICK, *supra* note 140, at 70-72.

<sup>183</sup> BLOOMFIELD, *supra* note 174.

<sup>184</sup> COOGAN, *supra* note 4, at 552.

<sup>185</sup> *Id.* at 554.

<sup>186</sup> *Id.* Deep interrogation methods involved use of the five techniques of interrogation. *Id.*

<sup>187</sup> *Id.* The prison ship was the “Maidstone.” *Id.*

9, 1971, when Faulkner authorized extrajudicial deprivation of liberty under Operation Demetrius.<sup>188</sup>

In the operation's initial sweep, 450 individuals were arrested for alleged violations of the Special Powers Act.<sup>189</sup> All were members of the minority community.<sup>190</sup> No unionists were interned for 18 months.<sup>191</sup>

The government had tipped its hand that internment was imminent. Therefore, many republicans went on the run to escape arrest. Martin McGuinness, for example, fled to a safe house to avoid capture.<sup>192</sup> The government also relied on outdated intelligence to draw up the list of individuals for detention. RUC intelligence "proved in many cases to be woefully out of date, reflecting the order of battle of the old IRA

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<sup>188</sup> JOHN MCGUFFIN, *INTERNMENT*, 86, (Anvil Books Ltd. 1973).

<sup>189</sup> GERARD HOGAN AND CLIVE WALKER, *POLITICAL VIOLENCE AND LAW IN IRELAND* 86 (Manchester University Press, 1989). The Special Powers Act authorized the detention of any person "who is suspected of acting or having acted or being about to act in a manner prejudicial to the preservation of peace and maintenance of order in Northern Ireland."

<sup>190</sup> COOGAN, *supra* note 7, at 126.

<sup>191</sup> F.J.M. MADDEN, *Understand Irish History*, 238 (McGraw-Hill Companies, Inc. 2010).

<sup>192</sup> LIAM CLARKE AND KATHRYN JOHNSTON, *MARTIN MCGUINNESS* 57 (Mainstream Publishing Company, 2007).

rather than the structures of the new Provisionals.”<sup>193</sup> As a result, one third of those arrested were released within 48 hours.<sup>194</sup>

As the arrests and detentions continued, the percentage of those released after 48 hours increased to nearly 50 per cent.<sup>195</sup> Ultimately, of the 2,357 people arrested under the Special Powers Act, more than 50 percent were released without going to court.<sup>196</sup>

While Faulkner claimed internment was a success, the numbers tell a different story. “The clear verdict of history is that the great gamble of internment failed.”<sup>197</sup> Moreover, in terms of government policies, granting civil rights and imposing internment were antipodes. Yet the government chose the latter policy.

Another government inquiry was established under Sir Edmund Compton to report “into allegations against the security forces of physical brutality” during and subsequent to the internment swoop of August 9, 1971.<sup>198</sup> After investigating allegations made by 40 detainees, the Compton Commission Report found none of the detainees “suffered physical brutality.”<sup>199</sup> The report did identify two cases of “ill-

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<sup>193</sup> BLOOMFIELD, *supra* note 174, at 151.

<sup>194</sup> JOHN MCGUFFIN, *INTERNMENT*, 86 (Anvil Books, 1973). The arrests included two civil rights activists - Ivan Cooper and Michael Farrell – who were released. *See also* COOGAN, *supra* note 4, at 554.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> BLOOMFIELD, *supra* note 174, at 150.

<sup>198</sup> TIM PAT COOGAN, *ON THE BLANKET* 132 (Ward River Press, 1980).

<sup>199</sup> Chairman Sir Edmund Compton, G.C.B., K.B.E., Report of the Enquiry into Allegations against the Security Forces of Physical Brutality in Northern

treatment” caused by hooding and wrist bands used “not as punishment but as a military precaution,” and one case of neglect in failing to give medical attention to a detainee who had been “accidentally cut” during arrest.<sup>200</sup> In the minds of nationalists, the report made Compton’s name synonymous with the term “whitewash.”<sup>201</sup>

A month later, the Hunt Commission Report on the “recruitment, organization, structure and composition” of the RUC and B Specials was released.<sup>202</sup> It recommended replacing the B Specials with a reserve RUC force and new part-time military force under the command of the British army.<sup>203</sup> With the abolishment of the B Specials, civil rights activists had achieved all of the goals set forth at the time NICRA protests began. But the ground had shifted since the first Derry civil rights march a year earlier and winning these reforms was no longer enough. Trust in government in the minority community eroded, and people turned against the Stormont government.

During internment, 14 internees were subjected to “the five techniques of interrogation” by RUC Special Branch officers, while

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Ireland Arising out of Events on 9 August 1971 at 7 (1971) *reprinted in* HC Deb 16 November 1971 vol 826 cc215-24.

<sup>200</sup> *Id.*

<sup>201</sup> COOGAN, *supra* note 7, at 129. Protestants reacted to the report with rage, leading to riots in which the first RUC officer killed in the Troubles was shot by a Protestant sniper. *Id.*

<sup>202</sup> REPORT OF THE ADVISORY COMMITTEE ON POLICE IN NORTHERN IRELAND, CAIN (Baron Hunt, Hunt Commission Report 1969).

<sup>203</sup> *Id.* at Ch. 10, Par 171. The report called for the creation of a part-time military force called the Ulster Defense Force (UDR). When the UDR was established in 1970, it recruited from the B Specials. COOGAN, *supra* note 7, at 92.

detained in a secret location.<sup>204</sup> The five techniques involved forcing detainees to stand against a wall in stress positions and “spread eagle” for hours at a time combined with beatings upon falling, keeping detainees hooded at all times except during interrogation, subjecting detainees to continuous noise, depriving detainees of sleep and depriving them of food and drink. The Irish government sued the United Kingdom in the European Court of Human Rights (ECHR) for using the five techniques against detainees in violation of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment.<sup>205</sup>

Although the European Commission on Human Rights found using the five techniques “constituted a practice not only of inhuman and degrading treatment but also of torture,” the ECHR did not go that far.<sup>206</sup> The ECHR disagreed with the finding on torture.<sup>207</sup> The ECHR distinguished inhuman and degrading treatment from torture based on “a difference in the intensity of the suffering inflicted”<sup>208</sup> The ECHR

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<sup>204</sup> Ireland v United Kingdom, (Irish State Case), 23 Eur. Ct. H.R. at 96.

<sup>205</sup> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Article 3, European Convention on Human Rights. Known as the *Irish State Case*, it was the first time a member State sued another one. *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 167.

<sup>208</sup> *Id.* at 167-68. In 2018, the ECHR rejected Ireland’s request to revise the decision in the Irish State Case, which was based on the failure of the original decision to address the issue of long-term psychiatric harm caused by using the five techniques on the 14 detainees. The ECHR rejected the revision request by a 6-1 vote, noting the court did not think the new evidence - had it

concluded that the five techniques violated Article 3 as “a practice of inhuman and degrading treatment” but did not rise to the level of “torture.”<sup>209</sup>

Interment “produced a ferocious orgy of destruction, a reaction from the republican community of rage.”<sup>210</sup> The “orgy” of violence resulted in 146 deaths from bombings and shootings during the remainder of 1971.<sup>211</sup> New recruits flocked to the IRA, and it grew into an army capable of conducting a guerilla war throughout all of Northern Ireland.<sup>212</sup> Additionally, “[s]ubstantial sums of money and arms were provided from overseas.”<sup>213</sup>

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been before the court in 1978 - would have changed the original decision. Ireland, 23 Eur. Ct. H.R. at 96.

<sup>209</sup> *Id.* A quarter of a century later, the Bush administration would rely on the ECHR decision in the Irish State Case to justify the U.S. enhanced interrogation program as lawful. The Department of Justice (DOJ) concluded that the War Crimes Act prohibited acts of torture but did not outlaw conduct which is merely inhuman or degrading. Bybee-Gonzalez Memorandum (Aug 1, 2002), *supra* note 4, at 29; War Crimes Act of 1996 (anti-torture statute), 18 U.S.C. 2441 (2006). Following the holding in the *Irish State Case*, DOJ opined that waterboarding passed legal muster because conduct constituting inhuman or degrading treatment is not a crime. Edward M. Neafsey, “The Irish State Case, Interrogation Techniques and the Global War on Terror,” Rutgers L. Rev. Commentaries (September 20, 2012).

<sup>210</sup> BLOOMFIELD, *supra* note 174, at 150.

<sup>211</sup> D. MCKITTRICK ET AL, LOST LIVES 79-135 (Mainstream Publishing, 2007).

<sup>212</sup> ED MOLONEY, *supra* note 68, at 102.

<sup>213</sup> SEAN MACSTIOFAN, REVOLUTIONARY IN IRELAND 190 (Gordon and Cresmonesi, 1975). Gerry Adams sent Brendan Hughes to New York “to

In the minority community, favorable sentiment for the IRA increased. Some considered the IRA an acceptable alternative to nonviolent protest. Some refused to join but agreed to serve as the IRA's eyes and ears in the community by providing information. Others offered safe houses for IRA members to hide-out from and avoid capture by authorities. This support was essential for waging a "classic insurgency." IRA firefights with security forces became common.<sup>214</sup> The IRA erroneously proclaimed that 1972 would be the "year of victory" for their "Brits Out" objective.<sup>215</sup>

As the Provisional IRA grew stronger, civil rights protests continued. The protests remained nonviolent, but were still treated by Stormont as an existential threat.<sup>216</sup> Now activists were protesting internment.

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arrange the purchase and shipment of guns." ED MOLONEY, *A SECRET HISTORY OF THE IRA*, 114 (Norton and Co., 2003).

<sup>214</sup> At first, the priority for the IRA was to protect neighborhoods. But now they took the fight to the British. WILLIAM BEATTIE SMITH, *THE BRITISH STATE AND THE NORTHERN IRELAND CRISIS* 115-16 (U.S. Inst. of Peace Press) (2011).

<sup>215</sup> ALAN PARKINSON, *1972 AND THE ULSTER TROUBLES* 558 (Four Courts Press) (2004).

<sup>216</sup> It was said that "British indifference created the [IRA]" and "British repression sustained it." ANTHONY MCINTYRE, *GOOD FRIDAY - THE DEATH OF IRISH REPUBLICANISM*, Ausubo Press (2008).

In January 1972, John Hume led an anti-internment march at Magilligan strand in County Derry.<sup>217</sup> 2,000 demonstrators took part.<sup>218</sup> They marched toward one of the internment camps, until being stopped by the British Army's First Parachute Regiment.<sup>219</sup> When marchers attempted to get around wire used to close off the beach, the army fired rubber bullets and CS gas into the crowd and beat many protesters.<sup>220</sup> John Hume accused the soldiers of "beating, brutalizing and terrorizing demonstrators."<sup>221</sup>

The level of unresponsiveness, violence and hatred leveled at the marchers frightened Hume.<sup>222</sup> He urged NICRA to call-off the anti-internment march scheduled for the following Sunday in Derry.<sup>223</sup> The RUC Chief Superintendent also expressed concerns. He "asked that the march be allowed to take place without military intervention."<sup>224</sup> Instead, the army was placed in charge of the overall command "to contain

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<sup>217</sup> SEAN FARREN AND DENIS HAUGHEY, JOHN HUME, THE PEACEMAKER 207 (Four Courts Press, 2015) [hereinafter FARREN AND HAUGHEY].

<sup>218</sup> ROUTLEDGE, *supra* note 8, at 110.

<sup>219</sup> FARREN AND HAUGHEY, *supra* note 217, at 207.

<sup>220</sup> ROUTLEDGE, *supra* note 8, at 110.

<sup>221</sup> *Civil Rights – A Chronology of Events*, (Jan. 22, 1972). <https://cain.ulst.ac.uk/events/crights/chron.htm>.

<sup>222</sup> FARREN AND HAUGHEY, *supra* note 217, at 207.

<sup>223</sup> *Id.*

<sup>224</sup> Martin Melaugh, *The Civil Rights Campaign - A Chronology of Events*, CAIN (Feb. 6, 2019, 8:38 AM) <https://cain.ulster.ac.uk/events/crights/chron.htm>.



the civil rights march.”<sup>225</sup> Once again, Cooper was an organizer of this march for NICRA. He obtained assurance from the IRA that “its members would withdraw from the area during the march.”<sup>226</sup>

January 30, 1972 was an infamous day in Irish history. It was Ireland’s second Bloody Sunday.<sup>227</sup>

### C. Northern Ireland’s Bloody Sunday

Since Derry’s anti-internment protest was deemed unlawful, Prime Minister Faulkner pushed the army “to take a hard line with the troublemakers” (i.e., marchers).<sup>228</sup> The number of protesters was estimated to be in the tens of thousands.<sup>229</sup> Initially, as marchers headed to Free Derry Corner to meet-up, things were peaceful. But some broke-off toward the army barricade. The army used a water cannon and rubber bullets to force the crowd back, while Catholic youth began

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<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Ireland’s first Bloody Sunday occurred on November 21, 1920, when agents of Michael Collins - known as the “Twelve Apostles -” killed 14 British Secret Service agents in Dublin, and the British responded by firing on a crowd watching a GAA football match at Croke Park. Dermot McEvoy, *Michael Collins and the Bloody Sunday Massacre*, *Irish Central News*, Nov. 21, 2018. Fourteen were killed at the match, including one of the players - Michael Hogan. *Id.* Collins’ operation shattered the British intelligence system in Ireland, which turned out to be a crucial event in winning the Irish War of Independence.

<sup>228</sup> COOGAN, *supra* note 7, at 134.

<sup>229</sup> *Civil Rights - A Chronology of Events*, (Jan. 30, 1972).

throwing stones.<sup>230</sup> A riot, “not particularly intense,” developed.”<sup>231</sup> Members of the First Parachute Regiment fired their rifles into the crowd; they continued to do so as thousands of people ran for cover.<sup>232</sup> A half an hour later, 13 unarmed civilians lay dead on the ground; all were shot by soldiers.<sup>233</sup>

The fallout from Bloody Sunday was dramatic and widespread. First and foremost, the civil rights movement was over. It was extinguished on the streets of Derry. In its place was a menacing threat to Stormont - the IRA’s armed campaign. Cooper said “Bloody Sunday destroyed the civil rights movement and opened up a path for the hard men” of the IRA.<sup>234</sup>

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<sup>230</sup> COOGAN, *supra* note 7, at 143. Rock-throwing at protest marches in Derry had become so common that the term “Derry Fusiliers” was used to describe rock-throwers. *Id.*

<sup>231</sup> *Civil Rights - A Chronology of Events*, *supra* note 74.

<sup>232</sup> COOGAN, *supra* note 7, at 136.

<sup>233</sup> *Id.* at 134. A fourteenth unarmed civilian would later die from his wounds. *Id.* Seventeen were wounded. *Id.* The soldiers claimed they returned fire after being shot at first and inflicted a “number of casualties on those who were attacking them with firearms and with bombs.” *Civil Rights - A Chronology of Events*, *supra* note 74. But none of the eyewitness accounts of those shot saw guns or bombs being used, and none were recovered at the scene. *Id.*

<sup>234</sup> Alan Parkinson, *1972 and the Ulster Troubles*, FOUR COURTS PRESS, 2004, at 24.

Second, Bloody Sunday ushered in decades of violence and death. In fact, 1972 was the “bloodiest” year of the Troubles - 495 were killed.<sup>235</sup>

Third, the minority community was traumatized and alienated. It was said “[e]very single last vestige of Catholic trust, confidence and reluctant support that Stormont or Westminster governments might have had on 29 January went out the door.”<sup>236</sup> Support for the government, even among moderates, swung away. After Bloody Sunday, “most Northern Catholics felt that the Northern State was unreformable and that they would only get civil rights in a united Ireland.”<sup>237</sup>

Fourth, it was a shot in the arm for the IRA, whose ranks “swelled” with new recruits. Martin McGuinness reportedly said,

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<sup>235</sup> DAVID MCKITTRICK ET AL, *LOST LIVES* 139-312 (Mainstream Publishing 2007). Northern Ireland was “on the brink of civil war.” ALAN PARKINSON, *1972 AND THE ULSTER TROUBLES*, 351 (FOUR COURTS PRESS, 2010). More than 100 security officers were killed, and the IRA began a car bombing campaign. *Id.* at 353. On a July day known as “Bloody Friday,” nine people died in a series of bombings in Belfast and 130 were seriously injured. “[T]he IRA detonated twenty-two bombs in Belfast within seventy-five minutes.” COOGAN, *supra* note 7, at 151. The IRA wanted to “balance the books for Britain’s Bloody Sunday,” but the indiscriminate and savage killings turned nationalists against them. Moloney, *supra* note 161, 108, at 303. It was “an unmitigated disaster” for the IRA. *Id.* at 116-17.

<sup>236</sup> WILLIAM BEATTIE SMITH, *FROM VIOLENCE TO POWER SHARING*, 179 (US Institute of Peace Press 2011).

<sup>237</sup> Smith, *supra* note 111, at 179. A united Ireland was the transcendent goal of the IRA. Equal rights and government reform, not a united Ireland, was the goal of the civil rights movement. Keeping a firm grip on power, however, was part of unionist DNA.

“I don’t believe until the day I die that I will ever get over the experience of what happened on that day and the cruelty and barbarity of the Paratroopers. . . . There are only two responses: that people lie down and accept that there is no future for them, or that people fight. I am proud of the fact that I was part of the community which was prepared to fight back.”<sup>238</sup>

Unlike a fight involving total non-cooperation which Devlin referred to in the aftermath of the Battle of the Bogside, McGuinness was referring to fighting back with armed resistance.<sup>239</sup> The IRA “could now seriously challenge British rule in Northern Ireland.”<sup>240</sup>

Mobs in Dublin burned-down the British Embassy.<sup>241</sup> Devlin called Bloody Sunday “our Sharpeville.”<sup>242</sup> In the House of Commons, she challenged Home Secretary Maudling, who defended the soldiers on the grounds they fired after being fired upon. Noting she was the only eyewitness to the event in Parliament, she called Maudling a “liar”

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<sup>238</sup> CLARKE AND JOHNSTON, *supra* note 135, at 79. McGuinness blamed the British for developing “republicanism” and bringing about resistance to British rule.” Moloney, *supra* note 68, at 362.

<sup>239</sup> Although not expressed directly by Devlin, one form of non-cooperation could involve a total boycott, which is what Dr. Martin Luther King, Jr. relied on to achieve victory in the Montgomery bus protest. A boycott protest was also an important part of the overthrow of South Africa’s apartheid government.

<sup>240</sup> Moloney, *supra* note 68, at 103.

<sup>241</sup> COOGAN, *supra* note 7, at 136.

<sup>242</sup> COOGAN, *supra* note 4, at 559. Devlin was referring to the 1960 Sharpeville massacre in Durban, South Africa, where security forces shot 69 peaceful protesters opposed to apartheid to death and seriously wound 180.

and “murdering hypocrite.”<sup>243</sup> Then she ran across the House floor, slapped his face and pulled his hair.<sup>244</sup>

British Prime Minister Edward Heath suspended Stormont and imposed direct rule on Northern Ireland from London.<sup>245</sup> This was thought to be a temporary measure, “until a political solution to the problems of the province [were settled] in consultation with all of those concerned.”<sup>246</sup> Heath named William Whitelaw to a new position, Secretary of State for Northern Ireland. For the IRA, direct rule was a victory because abolishment of Stormont was one of its goals.<sup>247</sup> It was seen as step toward unification of the island.

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<sup>243</sup> COOGAN, *supra* note 7, at 136-37.

<sup>244</sup> *Id.* at 137. Afterword, Devlin quipped that she “did not shoot him in the back, which is what they did to our people.” *Id.*

<sup>245</sup> BLOOMFIELD, *supra* note 174, at 165.

<sup>246</sup> COOGAN, *supra* note 7, at 140. Under direct rule, government administration and RUC policy came from London. British media had “concluded that Stormont could not survive because the state of Northern Ireland was itself sectarian: ‘Protestant supremacy was the only reason why the State existed. As such, the State itself was an immoral concept.’ The British Army was defending ‘a morally indefensible entity.’” Smith, *supra* note 165, at 208.

<sup>247</sup> MacStiofan, *supra* note 213, at 234. Since direct rule was supposed to be a temporary measure, Secretary Whitelaw negotiated the creation of a power sharing Assembly and Executive that guaranteed “the elected representatives of the minority population in the administration of the Province at the Cabinet level.” Smith, *supra* note 165, at 249. The British and Irish governments and the mainstream political parties in Northern Ireland signed the Sunningdale Agreement. The agreement went into effect on Jan. 1, 1974, ending direct rule. 1974 was going to be “the year of reconciliation.” BLOOMFIELD, *supra* note 174, at 195. Reverend Paisley led the charge against Sunningdale. In

The British government established a tribunal under Lord Chief Justice Widgery to determine what happened on Bloody Sunday.<sup>248</sup> When the Widgery Report was issued a few months later, it completely

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February, a new Labor government was elected, replacing the Conservative Party. Initially, the new government under Prime Minister Harold Wilson supported Sunningdale. Smith, *supra* note 165, at 308. The Prime Minister appointed Merlyn Rees as the Secretary for Northern Ireland. In May, the British government confronted an Ulster Workers Council strike supported by paramilitary groups. Facing a total shutdown of Northern Ireland, the British government backed down ending power-sharing. MCKITTRICK AND MCVEA, *supra* note 43, at 105-06. Rees later defended the capitulation on television. He said: "I didn't let them win. They were going to win anyway. It could not be done. That's the short answer. The police were on the brink of not carrying out their duties and the middle classes were on the strikers' side . . . this was the Protestant people of Northern Ireland rising up against Sunningdale and it could not be shot down." *Id.* at 106. John Hume said, "Faulkner showed courage," but "[t]he pusillanimity of the Labor government . . . in failing to resist predictable destructiveness of the demagogues and paramilitaries . . . set back the situation irremediably." JOHN HUME, *A NEW IRELAND* 78 (Roberts Rinehart Publishers, 1997). Reconciliation was not going to happen this year, or for a long time. Sunningdale was dead, and direct rule was re-imposed. BLOOMFIELD, *supra* note 174, at 220-21. Seamus Mallon, deputy SDLP leader, famously referred to Good Friday Agreement negotiated in 1998 as "Sunningdale for slow learners." POWELL, *supra* note 39, at 308. "Consent" (i.e., a change of status in Northern Ireland could only come about through a democratic process and the vote of a majority of the people) was an indispensable part of the Sunningdale Agreement. Consent was also a fundamental tenet of the Anglo-Irish Agreement (1985) and the Hume-Adams peace talks. Finally, according to British Prime Minister Tony Blair, consent was "the first principle" of the Good Friday Agreement. TONY BLAIR, *A JOURNEY* 182 (Vinitage 2010).

<sup>248</sup> COOGAN, *supra* note 4, at 562.

and unconditionally exonerated the soldiers and placed blame for the deaths on those who organized the illegal march. It said marchers created a highly dangerous situation in which a clash between demonstrators and security forces was almost inevitable.<sup>249</sup> The report concluded none of the deceased or wounded had been proven to be handling a firearm or bomb, but found “strong suspicion that some others had been firing weapons or handling bombs.”<sup>250</sup> The report also determined “[t]hat there is no reason to suppose that soldiers would have opened fire if they had not been fired upon first.”<sup>251</sup>

Widgery’s findings were blatantly false. The report was another whitewash. Covering up the truth when security forces break the law undermines the State’s authority and empowers insurgents.<sup>252</sup> “The cost to the State may be higher if the authorities also fail to prosecute members of the security forces who break the law.”<sup>253</sup> It took 38 years to correct the record with the real facts and ten additional years for criminal charges to be filed.

In 1998, British Prime Minister Tony Blair called for a new review of Bloody Sunday and established the Lord Saville Inquiry.<sup>254</sup> The

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<sup>249</sup> Report of the Tribunal appointed to inquire into the events on Sunday, 30 January 1972, which led to loss of life in connection with the procession in Londonderry on that day [hereinafter Widgery], 1972, H.L. 101, H.C. 220, ¶ 1.

<sup>250</sup> *Id.* at 10.

<sup>251</sup> *Id.* at 7.

<sup>252</sup> Smith, *supra* note 165 at 9.

<sup>253</sup> *Id.*

<sup>254</sup> PETER MORRISON AND DAVID STRINGER, *NIRELAND’S BLOODY SUNDAY KILLINGS UNJUST*, ASSOCIATED PRESS (June 15, 2010).

Saville Report was issued twelve years later. It unreservedly rejected the Widgery findings.<sup>255</sup>

The Saville report declared the innocence of the victims and the guilt of the soldiers in clear and unambiguous language.) The report concluded: “[S]oldiers of 1 PARA on Bloody Sunday caused the deaths of 13 people and injury to a similar number, none of whom was posing a threat of causing death or serious bodily injury.”<sup>256</sup>

The report said soldiers did not act in self-defense, nor did they warn civilians of their intention to shoot.<sup>257</sup> The report also determined soldiers tried to cover-up their acts with lies.<sup>258</sup> It placed “[t]he immediate responsibility for the deaths and injuries on Bloody Sunday . . . with those members of Support Company whose unjustifiable firing was the cause of deaths and injuries.”<sup>259</sup> Finally, responsibility and blame for the atrocity was placed on the guilty parties. At the inquiry, some witnesses testified they saw Martin McGuinness with a weapon at the

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<sup>255</sup> CONOR CLEARY, *FINALLY, THE TRUTH ABOUT BLOODY SUNDAY*, CNN (June 16, 2010), <https://www.cnn.com/2010/OPINION/06/16/oclerly.bloody.sunday.report/>.

<sup>256</sup> Widgery, *supra* note 249, at 100.

<sup>257</sup> *BLOODY SUNDAY REPORT: AT A GLANCE*, BBC NEWS (June 15, 2010), [https://news.bbc.co.uk/2/hi/northern\\_ireland/10321886.stm](https://news.bbc.co.uk/2/hi/northern_ireland/10321886.stm).

<sup>258</sup> HELEN MULHOLLAND AND HENRY MCDONALD, *BLOODY SUNDAY REPORT: DAVID CAMERON APOLOGIZES FOR ‘UNJUSTIFIABLE’ SHOOTINGS*, THE GUARDIAN (June 15, 2010), <https://www.guardian.co.uk/uk/2010/jun/15/bloody-sunday-report-saville-inquiry/print>.

<sup>259</sup> Widgery, *supra* note 249 at 90.



march.<sup>260</sup> He denied it when he testified.<sup>261</sup> The report found McGuinness “did not engage in any activity that provided any of the soldiers with any justification for opening fire.”<sup>262</sup> After the report’s release, Blair called it “an exhaustive and fair account of what happened.”<sup>263</sup>

David Cameron was British Prime Minister when the Saville Report was made public. He responded to it in the House of Commons by apologizing to family members of those killed, who had waged a four-decade campaign for the truth about Bloody Sunday.<sup>264</sup> He acknowledged: “What happened should never have happened. The families of those who died should not have to live with the pain and hurt of that day, and a lifetime of loss. Some members of the Armed Forces acted wrongly. The government is ultimately responsible for the Armed Forces. And for that, on behalf of the government - and indeed our country - I am deeply sorry.”<sup>265</sup>

He admitted that “the conclusions of this report are absolutely clear. There is no doubt, there is nothing equivocal, there are no

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<sup>260</sup> BLOODY SUNDAY REPORT: AT A GLANCE, *supra* note 257.

<sup>261</sup> *Id.*

<sup>262</sup> Tim Shipman, *McGuinness Was Armed with a Machine Gun on Bloody Sunday: Provisionals’ godfather had central role in the Troubles*, DAILY MAIL (June 16, 2010), <https://www.dailymail.co.uk/news/article-1286990/Bloody-Sunday-Inquiry-Martin-McGuinness-WAS-armed-machine-gun-Bloody-Sunday.html>.

<sup>263</sup> Blair, *supra* note 247, at 166.

<sup>264</sup> Terry Golway, *Apology a Sign of Strength and Weakness*, IRISH ECHO (Oct. 2, 2012), at 16.

<sup>265</sup> *BLOODY SUNDAY KILLINGS ‘UNJUSTIFIED AND UNJUSTIFIABLE,’* BBC News Northern Ireland (June 15, 2010), <https://www.bbc.com/news/10320609>.

ambiguities. What happened on Bloody Sunday was both unjustified and unjustifiable. It was wrong.”<sup>266</sup>

Family members of the victims marched from Free Derry Corner to Guild Hall Square in Derry where the report was made public. Upon arriving there, they read its conclusions and sang “We Shall Overcome.” A line from that civil rights anthem goes: “Deep in my heart, I do believe, we shall overcome one day.”<sup>267</sup> They believed while others did not. On Bloody Sunday, the government acted as tormentor, not protector. Justice, which is indispensable for peace, requires truth. Nearly four decades later, the lies were overcome and the truth was finally out.

Family members stood in Guild Hall at a stained-glass window and gave a thumbs-up sign to the thousands who had gathered outside.<sup>268</sup> Family members felt “vindicated.”<sup>269</sup> Cameron’s

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<sup>266</sup> *Id.*

<sup>267</sup> *THE INSPIRING FORCE OF ‘WE SHALL OVERCOME,’* NPR (Aug 28, 2013), <https://www.npr.org/2013/08/28/216482943/the-inspiring-force-of-we-shall-overcome><https://www.npr.org/2013/08/28/216482943/the-inspiring-force-of-we-shall-overcome>.

<sup>268</sup> GERRY ADAMS, *THE LONG ROAD TO THE TRUTH*, 6 (IRISH ECHO, July 6, 2010).

<sup>269</sup> *Id.* Family members began the Bloody Sunday Justice Campaign In 1992 with three goals: to overturn the Widgery findings and have a new inquiry conducted, to win formal acknowledgement of the innocence of their loved ones, and to prosecute those responsible. Gerry Moriarty & Freya McClements, *Bloody Sunday: Former British Soldier to Be Charged Over Killings*, IRISH TIMES (March 14, 2019), <https://www.irishtimes.com/news/ireland/irish-news/bloody-sunday-former-british-soldier-to-be-charged-over-killings-1.3825695>. The first two goals

condemnation of what happened was a stinging rebuke of government conduct on Bloody Sunday and attempts to cover it up.

Family members still had one more goal to achieve for their loved ones. They wanted those responsible prosecuted. In 2015, the Police Service of Northern Ireland (PSNI) opened an investigation involving certain members of the First Parachute Regiment.<sup>270</sup> The PSNI file on Bloody Sunday was referred to the Public Prosecution Service (PPS) for a decision on whether soldiers should be prosecuted.<sup>271</sup> The PPS investigated the conduct of 16 paratroopers.<sup>272</sup>

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were accomplished in 2010 with the issuance of the Saville Report. Family members pressed on with the third goal.

<sup>270</sup> The Good Friday Agreement (GFA) called for police reform. To further a complete overhaul of and cultural change in Northern Ireland's policing agency, the PSNI was established to replace the RUC. The new police force was to be fair, impartial, apolitical, accountable, and human rights compliant. The GFA also recognized the need to redress the suffering of victims "as a necessary element of reconciliation." It did not, however, set forth what that transitional justice mechanism for truth-recovery might be.

<sup>271</sup> *Bloody Sunday Paratrooper Soldier Dies*, BBC NEWS (Jan. 25, 2019), <https://www.bbc.com/news/uk-northern-ireland-46995647>.

<sup>272</sup> Before a final decision was announced by the PPS, then Northern Ireland Secretary of State (SOS) Karen Bradley answered a question in Parliament posed by a DUP MP about the handling of legacy cases involving soldiers. The SOS responded that fewer than 10% of the killings during the Troubles were carried out by the military and police, and that those killings - unlike murders perpetrated by terrorists - were "not crimes." Ed O'Loughlin, *The Northern Ireland Minister Apologizes Over Remarks*, N.Y. TIMES (Mar. 7, 2019), <https://www.nytimes.com/2019/03/07/world/europe/karen-bradley-northern-ireland-crimes.html>. She said, "[t]hey were people acting under orders and under instruction and fulfilling their duty in a dignified and

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appropriate way.” *Id.* The SOS also said, “[o]ver 90 per cent of the killings during the Troubles were at the hands of terrorists, every one of them a crime.” Gerry Moriarty, *Killings by British soldiers during Troubles Were ‘Not Crimes’ – Karen Bradley*, IRISH TIMES (Mar. 6, 2019, 8:20 PM), <https://www.irishtimes.com/news/politics/killings-by-british-soldiers-during-troubles-were-not-crimes-karen-bradley-1.3816483>. The criticism over the SOS’s parliamentary answer was immediate. She was accused of lacking knowledge or understanding of the complexity of Northern Ireland’s history, and for showing insensitivity to the families of those killed by security forces. Noel Whelan, *Northern Secretary Karen Bradley Should Go after Crass Comments*, IRISH TIMES (Mar. 8, 2019, 1:00 PM), <https://www.irishtimes.com/opinion/northern-secretary-karen-bradley-should-go-after-crass-comments-1.3818204?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fopinion%2Fnorthern-secretary-karen-bradley-should-go-after-crass-comments-1.3818204>. Her comments were seen as particularly destructive to the rule of law. She was accused of interfering in the judicial process and lost all credibility as a fair arbiter in how legacy cases would be handled. *Id.* The SOS quickly backtracked by making a second statement in the House of Commons. She said: “The point I was seeking to convey was that the overwhelming majority of those who served carried out their duties with courage, professionalism, and integrity within the law. I was not referring to any specific cases but expressing a general view. Of course, where there is evidence of wrongdoing it should always be investigated whoever is responsible. These are matters of course for the police and prosecuting authorities who are independent of government.” Moriarty, *supra* note 199. When this failed to quell the uproar, she issued a third statement after meeting with the victims’ group Relatives for Justice. In this statement she acknowledged her mistake and the harm it caused. She said: “The language was wrong even though this was not my intention; it was deeply insensitive to many of those who lost loved ones. I know from these families that I have met personally just how raw their pain is and I completely understand why they want to see justice properly delivered.” O’Loughlin, *supra* note 202. During the meeting with victims’ families,

The results of its investigation were announced in 2019. The PPS concluded that evidence against one soldier, described as Soldier F, met the “test for prosecution;” that is, there was a reasonable prospect for conviction based upon the evidence and the prosecution was in the public interest.<sup>273</sup> Soldier F was charged with murder (2) and attempted

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Bradley apologized for the “hurt” her comments caused. *Karen Bradley: NI Secretary ‘Humbled’ by Troubles Families*, BBC NEWS (Mar. 8, 2019), <https://www.bbc.com/news/uk-northern-ireland-47492069>. After the meeting, she said “[i]t was humbling to listen to each of them and their personal and deeply moving stories;” she added, “I heard about the hurt and suffering endured for many years.” *Id.* SOS Bradley lost her job when a new Conservative government took over the reins of power in Westminster and a new SOS for Northern Ireland was appointed. But debate surrounding the issue of soldier prosecutions will continue and, if anything, become more acrimonious. During his first week in office, British Prime Minister Boris Johnson created a new Office of Veterans Affairs to look at, among other things, the prosecution of soldiers who served in Northern Ireland. *New Office to Improve Support for Military Veterans*, BBC NEWS (July 29, 2019) [hereinafter New Military Veterans Office] <https://www.bbc.com/news/uk-politics-49152253>.

<sup>273</sup> Moriarty, *supra* note 272. Then British Secretary of Defense Gavin Williamson reacted to the decision by saying the British government will “offer full legal and pastoral support to the individual affected by today’s decision.” Jennifer Bray, Freya McClements, Denis Staunton, *British Government Pledges Legal Support to Soldier Charged over Bloody Sunday*, IRISH TIMES (Mar. 14, 2019, 12:19 PM), <https://www.irishtimes.com/news/ireland/irish-news/british-government-pledges-legal-support-to-soldier-charged-over-bloody-sunday-1.3825755>. After replacing Prime Minister (PM) May, PM Johnson appointed a new Secretary of Defense who said he was “determined to reset the country’s relationship with veterans.” New Military Veterans Office, *supra* note 202. This Minister will oversee the new Office for Veterans Affairs. He stated one of his tasks is “to end the repeated and vexatious pursuit of veterans” over offenses allegedly committed in the line of duty. *Id.*

murder (4) of 6 Bloody Sunday victims.<sup>274</sup> The PPS concluded that the available evidence was “insufficient to provide a reasonable prospect of conviction” of other soldiers.<sup>275</sup>

News that a single soldier was going to be prosecuted generated a range of reactions among Bloody Sunday family members. Those whose loved ones formed the basis of the murder charges felt they had achieved justice for all Bloody Sunday victims.<sup>276</sup> Some of those whose loved ones were not recognized as victims in the murder charges were disappointed, while others were devastated.<sup>277</sup> Before the PPS announced its decision, one family member expressed “forgiveness” for the soldiers. He said, “[p]utting a soldier in jail wouldn’t make me happy whatsoever.”<sup>278</sup> Instead, he wanted to see the British

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<sup>274</sup> NIC ROBERTSON AND JACK GUY, *FORMER BRITISH PARATROOPER TO BE CHARGED OVER BLOODY SUNDAY*, CNN, (March 14, 2019), <https://www.cnn.com/2019/03/14/uk/bloody-sunday-verdict-intl/index.html>

<sup>275</sup> Moriarty, *supra* note 272.

<sup>276</sup> Freya McClements, *Families React to Bloody Sunday Verdict: ‘This is not the end of it’*, IRISH TIMES (Mar. 14, 2019, 1:44 PM), <https://www.irishtimes.com/news/ireland/irish-news/families-react-to-bloody-sunday-verdict-this-is-not-the-end-of-it-1.3825795>.

<sup>277</sup> Moriarty, *supra* note 272.

<sup>278</sup> Paddy Clancy, *Bloody Sunday victim’s family forgives soldiers*, IRISHCENTRAL NEWS (Mar. 8, 2019), <https://www.irishcentral.com/news/irish-voice/bloody-sunday-victim-family-forgives-soldiers>. Some family members of those killed in Dylan Roof’s massacre in a Charleston Church forgave him. They did so because forgiveness was integral to their faith and because it allowed them to move on from the pain.

establishment and unionist leaders of the day who called the paratroopers into Derry placed on trial.<sup>279</sup>

Family member responses to the news of a single soldier prosecution differ, but hurt and heartache are at the core of every reaction. These feelings have a universal quality in that anyone experiencing a similar trauma would feel. Losing a loved one causes pain that lasts a lifetime. And to have a loved one murdered magnifies the grief. Basic questions abound. Did the person die alone or with others? Was the person in pain or know they were dying? Did they suffer before dying? Did they have any final words or say anything? How did it happen? Who was responsible? Will those responsible be held accountable?

For Bloody Sunday family members, some of these questions have an answer. What about other cases? There are more than 3,000 unsolved murders from the Troubles.<sup>280</sup> The grieving family members of those victims also deserve answers. They deserve to hear the truth.

As a resource intensive case, the Bloody Sunday prosecution case is instructive. There are not enough resources to investigate, and prosecute where appropriate, all of the other cases. It took three years to gain necessary funding to conduct inquest hearings for just a portion of them. In 2016, Northern Ireland Chief Justice Declan Morgan said the State has a legal obligation to ensure there is funding to conduct inquest hearings into some of the most controversial killings of the

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<sup>279</sup> *Id.*

<sup>280</sup> MARK OLIVER, TEAM TO INVESTIGATE UNSOLVED NORTHERN IRELAND MURDERS, THE GUARDIAN (Jan. 20, 2006), <https://www.theguardian.com/uk/2006/jan/20/northernireland.northern>.

Troubles.<sup>281</sup> He described the situation as an “exigency,” noting it should not be treated as a political football.<sup>282</sup> Delay, he said, frustrates the rule of law, and frustrates families “who have lived with these issues for so long.”<sup>283</sup> Chief Justice Morgan presented a plan for conducting 56 legacy inquests involving 98 deaths, if money was made available.<sup>284</sup> Despite the exigency and damage to the rule of law, funding for these matters was not provided by the Justice Department until 2019.

What this means for dealing with other cases is that some type of systemic process, like the Stormont House Agreement, is needed. Trying to handle them on an individual basis will not work. It is imperative that a truth recovery mechanism be implemented to deal with the legacy of the past in a way that provides victims information, truth and justice. Truth, accountability and acknowledgement can help heal wounds, which makes these factors the great yearning of family members of all Troubles victims. The raw feelings expressed by Bloody Sunday family members send a powerful message to political leaders. Leaders must find the courage to address the past as a whole in a systemic way in order to heal societal wounds. Further delay is no longer an option.

#### IV. Reconciliation

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<sup>281</sup> Vincent Kearney, *Government Has ‘Legal Obligation’ over Troubles Deaths Inquests*, BBC NEWS (Dec. 15, 2016), <https://www.bbc.com/news/uk-northern-ireland-38322209>.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> VINCENT KEARNEY, *GOVERNMENT HAS ‘LEGAL OBLIGATION’ OVER TROUBLES DEATH INQUESTS*, BBC News (Dec. 15, 2016), <https://www.bbc.com/news/uk-northern-ireland-38322209>.



### A. Stormont House Agreement (SHA)

In 2014, the British and Irish governments and leaders of five political parties in Northern Ireland signed the SHA on dealing with the legacy of the past.<sup>285</sup> The agreement called for legislation in Westminster that would establish new institutions to promote reconciliation, uphold the rule of law, promote human rights, acknowledge and address the suffering of victims and survivors, facilitate the pursuit of justice, and address Northern Ireland's past in a balanced, proportionate, fair and equitable way.<sup>286</sup>

The new institutions included a Historical Investigations Unit ("an independent body to take forward and conduct investigations into outstanding Troubles-related deaths), an Independent Commission on Information Retrieval ("to enable victims and survivors to seek and privately receive information about the deaths of their next of kin"), an Implementation and Reconciliation Group ("to oversee themes, archives and information recovery"), and an Oral History Archive ("to provide a central place . . . to share experiences and narratives related to the Troubles").<sup>287</sup>

In short, the institutions would uncover the truth, provide a forum for story-telling, answer questions about the past and hold perpetrators accountable. In this way, the suffering of victims and survivors would be acknowledged and addressed and their pursuit of justice and recovery of information would be facilitated.

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<sup>285</sup> The Stormont House Agreement, Ir. – UK (Dec. 23, 2014).

<sup>286</sup> The Stormont House Agreement, Finance and Welfare, Ir. - U.K., art. 21, Dec. 23, 2014.

<sup>287</sup> *Id.* at art. 22, 30, 41, 51.

Implementation immediately stalled. A year later, the British and Irish governments and the Stormont First Minister and Deputy First Minister issued “A Fresh Start: The Stormont Agreement and Implementation Plan.”<sup>288</sup> The document recognized that not enough progress had been made in reaching “final agreement on the establishment of new bodies to deal with the past.”<sup>289</sup> The effort signaled an understanding that without these new institutions division fueled by identity issues involving the “other” (“us and them” attitudes) would remain entrenched in society.

In support of the agreement, Stormont First Minister Peter Robinson and Deputy First Minister Martin McGuinness wrote: “Confidence has to be built if we are to fully overcome the legacy of our tragic past. The essence of this Agreement, the vision which must inspire our leadership, is our shared belief that the civic values of respect, mutual-ity, fairness and justice must take precedence over those narrow values that too often manifest in division. This document signals our resolve to engender the sea change so longed for by our community - a new beginning, and opportunity to move forward with a real sense of hope and purpose.”<sup>290</sup>

The leaders’ goal was to foster reconciliation and build a shared future by addressing the past. Despite recognition of the dire need for action and the entreaty to overcome the legacy of the past and division

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<sup>288</sup> A Fresh Start: The Stormont Agreement & Implementation Plan 2015.

<sup>289</sup> *Id.* The document also recognized the “malign impact” of continued paramilitary activity and the need to rid “society of all forms of paramilitary activity and groups.” *Id.*

<sup>290</sup> *Id.* at 6. Ministerial Introduction by the First Minister and Deputy First Minister.

in society, no progress was made. As a consequence, the agreement's call for new institutions remains in limbo.

In 2018, a consultation process was undertaken on draft legislation to implement the SHA. Controversy arose surrounding the prosecution of soldiers. Prime Minister (PM) May claimed the system for investigating legacy cases was "unfair" because members of the "armed forces" or "law enforcement" were being investigated in disproportionate numbers to terrorists.<sup>291</sup> She repeated the claim during the consultation process. Her assertion was rebutted by the Northern Ireland Victims' Commissioner, who noted there is no evidence to support that.<sup>292</sup> The PPS has made 26 decisions on Troubles-legacy cases since 2011: 13 involved republican paramilitaries, 8 involved loyalist paramilitaries and 5 were related to security forces.<sup>293</sup>

Another issue related to soldier prosecutions arose when some MP's called for a statute of limitations.<sup>294</sup> A statute of limitations is in effect a grant of blanket amnesty, because it immunizes a perpetrator

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<sup>291</sup> PM May said security forces were responsible for 10% of Troubles deaths yet accounted for 30 % of the legacy workload, and terrorists accounted for 90% of the killings but were treated more favorably. Gareth Gordon, *Theresa May on the Attack Over Troubles' Soldiers Cases*, BBC NEWS (Feb. 22, 2017), <https://www.bbc.com/news/uk-northern-ireland-39053849>.

<sup>292</sup> Stephen Walker, *Victims' Commissioner Says PM's Facts Incorrect*, BBC NEWS (May 11, 2018) <https://www.bbc.com/news/uk-northern-ireland-44088827>.

<sup>293</sup> New Military Veterans Office, *supra* note 272.

<sup>294</sup> Julian O'Neill, *Military Prosecutions: Veterans' Protections Should Cover NI*, BBC NEWS (May 5, 2019)

from prosecution if criminal conduct occurred beyond a certain statutory time frame.

Blanket amnesty for certain crimes is contrary to human rights norms. Blanket amnesty occurs when “broad categories of serious human rights offenders [are exempted] from prosecution and/or civil liability without the beneficiaries’ having to satisfy preconditions, including those aimed at ensuring full disclosure of what they know about crimes covered by the amnesty.”<sup>295</sup> Blanket amnesty with regard to State-involved killings violates obligations imposed by the United Nations to combat impunity.<sup>296</sup> “Impunity arises from the failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of perpetrators, particularly in the area of justice, by ensuring those suspected of criminal responsibility are prosecuted, tried and duly punished for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent recurrence of violations

In addition, blanket amnesty violates Article 2 of the European Convention on Human Rights (Convention), which calls for accountability in cases of State-involved killings.<sup>297</sup> Article 2 imposes on States

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<sup>295</sup> *Rule of Law Tools for Post Conflict States – Amnesties*, Office of the UN Commissioner for Human Rights (2009).

<sup>296</sup> UN General Assembly Resolution on *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Dec. 16, 2005).

<sup>297</sup> Article 2 of the European Convention on Human Rights recognizes and protects an individual’s right to life as a basic human right. “Everyone’s right to life is protected by law . . . Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force

a duty to protect the right to life by conducting effective, efficient, independent and transparent investigations of State-involved killings.<sup>298</sup> The United Kingdom (UK) will not, however, be required to comply with the Convention or European Court of Human Rights decisions after it leaves the European Union (EU) in what is known as “Brexit.”<sup>299</sup>

May’s government opposed legislation calling for amnesty for prosecuting the conduct of soldiers in Northern Ireland.<sup>300</sup> This was due

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which is no more than absolutely necessary.” European Convention on Human Rights art. 2, Nov. 4, 1950, C.E.T.S., [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>298</sup> *Finucane v. United Kingdom*, App. No. 29178/95, 2003-VIII Eur. Ct. H.R. 1. (2003).

<sup>299</sup> The UK voted to leave the EU in a national referendum in 2016. The deadline for the UK’s departure from the EU is January 31, 2020. Patrick Smyth and Simon Carswell, *EU Agrees Brexit Extension until January 31, 2020*, IRISH TIMES (Oct. 28, 2019), <https://www.irishtimes.com/news/world/uk/eu-agrees-brexit-extension-until-january-31st-2020-1.4064806>. British PM Boris Johnson introduced a Brexit withdrawal bill in Parliament to win ratification for the exit deal he negotiated with the EU. *Brexit: Boris Johnson Seeks to Fast-Track Brexit Legislation*, IRISH TIMES (Oct. 21, 2019), <https://www.irishtimes.com/news/world/uk/brexit-boris-johnson-seeks-to-fast-track-brexit-legislation-1.4057776>. Before the House of Commons votes on the withdrawal bill, Great Britain will hold a national election. *UK Set for 12 December General Election after MPs’ Vote*, BBC NEWS (Oct. 30, 2019), <https://www.bbc.com/news/uk-politics-50229318>. The outcome may determine Brexit’s future.

<sup>300</sup> DENNIS STAUNTON AND MARIE O’HALLERAN, *BRITAIN SHOULD NOT ‘SCAPEGOAT VETERANS TO PANDER TO TERRORISTS’ SAYS TORY MP*, IRISH TIMES (May 16, 2019),

to a fear that once such a law was enacted, it would inevitably be made to equally apply to members of paramilitary organizations.<sup>301</sup>

The jury is out on whether a statute of limitations will be enacted now that there is a new Prime Minister. PM Boris Johnson pledged to end “unfair” prosecutions of Army veterans who served in Northern Ireland, “when no new evidence has been produced and when the accusations have already been exhaustively questioned in court.”<sup>302</sup> Thus, it is clear the controversy surrounding the prosecution of soldiers will continue to stall implementation of the SHA.

Despite the acute need to move forward, legislation has not been introduced in Parliament. Action has not been taken to put the SHA, a portion of it or some other truth recovery mechanism into effect. Surviving family members continue to wait for answers, for some semblance of justice. Many have been waiting for decades. Delay makes investigation and prosecution of legacy cases more difficult, if not impossible. Witness memories fade. Witnesses can become confused, or forgetful. Witnesses cannot be located, or they die. Yet the delay continues. By running out the clock, surviving family members may stop asking questions or simply pass away.

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[https://www.irishtimes.com/news/Ireland/Irish-news/britain-should not-scapegoat-veterans-to-pander-to-terrorists-says-tory-mp-1.3894866](https://www.irishtimes.com/news/Ireland/Irish-news/britain-should-not-scapegoat-veterans-to-pander-to-terrorists-says-tory-mp-1.3894866).

<sup>301</sup> *PM ACCUSED OF ‘THROWING VETERANS TO THE WOLVES,’* BBC NEWS, (May 22, 2019), <https://www.bbc.com/news/uk-northern-ireland-48369310> .

<sup>302</sup> *New Military Veterans Office*, *supra* note 272.

It is not just surviving family members who suffer due to this inaction. Society as a whole suffers. “Identity” issues are divisive.<sup>303</sup> They undercut efforts to build mutual respect, tolerance and parity of esteem for the other. All of these elements are required to bridge divides, strengthen trust and unite people.

There is also a need to develop a shared understanding of the causes and consequences of the conflict. A truth recovery process can provide that. Without one, reconciliation between Northern Ireland’s two communities will not take root. The lack of a meaningful truth-recovery process for surviving victims hinders their ability to move-on and keeps society stuck in the past.

“The past,” according to Anglican Archbishop and Nobel Peace Prize laureate Desmond Tutu, “far from disappearing or lying down and being quiet, has an embarrassing and persistent way of returning and haunting us unless it has in fact been dealt with adequately. Unless we look the beast in the eye, we find it has an uncanny way of returning to hold us hostage.”<sup>304</sup>

Dealing with the past through a truth recovery process is, therefore, essential. It is also an important component of “preventing a repetition of crimes and contributing to the healing of victims and society.”<sup>305</sup> Victims long to know the truth about what happened to their

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<sup>303</sup> The Stormont Assembly, headed by the DUP and Sinn Fein, has not sat in nearly three years because of policy differences between the parties. An argument over enactment of a stand-alone Irish Language Act is one cause of the dysfunction.

<sup>304</sup> DESMOND TUTU, *NO FUTURE WITHOUT FORGIVENESS*, 28 (DoubleDay 1999).

<sup>305</sup> Louise Mallinder & Kieran McEvoy, *Amnesties, Punishment and the*

loved ones, receive acknowledgement for their loss, and see wrongdoers held accountable. For them and society in general to heal, the legacy of Northern Ireland's bloody past must be addressed.<sup>306</sup>

## B. South Africa Truth and Reconciliation Commission (SATRC)

The SATRC offers an example of how to address a bloody and divisive past in a way that heals wounds and reconciles differences. It was established by South African President Nelson Mandela.<sup>307</sup> His vision of how to unify the nation torn apart by apartheid flowed directly from his journey in life. It is worth taking a moment to look at that journey.

In 1962, Nelson Mandela was put on trial for inciting South Africans to strike in opposition to the apartheid government.<sup>308</sup> He was an attorney and chose to defend himself. He told the court:

“I regard it as a duty which I owed, not just to my people, but also to my profession, to the practice of law, and to justice for all mankind, to cry out against this

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*Calibration of Mercy in Transition*, 39(3) J. L. SOC'Y 410 (2012).

<sup>306</sup> In his Second Inaugural Address, President Lincoln's generosity of spirit “to bind up the nation's wounds” after the Civil War was expressed in the following words: “With malice toward none, with charity for all.” President Abraham Lincoln, Second Inaugural Address (March 4, 1865). That was his formula for healing the nation. President Lincoln was assassinated before he could act on this. Yet his words offer apt advice for leaders in Northern Ireland to follow.

<sup>307</sup> TUTU, *supra* note 304, at 9-10.

<sup>308</sup> NELSON MANDELA, *LONG WALK TO FREEDOM* (Abridged Autobiography) 65-66, (Little Brown and Co. 1994).



discrimination which is essentially unjust. . . . I believed that in taking up a stand against this injustice I was upholding the dignity of what should be an honorable profession. . . . The law as it is applied, the law as it has been developed over a long period of history, and especially the law as it is written and designed by the Nationalist government, is a law which, in our view, is immoral, unjust and intolerable. Our consciences dictate that we must protest against it, that we must oppose it, and that we must attempt to alter it.”<sup>309</sup>

Mandela also noted, “I was made, by the law, a criminal, not because of what I had done, but because of what I stood for, because of what I thought, because of my conscience.”<sup>310</sup> He was prosecuted and jailed for challenging apartheid with acts of civil disobedience.<sup>311</sup>

For Mandela, like Dr. King, the moral imperative of justice compelled him to act. They shared a similar dream - that one day people “would be judged not by the color of their skin but by the content of their character.”<sup>312</sup> But, unlike Dr. King, Mandela came to reject the path of nonviolence when its futility became apparent to him. The saying, one person’s freedom fighter is another person’s terrorist, bears upon how one views Mandela’s actions.

At the Robben Island Museum in Cape Town, South Africa, an entire room is devoted to chronicling the 1916 Easter Rising in Ireland through individual stories about participants. The fight for Irish

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<sup>309</sup> NELSON MANDELA, *THE SUN WILL RISE* 11 (Mary Benson ed., 1981).

<sup>310</sup> *Id.*

<sup>311</sup> MANDELA, *supra* note 308, at 66-67.

<sup>312</sup> JOHN CARLIN, *PLAYING THE ENEMY: NELSON MANDELA AND THE GAME THAT MADE A NATION*, 1 (Penguin Press, 2008).

freedom is commemorated in this way because it influenced the fight against apartheid in South Africa. Mandela drew lessons from the Easter Rising, as did Ghandi. The lessons differed. Ghandi learned that to defeat the British one had to shame them. Mandela learned that to defeat an unscrupulous and corrupt government one may be required to engage in violence at some point. Each one applied the lesson they learned in a way that worked for their situation and nation.

In 1964, Mandela faced sabotage and conspiracy charges.<sup>313</sup> He represented himself once again and addressed the court. This time he justified the African National Congress' use of "sabotage" and "guerrilla warfare" against the apartheid government. He felt the time for patience with the government had ended, because black people would wait no longer for equal treatment as citizens of South Africa. He was convicted and received a life sentence.<sup>314</sup> He served 27 years on Robben Island and at Pollsmoor Maximum Security Prison in Cape Town, South Africa.<sup>315</sup>

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<sup>313</sup> MANDELA, *supra* note 308, at 71.

<sup>314</sup> Mandela closed his address to the court with prophetic words: "I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if need be, it is an ideal for which I am prepared to die." Mandela, *supra* note 309, at 23. Thirty years later, he followed through on his dream of creating a democratic, free and reconciled society when he became the first President of South Africa in the post-apartheid era. Carlin, *supra* note 312, at 1.

<sup>315</sup> June 1964 – February 1990.

Mandela was released in 1990.<sup>316</sup> Four years later, he was elected South Africa's President.<sup>317</sup> He did not seek revenge for his years in jail. Instead, he led South Africa's transformation from a society based upon racial segregation, discrimination and government oppression to a society that cherished equality, freedom, democracy and treating all citizens with human dignity. These values were embedded in South Africa's newly promulgated Constitution.

But Mandela knew it would take more than new laws to change hardened hearts. Under apartheid, South Africa experienced four decades of violence. Victims were traumatized, as was society as a whole. Relationships, broken by human rights abuses and violent atrocities, needed to be restored so that healing and reconciliation could take hold.<sup>318</sup> He realized these were required elements of the peaceful shared future he envisioned for South Africa.

Mandela recognized that just as peace is a process, so too is reconciliation. Significantly, he understood if the past was not dealt with properly, it will hold the future hostage.<sup>319</sup> This led him to create the SATRC under the leadership of Archbishop Tutu.<sup>320</sup>

As the name indicates, the SATRC sought to uncover the truth about South Africa's past. It provided a victim friendly "platform for story-telling, for revealing the truth, for holding the perpetrator

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<sup>316</sup> MANDELA, *supra* note 308, at 133.

<sup>317</sup> CARLIN, *supra* note 312, at 153.

<sup>318</sup> JOHN DE GRUCHY, RECONCILIATION, RESTORING JUSTICE, 204 (Fortress Press, 2012).

<sup>319</sup> TUTU, *supra* note 304, at 28.

<sup>320</sup> DE GRUCHY, *supra* note 318, at 22.

accountable, for reparations, remorse and forgiveness.”<sup>321</sup> Archbishop Tutu believed that giving victims a forum to share their stories of how their lives were affected was important to healing “a traumatized and wounded people.”<sup>322</sup> The public story-telling helped victims feel acknowledged and gain a sense of closure. Perpetrators were incentivized to tell their stories. The process used the carrot of amnesty along with the stick of possible prosecution to get perpetrators to admit and confess to their wrongdoing in public. If they acknowledged their guilt before the SATRC and fully disclosed what they had done, they could avoid prosecution.<sup>323</sup>

What emerged from this process was a fuller, deeper and more complete history of the past and a shared narrative about it. The process provided victims access to information and truth recovery. By being required to testify in public, perpetrators were accountable for their conduct. This reduced the possibility that the same conduct would be repeated, and it offered victims a form of justice. Acknowledgement of the violence committed by both sides reduced us and them attitudes and polarization. Dialogue involving victims and offenders propelled rebuilding relationships shattered by mass violence.

In short, the SATRC process was transformative. It laid the foundation for South Africa’s national unity and peace. It was a

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<sup>321</sup> DE GRUCHY, *supra* note 318, at 147. (The SATRC slogan was “Truth, the Road to Reconciliation”).

<sup>322</sup> TUTU, *supra* note 304, at 114.

<sup>323</sup> TUTU, *supra* note 304, at 54. Contrary to what happened in many other countries that conducted a truth and reconciliation process - for example, Chile - perpetrators did not receive a “blanket amnesty.” In exchange for amnesty in South Africa’s process, perpetrators had to tell the truth about what happened in public.

constructive way to change hearts and minds, repair broken relationships and produce new perceptions about a shared future. Northern Ireland needs a truth recovery process that accomplishes similar things.<sup>324</sup> To date, however, the courage Mandela displayed in charting South Africa's journey forward is missing in Northern Ireland's political leaders.

## V. Conclusion

Northern Ireland went from nonviolent civil rights protests to civil war in less than five years. Why? Government reform had not kept up with the times. The identity issue hardened, polarizing society and driving the two communities further apart. Nationalists wanted to receive equal treatment and full rights as British citizens, while unionists wanted to maintain their political and cultural dominance. Other societies - like South Africa - experiencing similar division and inequality had fallen into violence. This should have been an instructive lesson for those in power in Northern Ireland, but wasn't.

A long, hard road to peace followed the end of the civil rights movement. 3,345 people died between Bloody Sunday and the 1998 Belfast/Good Friday Agreement.<sup>325</sup> There were many attempts to make

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<sup>324</sup> Like the SATRC, main goals of the SHA included truth recovery and accountability, which are achieved by the creation of new institutions: Historical Investigations Unit, Independent Commission on Information Retrieval, Implementation and Reconciliation Group and Oral History Archive.

<sup>325</sup> MCKITTRICK, ET AL, *supra* note 140. (“[t]he two sides couldn't even agree on the agreement's title: the unionists called it the Belfast Agreement and the nationalists called it the Good Friday Agreement”); JONATHAN POWELL, GREAT HATRED, LITTLE ROOM, Random House 108 (2008) (The peace agreement ended the Troubles).

peace during these years.<sup>326</sup> But peacemaking efforts failed at those inflection points as the Troubles continued. One is left to ponder the unnecessary loss of life, and ask “what if” the civil rights movement had been successful in transforming Northern Ireland.

Sinn Fein has claimed that its party leadership along with the IRA had direct involvement “with the formation of the civil rights movement;” Bernadette McAliskey (nee Devlin) has rebuked the claim as “delusional.”<sup>327</sup> On its face, it appears to be an attempt by Sinn Fein to re-write history and attach itself to the movement.<sup>328</sup> What everyone should be able to agree on, however, is what is necessary for Northern Ireland’s future.

When the civil rights movement began 50 years ago, activists chose to follow the path charted by Dr. King. He believed nonviolent resistance was indispensable to achieving his dream of building the

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<sup>326</sup> Sunningdale Agreement (1973), hunger strikes (1981), Anglo-Irish Agreement (1985), Hume-Adams peace talks (1988-93), Downing Street Declaration (1993), President Bill Clinton’s approval of a U.S. visa for Gerry Adams (1994), IRA and Combined Loyalist Military Command ceasefires (1994), Framework Documents for peace talks issued by British and Irish governments (1995), and the Mitchell Principles guiding all-party peace talks (1996).

<sup>327</sup> Stephen Walker, *Sinn Fein ‘Delusional’ over Origin of Civil Rights Movement*, BBC NEWS, (Feb. 8, 2018), <https://www.bbc.com/news/uk-northern-ireland-42996002>

<sup>328</sup> Sinn Fein is the political arm of the Provisional IRA. The Provos were not established until 1970, after the split from the Official IRA. Members ascribed to the republican physical-force tradition. Contrarily, civil rights activists were strict adherents of Dr. Martin Luther King, Jr.’s philosophy of nonviolent resistance to achieve justice and reconciliation.

“Beloved Community.”<sup>329</sup> Civil rights activists pursued nonviolent resistance as the cornerstone of the transformation of Northern Ireland they were seeking to achieve; that is, a society in which all citizens are treated equally and with parity of esteem, and are accorded mutual respect and human dignity. Much of what they envisioned has been accomplished. Catholics are no longer treated as second class citizens. But more work remains to establish Dr. King’s Beloved Community, where people agree to live with others in a loving and shared community grounded in equality, respect and human dignity.

Two decades after the Good Friday Agreement (GFA), day-to-day life in Northern Ireland is very different. Since the agreement was signed, peace has held and violence has subsided. The society may be at peace, but it has not reconciled.<sup>330</sup>

Reconciliation will require political leaders to deal with the legacy of the past, before it is too late to disclose the truth and render justice to survivors.<sup>331</sup> If the government fails to deliver on this, wounds caused

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<sup>329</sup> LEWIS, *supra* note 22, at 78.

<sup>330</sup> The agreement was successful at conflict management. But the conflict has not been resolved. There is a fear that, if custom check points are required along the Ireland-Northern Ireland border after the UK leaves the EU, there will be an upsurge in violence from dissident republicans. *No-deal Brexit ‘Could Motivate Extremists in Northern Ireland*, IRISH TIMES (Aug. 30, 2019, 7:12 PM), <https://www.irishtimes.com/news/crime-and-law/no-deal-brex-it-could-motivate-extremists-in-northern-ireland-1.4002809>.

<sup>331</sup> The Consultative Group on the Past tried to make this point in 2009, when it issued a report that said reconciliation requires a willingness to address the truth and a willingness for mutual forgiveness (i.e., “acknowledging that wrong was done on both sides”). Report of the Consultative Group on the

by the Troubles will continue to fester. On an individual level, this failure undermines an individual's ability to heal. On a societal level, it undermines the rule of law.

Former U.S. Senator George Mitchell, chief architect of the GFA, said: "What is most difficult to change in conflict societies is what is in the minds and hearts of people. That's what's hard, that's what takes time to change, and that change is not completed in Northern Ireland."<sup>332</sup> The change Mitchell is speaking about will not occur without a truth recovery mechanism put in place for survivors and society as a whole. Without one the past will cause lingering resentment and distrust, and negate efforts to foster reconciliation and move Northern Ireland toward a shared future.<sup>333</sup> That is what must change.

The truth about the Troubles will always be contested.<sup>334</sup> There will never be complete agreement on what happened. But reconciliation is not about each side reaching complete agreement. It's about people

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Past, 2009, HC, at 25 (N. Ir.). The group's recommendations were rejected and not implemented.

<sup>332</sup> Lisa O'Carroll, *Brexit Warning from US Senator Who Brokered Northern Ireland Peace*, The Guardian (March 3, 2018, 11:23 AM), <https://www.theguardian.com/world/2018/mar/03/brexit-warning-us-senator-brokered-northern-ireland-peace-george-mitchell>.

<sup>333</sup> As Chair of the SATRC, Archbishop Tutu said, the mission is "to unearth the truth about [the] dark past; to lay the ghosts of the past so they will not return to haunt us." TUTU, *supra* note 304, at 114.

<sup>334</sup> "The people of Northern Ireland have competing versions of the past, but it is unlikely that society will be able to move on . . . without some versions of the past being officially legitimized or validated, and some even discarded." Fabrice Mourlon, *Official Responses to Dealing with the Past in Northern Ireland: Between Remembering and Forgetting*, 10.1 E-rea 1, 3 (2012)



agreeing to peacefully live with each other in a shared space. A truth recovery process can help achieve that.

On the evening of Dr. King's assassination, Senator Robert Kennedy spoke to a stunned crowd in Indianapolis, Indiana.<sup>335</sup> He pro-pounded words of healing and unity to a nation suffering anguish and racial strife. "What we need in the United States is not division; . . . but love and wisdom, and compassion toward one another and a feeling of justice toward those who still suffer within our country whether they be white or they be black."<sup>336</sup> Kennedy's guidance that night was meant for us as individuals and as a people striving for harmony.<sup>337</sup> Kennedy's words have profound relevance for Northern Ireland.

Members of both communities - unionist and nationalist - lost loved ones during the Troubles. Suffering, hurt and grief continues on both sides of the divide. All deserve compassion. One way to foster healing and harmony is to provide the truth and a form of justice to survivors. It is a key to reconciliation. To transform society in this way, a truth recovery process must be implemented now.

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<sup>335</sup> ARTHUR SCHLESINGER, JR., *ROBERT KENNEDY AND HIS TIMES*, 939 (Ballantine Books 1978) [hereinafter SCHLESINGER].

<sup>336</sup> SCHLESINGER, *supra* note 335, at 940.

<sup>337</sup> Sadly, more than 50 years later, there is still racial strife in the U.S. and our nation has a long way to go to attain racial harmony.

