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## **Mobilizing against Neo-Liberalism? Global Affirmative Action in Context\***

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### **Abstract**

This article uses the example of Northern Ireland to illustrate how political mobilization may be deployed to challenge structural forms of inequality. The experience suggests that regulatory models can be designed for particular contexts to shape approaches that present challenges to dominant economic and political orthodoxies. The intention is not to overstate the significance of this specific transitional context but simply to highlight elements that might feature in any attempt to mobilize successfully around human rights and equality, and against aspects of neo-liberal thinking.

### **Keywords**

Equality, human rights, Northern Ireland, affirmative action, neo-liberalism

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## **Introduction**

Affirmative action is a sharply contested concept. The question of how inequality is addressed remains pressing because of the significance to individuals and communities of being enabled to participate effectively in social, political, economic and cultural life. *Laissez faire* policies of non-intervention, promoted by neo-liberalism, do little to disrupt established patterns of unfairness. The argument in this article is that social and political mobilization can succeed, even in the face of neo-liberal pressures, to secure progressive group-based measures to protect human rights and equality. The rise of a globalized movement arguing for human rights and equality, reinvigorated in the second half of the 20<sup>th</sup> century, has promoted sophisticated understandings of the relationship between the rights of individuals and the rights of groups (Kymlicka, 2007). The term ‘affirmative action’ can be elusive, and can also be understood differently in localized settings. At its core, it represents an attempt to create the conditions for individuals and communities to participate in a range of social, political, economic and cultural spheres. The ambition is to eradicate barriers to participation that are structurally embedded, and will not erode in the absence of forms of directed legal and political action. In law, this will often mean the creation of legal tools to make change possible – in other words, using law to achieve social change. The picture that emerges is complex, and includes political mobilization through law, the enactment of measures, and the continuing contestation that arises. Keeping in mind the multiplicity of approaches, the aim here is simply to sketch how discussions in Northern Ireland might relate to the global conversation. The intention is therefore to highlight the adoption of affirmative action policies in the specific context of ethno-national division, and then to reflect on some of the implications. The Northern Ireland experience is of a society that has witnessed violent conflict, but which exists in a European liberal democratic setting. This shapes the normative reality of what might be possible, and indicates how we should understand this example. The global and the local therefore meet in a delicate set of interactions which are ongoing. The debate is brought into sharp focus in the tensions which emerge with the rise of neo-liberalism, and the models of political life it endorses.

If democratic dialogue is not to be distorted, we need techniques (including laws) to address structural inequality in sophisticated and contextually sensitive rights-based ways. That is why global affirmative action can be securely located within a broader movement for the advancement of rights and equality, but that is also why there is a need for well-designed models that are both reflective of the environment they must function in, and respect the global ambitions of the international movement for rights and equality. If understood in this way, attempts to secure affirmative action in localized settings must be linked to global debates around the practical advancement of rights, equality and social justice. The argument is that whatever terminology is deployed – and accepting that matters of practical design will vary – the movement to promote forms of affirmative action can be viewed as aligned to the global trend towards the meaningful protection and promotion of human rights. There is, however, no escaping the tensions that are there, and the challenges which the new cultures of human rights and equality pose for the spread of neo-liberalism.

## **Affirmative Action: Contested Concept**

The term ‘affirmative action’ is subject to discussion over its precise meaning but the boundaries of the concept are now broadly understood. This conceptual clarity

becomes even more significant when we attempt to reflect on its global setting. Gomez and Premdas (2013: 5-7) explain it in this way:

Affirmative action, in essence, is a form of justice that seeks to establish equality by using compensatory benefits to rectify past discrimination...It aims to reorganize, usually over a short duration, the distribution of benefits and burdens of society by facilitating the participation of the previously disadvantaged through special policy preferences and programmes...The policy seeks to promote unity through wider inclusion, by compensating for past injustices and discrimination that created inequality and systemic deprivation for entire classes, castes and groups. Affirmative action strives to end exclusion and facilitate access for the disadvantaged by socially engineering the institutions of a society... (references omitted).

They outline the 'hard' and 'soft' forms this can take and highlight how much disagreement there can be (Gomez and Premdas, 2013: 7):

In particular, when individual rights are pitted against group rights, and procedures for adjudicating differ according to religious faith, the claims of justice for one community often run contrary to those of others...In each multi-ethnic country then, where affirmative action is proposed as a form of compensatory justice, different and rival assumptions of justice cause bitter and irreconcilable arguments and can trigger deeper divisions that border on civil war and the disintegration of that country...Affirmative action could then become a critically contentious issue in some countries, a reason why when the policy is introduced caveats are attached, such as a fixed duration for the implementation of the policy while its objectives are clearly delineated (references omitted).

Gomez and Premdas are right to stress the reception of these policies, and how they tend to be viewed as 'exceptional'. As they note, there are so many caveats often attached precisely because they can be perceived as divisive. It would be surprising if such directive measures to achieve social change did not attract serious debate. Affirmative action therefore promotes specific, targeted and precise policy approaches that pay due regard to group membership with the objective of challenging structural forms of inequality.

The 'affirmative action approach' has often attracted sustained attack from conservative and neo-liberal positions, in ways that can impact on design. In individualistic liberal discourse, for example, the group-based preference of affirmative action has been criticized as flawed and problematic. Nevertheless, Dworkin has stated - in the context of US debates on affirmative action - and from within the liberal tradition:

It is said that in pluralistic society, membership in a particular group cannot be used as a criterion for inclusion or exclusion from benefits. But group membership is, as a matter of social reality rather than formal admission standards, part of what determines inclusion or exclusion for us now.

Whatever scepticism may exist about group-sensitive approaches they need not be inherently anti-liberal or even in opposition to a rights-based approach (Kymlicka, 2007). It is possible to advocate affirmative action from within a liberal tradition of rights and equality, even though this framing context will have an impact on questions of permissible design (especially in constitutional and political situations where there is less tolerance for group-based initiatives).

The trend of embracing affirmative action is also reflected in international human rights law. Although the focus of international instruments is on the rights of 'everyone', there is enhanced acknowledgement of the impact that group membership has on the realization of rights. There is also plain acceptance in human rights law that particular communities are especially vulnerable and marginalized. Human rights law recognizes, for example, that special measures will be needed in certain circumstances if the aims of the law are to be achieved (NIHRC, 2008: 84). The UN Human Rights Committee, in General Comment 18 paragraph 10, for example, puts it well:

The principle of equality sometimes requires States to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Convention.

This argument, that it is the *principle of equality* as articulated in human rights law that may require affirmative action, is reflected in other areas, such as in the Convention on the Elimination of Racial Discrimination and the work of the Committee on the Elimination of Discrimination Against Women, among others (NIHRC, 2008: 84). It is apparent that the European Convention on Human Rights permits positive discrimination that is in accordance with the law, and has an objective and reasonable justification tied to a factual need (NIHRC, 2008: 83). In its final advice to the British government in 2008 (on a Bill of Rights), the Northern Ireland Human Rights Commission plainly viewed affirmative action/positive measures as central to the meaning of equality (NIHRC, 2008: 83-84).

#### *Legality and Affirmative Action*

Whatever conceptual debates persist around neo-liberalism and affirmative action, one point seems evident. In the global contexts under examination, the measures enacted will take legal form. Although this may seem a banal point, it is significant precisely because the arguments are frequently transformed into legal contestation fought out in legislative contexts and in courtrooms around the world. The rival interpretations of economic development, justice, equality, equal treatment and human rights are translated into legalistic debates about the impact, interpretation and application of specific legal texts. There are several points of general relevance to draw out from this.

First, legal reform must be achieved. While lessons can be learned from unsuccessful attempts at legislative change, if affirmative action policies are operational then they must have some legal basis or formal source of legitimacy and authority. This suggests that there will have to be a stage that will include a form of persuasion as to the necessity of the measures. This will carry great weight because of the contribution that democratic endorsement of affirmative action policies might lend to their practical legitimacy. There must therefore be reflection at the stage of formal enactment or attempts to do so. This is the point in the process when political and other work is undertaken to give legal expression to affirmative action policies, and when disagreement over necessity and design will often be revealed. The debates may be focused on the need for such laws, the broad context, the legal design and the potential impact. In order to achieve legal reform there must be the political will or acceptance, in accordance with whatever constitutional context is in place, to achieve the objective. This may stretch from the adoption of the broadly based equality laws (which may permit affirmative action) to specific provision for positive measures. Given the nature of affirmative action, the trend is for targeted, detailed and time-limited measures aimed at achieving designated outcomes. What emerges is a perspective that views affirmative measures as a departure from 'the norm', a viewpoint which must also remain open to question. At this stage, power dynamics will influence which approach is adopted and the parameters of the measures.

If democratic deliberation is undertaken it should also mean that the issues are debated at this pre-enactment stage. The legitimacy of whatever legal measure is adopted should then be enhanced if the societal conversation that precedes it is wide and deep; it will also set the parameters for how the law is designed and how far it is permitted to go. This pre-enactment stage will provide a detailed sense of the support or lack of it (and how divisive the measures may be).

One of the more intriguing trends - in this context - can be when measures are adopted at the sub-constitutional level, and are debated on the basis of *constitutionality*. At this initial stage the question is one of how formal enactment is achieved at all and whether the legitimacy of proposals can be defended in constitutional terms.

Second, once affirmative action laws are in place questions will arise about effective implementation and enforcement. For example, who is charged with ensuring that the impact is monitored and whether the objectives are being achieved. If there are time-limits who then will decide when the measures cease? What happens if there is continuing contestation or uncertainty?

Third, the fact that a policy has successfully achieved legal form through enactment does not mean that it will be free from subsequent challenge. In a global context of multiple normative and legal orders, of international avenues of redress, and the diffusion of legal standards at all levels, it remains possible to deploy strategies to keep societal conversations open. Legal enactment in the pluralistic world of law we inhabit, will leave the option of some form of specifically *legal* questioning; an issue that is apparent in affirmative action debates. What this means is that the design of a sophisticated legal mechanism for giving life to affirmative action policies will not necessarily end the democratic conversation. For example, where a regional human rights mechanism exists (such as in Europe) it may be that domestically enacted arrangements are subjected to further legal action. Opponents of affirmative action may take every opportunity to question and challenge the policy, and this is where the tensions between neo-liberalism and group-based approaches can emerge sharply. For example, when local opposition to affirmative action is joined with international neo-liberal discourses.

These basic preliminary points about legal form are made to contextualize the discussion. Affirmative action policies will derive from a formal source, and many debates can become excessively legalistic in ways that reveal different conceptions of law. The intention in this section is to highlight the fact that affirmative action policies will often take this form, and that there is a specifically legal context to it that should not be neglected.

## **Affirmative Action in Context: Northern Ireland**

### *From Partition to Affirmative Action?*

In the following section the focus shifts to Northern Ireland. How have the various forms of affirmative action advanced, and what lessons might there be for the global discussion? The analysis of Northern Ireland rests on two general perspectives. First, the suggestion is that global debates about rights and equality must be localized in effective and meaningful ways if the policy ambitions of, for example, the international human rights movement, are to be realized. Second, that the Northern Ireland experience has specific qualities that may not be easily replicated elsewhere, in particular the combination of a western European liberal democratic framework with a violent ethno-national conflict that has drawn in two EU member states, as well as international actors (most notably the US) (Cf. Bell, Campbell, Ní Aoláin, 2004). Several key themes emerged before and during the Northern Ireland peace process. First, it was clear that an exclusively military/security response would not bring an end to the conflict. Aspects of the policy response in this field, from the use of the military to dealing with political prisoners, simply exacerbated existing problems.

Second, slowly and steadily an appreciation of what might be required to manage and resolve the conflict – in broad terms – gained wider recognition. For example, that any resolution would include a form of power-sharing government between the two main national communities, recognition of the British-Irish dimensions, as well as extensive internal reform of ‘Northern Ireland’, and a firm commitment to the use of exclusively peaceful and democratic means to resolve disagreement.

And third, as a core part of internal reform, fundamental change was required on equality, human rights, criminal justice, and policing. It is this element of the planned transformation of Northern Ireland that is of most significance; the belief that



robust measures to tackle discrimination, and to advance fair employment, were viewed as part of a well-managed resolution of the conflict. What remains interesting is that the need for reform was accepted early on (in, for example, the Northern Ireland Constitution Act 1973), with for example, the enactment of the (relatively weak) Fair Employment Act 1976, and then the Fair Employment Act 1989 (more robust). Arguably, the problems were identified (and understood) even earlier than this; the difficulty was securing practical and effective measures to address them in a challenging societal and security context.

Long before the conflict was brought to an end, it was therefore officially acknowledged that religious and political discrimination in employment needed to be challenged. This recognition gained ground, and was acted upon, by British governments as a result of targeted political and community-based action as well as international pressure, particularly via the US. The result was that fair employment, affirmative action, and the promotion of equality became part of creating the conditions for tackling some of the causes of conflict. An underpinning rationale was that whatever political choices individuals and communities might make on constitutional status, they should do so on the secure basis of equality within Northern Ireland. The broader principle was to find a home in the 1998 Agreement, and was recognition of the importance of equal participation in economic life to a fairer society.

#### *Fair employment, equality, and affirmative action in Northern Ireland*

In order to address patterns of discrimination and disadvantage, laws and policies were enacted to advance 'fair participation' in employment, with a particular focus on discrimination based on religious belief or political opinion in the public and private sectors. Edwards (1995: 95) has noted how much fair employment law was influenced by developments in the US, rather than Britain or elsewhere, and that the approach in Northern Ireland is focused on fair representation/participation rather than explicitly targeted at a disadvantaged group. Affirmative action, depending on context, can be required for Catholics or Protestants (it is not, in design terms, specifically targeted at one group). He cites the anxiety around the term 'affirmative action', which was often viewed as a US import with too close an association with 'quotas', and he observes the wise and tactical use of the notion of 'fairness' in the debates (Edwards, 1995: 26–7). This concern with terminology is evident generally in the debate in the UK. For example, in their review of anti-discrimination law Hepple, Coussey and Choudhury (2000: 34) concluded: 'We have avoided using the words "affirmative action" as such, because of the connotations which this has wrongly acquired of requiring quotas or reverse discrimination.' General 'constitutional provisions' were already in place (a standard and generic anti-discrimination tool), but the regulatory moves have all been in the direction of the development of more precise, detailed, and focused regimes. The Northern Ireland legislation is, in many ways, innovative, and has had an impact on what was previously a highly segregated employment context. Christopher McCrudden *et al.*, in their article 'Affirmative Action without Quotas in Northern Ireland' (2009) conclude:

Historically, Catholics and Protestants in Northern Ireland were typically highly segregated from each other in employment, with Catholics being concentrated in the Labour market, and in particular firms, and suffering unemployment rates two to three times as high as those of Protestants. But for

the last twenty years, Northern Ireland's programme of affirmative action has used detailed monitoring for firms' composition plus agreed action plans, where necessary, to ensure for both groups 'fair participation' in employment, avoiding the setting of quotas.

As McCrudden *et al.* note, affirmative action in Northern Ireland has made progress by the deployment of the concept of 'fair participation' without the use of prescribed quotas. An underpinning assumption remains that while anti-discrimination law is of vital significance, law and policy must advance beyond the generic and traditional approaches if the objective was to promote employment equality. Thus, equality of opportunity and fair participation were actively promoted to ensure employers were taking positive steps and supporting permissible affirmative action measures. It is worth outlining the measures, and also noting that several elements of fair employment law are innovative, in a UK and Irish context and more generally. As McCrudden notes, this is an attempt to achieve affirmative action in a specific context, without resort to quotas, and there is evidence that it has met many of its objectives (McCrudden, 2004).

*The Road to Reform: The development of fair employment law and policy*

A prohibition on discrimination was included in the Government of Ireland Act 1920 s.5, but this weak 'constitutional' provision failed to make inroads, and was insufficient in recognizing the extent of the problems. The build-up of a unionist-dominated system was underlined by the non-intervention of the Westminster Parliament in Northern Ireland affairs, underpinned by constitutional convention (Hadfield, 1989), and the creation of a special powers regime which led to the close alignment of the institutions of security, law and order with the interests of the unionist government (Campbell, 1994). In such a context generic 'constitutional' provisions are often inadequate, even if they do express a constitutional aspiration towards fairness.

The initiation of direct rule from Westminster led to a more proactive role for the British government and eventually resulted in new legislation. The Northern Ireland Constitution Act 1973 provided for the establishment of the Standing Advisory Commission on Human Rights (SACHR), which had an anti-discrimination remit, as well as the inclusion of two anti-discrimination provisions (ss. 17 and 19), dealing with discrimination in legislation and discrimination by public authorities (Rose and Magill, 1996: 6). The difficulty was that the system was designed to operate under a devolved administration – and this proved difficult to secure – and the previously identified problems with such traditional anti-discrimination tools persisted.

The need to tackle religious discrimination directly was, however, gaining enhanced recognition. The van Straubenzee Report 1973 recommended the establishment of a Fair Employment Agency, and noted the role of affirmative action, among other things, in overcoming discrimination in employment (Rose and Magill, 1996: 9). Many of the recommendations were implemented in the Fair Employment Act 1976, which led to the creation of a new Fair Employment Agency to address the promotion of equality of opportunity, and to tackle discrimination on the basis of religious belief or political opinion. The 1976 Act was primarily a traditional anti-discrimination tool, as opposed to a regime with positive/affirmative measures. The Agency had a fairly wide-ranging remit, which included dealing with investigations and complaints and awarding appropriate remedies. However, due largely to the

voluntary nature of key aspects of its work, and limits to its remit and role, the Agency was not as successful as it might have been. It became clear that further reform would be needed.

Several elements combined to build the case. First, both governments were moving closer together in their management of the conflict and shared acceptance of some core problems. The Anglo-Irish Agreement 1985 marked a significant step in a more co-ordinated approach, and this became a major driver of reform.

Second, a political campaign aimed at legal reform emerged (McNamara, 2007). This campaign concentrated on those US companies and public bodies that were investing in Northern Ireland, and argued that they should adopt what were termed the 'MacBride Principles' – with a commitment to anti-discrimination and the promotion of equality of opportunity in employment (McNamara, 2007). According to McCrudden *et al.* (2009: 9–10):

Another politically important reason for employers to engage in affirmative action in Northern Ireland was provided by the MacBride Principles. This was a campaign by US-based activists, largely from the Irish-American community, together with some human rights groups, to put pressure on the British government to act more decisively on fair employment in Northern Ireland.

The MacBride Principles (launched in 1984 and subsequently amended), and this strategic approach remain of interest. It is a relevant example of effective transnational political mobilization around legal reform that incorporates powerful diaspora communities. Campaigners were able to draw on the Irish-American community in the service of anti-discrimination objectives.

Third, further detailed work was undertaken by SACHR to assess how law and policy could be enhanced (SACHR, 1987). In 1987, SACHR published an authoritative report that advanced several specific recommendations, including a proposal for the establishment of a new tribunal to hear complaints (SACHR, 1987). The Fair Employment Act 1989 followed up on some of this work, and established a more proactive regime, but the government's response also excluded several significant SACHR recommendations. The FEA was replaced with a Fair Employment Commission (FEC), and complaints were then heard by a new Fair Employment Tribunal (FET). Of particular interest were the provisions on monitoring and affirmative action contained within the new legislation. The new legislation saw the arrival of an 'affirmative action' approach, as one way of addressing employment inequalities between the two main communities. The affirmative action regime introduced was, and remains, 'symmetrical', as it applies equally to both Protestants and Catholics (McCrudden *et al.*, 2009: 9). On affirmative action, the Act provided for specific types of affirmative action measures, which were then supplemented by actions set out in a Code of Practice by the FEC (now ECNI).

A further review by SACHR was conducted in the 1990s, with the outcomes published in its employment equality report of 1997 (SACHR, 1997). This review, as well as other work ongoing in Northern Ireland, informed the political developments which resulted in the adoption of the Belfast/Good Friday Agreement 1998 (Harvey, 2000; Harvey and Russell, 2009; Harvey and Schwartz, 2010; Schwartz and Harvey, 2012). Of particular note was the creation of a new single Equality Commission for Northern Ireland, which was resulted from a merger of the pre-existing bodies

(including the Fair Employment Commission), as the body that would take over the monitoring function in a shared institutional setting. The work of the FEC is now taken forward by the ECNI.

#### *Fair Employment Law: Affirmative Action in Practice*

The Fair Employment and Treatment Order 1998 (as amended) sets out the framework of fair employment law in Northern Ireland. The order repealed and re-enacted aspects of the 1976 and 1989 legislation, with some amendments and additions (for example, extending protections beyond the employment sphere). Much of it simply follows the pre-existing system and remains in place. Employers (with 10 or more staff) are under a duty to conduct reviews of their workforce to ensure there is fair employment, and take action if it is needed. FETO requires employers to collect monitoring data each year on the community composition and gender of their workforce. At least once every three years this information must be used to evaluate fair participation, and if required the employer should identify any affirmative action required. In addition, annual summaries of the monitoring data are supplied to the ECNI via an annual monitoring return.

In order to secure fair employment objectives, the law (FETO 1998, Art. 4(1)) permits employers to undertake affirmative action by means including: the adoption of practices aimed at encouraging fair participation; and the modification or abandonment of practices that have or may have the effect of restricting or discouraging such participation. The definition of equality of opportunity in FETO provides a general exception for 'lawful affirmative action' (FETO 1998, Art. 5). The affirmative action measures prohibit preferential treatment, but measures that are allowed are: the encouragement of applications for employment or training for people from under-represented groups; targeting training in a particular area or at a particular class of person; the negotiation of agreed redundancy schemes to preserve fair participation; the provision of training for non-employees of a particular religious belief – following approval by the ECNI; and the recruitment of unemployed persons.

The position in Northern Ireland therefore focuses on fair participation of both main communities in the employment context, without the adoption of quotas, and provision for affirmative action measures (as an exception to equality of opportunity) that are listed.

#### *Achieving Fair Participation: Monitoring and Community Background*

Monitoring of employment settings has formed an intriguing aspect of the debate in Northern Ireland in which tensions can arise. As noted, all registered employers, and public authorities, must monitor the composition of their workforces by 'community background'. The focus is on perceived 'community background' (Protestant/Catholic), rather than the actual religious beliefs of the person concerned. Detailed guidance is provided by the ECNI on how monitoring is to be conducted. First, an employer can ask directly (the principal method); if this does not elicit the information, the second, 'residual method' can be adopted. An employer is then permitted to use a range of sources to establish 'community background' and the employee is informed. Monitoring returns on workforce composition must be completed annually and returned to the Commission. For those employers and public authorities who employ over 250 people, this information is required for applications for posts, as well as those who are no longer employed by the organization. The system is not a fault-based one, as Fredman (2002: 144) notes:

The employer is made responsible for promoting fair participation simply where disparities are apparent even though there is no proof that the employer was guilty of unlawful discrimination. It is clear from these provisions that fair participation is to be measured in terms of groups rather than particular individuals.

One group of commentators (Bamforth *et al.*, 2008: 427) concludes:

The Northern Irish measures have had considerable and well documented success ... in fact, the emphasis on setting and meeting transparently defined targets has generated better results than virtually any other set of positive action approaches (footnotes omitted).

It would also appear that some of the most successfully ‘integrated’ spaces in Northern Ireland exist within the employment setting, precisely the area of life where the regulatory environment has been the most creative (and also ‘robust’) (Fitzpatrick in Osborne and Shuttleworth, 2004: Chapter 8). However, two points are marked in the existing literature and available research: its strength may not be the only reason for its effectiveness; and employers have generally not viewed the regime as hostile to their economic effectiveness. This particularized ‘success’ appears connected to the regulatory creation of spaces for ongoing dialogue with employers based on evidence and targets, rather than the simple application and use of robust legal tools. However, the fact that these legal tools exist would appear to play a role in ensuring that the dialogue within the regulatory space continues. In Northern Ireland then, there is an interaction between concentrated regulatory dialogue to secure fair participation and strong enforcement tools.

The evidence from Northern Ireland may be relevant for others considering how fair employment might be achieved in the employment sphere, in contexts where any form of preferential treatment and/or quotas is difficult. However, it is also the argument here that the political and societal dynamics of Northern Ireland, combined with the nature of the regulatory regime, must be factored into any such contextualized assessment. The regulatory equality conversations could progress in a changing post-conflict climate, backed by a continuing and strong legal enforcement framework, with clear and understood targets and goals. There was internal and external mobilization that would guarantee that political pressure was exerted to remain focused on outcomes. This coming together of diverse elements ensured that progress was made, but also gives a sense of the type of political mobilization around law that might be required to secure particularised outcomes and a meaningful form of ‘contextualized equality’.

## ***Policing Reform in Northern Ireland***

The purpose of this article is to suggest that social and political mobilization can succeed even against strong neo-liberal and other pressures. I want to use another example from Northern Ireland to illustrate the point. The focus on fair employment law, with its use of limited affirmative action measures to advance fair participation, gives a sense of what was possible and what was achieved in Northern Ireland. There is, however, another substantive area that requires attention: policing reform. In order to promote enhanced inter-communal representativeness in the new Police Service of Northern Ireland (PSNI) there was acknowledgment that Catholic representation needed to increase dramatically. The measures enacted to achieve the objective merit mention here and are a useful example of the limitations on what might be possible in a broad European 'liberal democratic' context such as Northern Ireland.

The reform of policing is instructive, as an example of the use of temporary recruitment measures (introduced in November 2001) to ensure progress in the promotion of a representative (Catholic-Protestant) police force, and thus to address a stark imbalance in workforce composition. Bamforth *et al.* (2008: 427) note the approach adopted was 'a dramatic use of preferential treatment based upon the detailed analysis contained in the Patten Report'. The Patten proposals on police reform were contested, but were viewed as significant enough to merit implementation.

The Royal Ulster Constabulary (RUC) never gained the widespread acceptance of the nationalist community in Northern Ireland, and was a consistent source of tension and grievance since its creation (Ellison and Smyth, 2000; O'Rawe, 2003). This police force was closely aligned with the Northern Ireland government and unionist establishment, and during its life had Catholic representation of around 7–8%, in a society where Catholics comprise over 40% of the population (Ellison, 2007). Policing was high on the agenda of those negotiating the Belfast/Good Friday Agreement 1998, and it was a source of significant disagreement during those negotiations and after (Doyle, 2010). In the final document a commitment was made to a 'new beginning to policing', and the establishment of an independent commission to make recommendations (chaired by Chris Patten, thus 'The Patten Commission'). One of the dilemmas facing this commission was how any police service – operating in a contested ethno-national context - would secure cross-community consent, and be viewed as legitimate within all communities. This resulted in fraught debates following the Agreement, particularly on how internal institutional and cultural reform would be achieved (Doyle, 2010). The unionist political parties did not perceive a major problem (although interestingly, policing professionals and practitioners generally did) – the RUC was viewed as a defender of 'the state', and had stood for law and order in challenging times. Any call for a radical break was met with resistance. A new system was, however, put in place. What measures were adopted? The name of the police service was changed from the RUC to the PSNI; this included the adoption of new symbols and uniforms (Independent Commission on Policing, 1999). An Oversight Commissioner was appointed to monitor the practical implementation of the Patten report, new accountability mechanisms were established (Policing Board, and Police Ombudsman), and the recruitment processes to the PSNI were reformed. The new system promoted the recruitment of Catholics and Protestants on a 50:50 basis, from a 'merit pool' of suitable applicants; the overall objective was to increase Catholic representation to 30% within ten years. The

scheme included generous retirement packages for long-serving officers – and many availed of this opportunity. The retirement arrangements have recently come under enhanced scrutiny, due to evidence that has emerged around re-hiring practices within the PSNI. What outcomes have been achieved by the use of these temporary recruitment initiatives as they relate to *police officers* in particular? In 2001 the newly established PSNI comprised 91.2% Protestants and 8.2% Catholics (in 1992, the RUC figure was 7.78% Catholic in the full-time force); five years later those figures had changed to 20.1% Catholic and 79.9% Protestant. By 31 March 2011, the Catholic figure was 30.3%, and thus above the original initial target of 30%. This statistical progress led to calls for the scheme to be permitted to lapse in 2011 (NIO, 2010). It also provoked a debate among the political parties, with the DUP – as it has done from the inception of the legislation – calling for it to be scrapped, and Sinn Féin and the SDLP suggesting that the temporary measures should remain in place until the Catholic proportion reached that of the composition of the general population (over 40%). Also, while figures for police officers had improved markedly, severe problems persisted in relation to PSNI staff generally (where disparities remain evident), meaning that the overall picture on police personnel was less impressive (Nolan, 2012). What was evident - in the limited statistical terms presented - was that progress on the recruitment of Catholic police officers had been made by the use of an extensive range of directed mechanisms deployed in the ten year period.

The British government indicated in 2010 that it was minded to allow the scheme to end. This announcement set the scene for nationalist-unionist political disagreement in the run-up to the Northern Ireland Assembly elections held in May 2011. Despite criticism, and ongoing concerns, the Secretary of State opted to permit the scheme to lapse on 28 March 2011, and as a result it has now ended (the policing service does, however, remain subject to existing fair employment law, and other rights, equality and accountability regimes in Northern Ireland).

This was a system configured to increase Catholic representation in the police service over a short period of time, in a targeted and direct way, as part of a process of securing nationalist/republican confidence in the new policing arrangements. It was a legal scheme designed with political imperatives in mind and it was carried through even when cross-party agreement was absent. Unionist political parties in Northern Ireland never accepted the new policing recruitment regime, and have subjected it to critique on the basis that it is described as a ‘quota system’ that led to reverse discrimination against the Protestant community. These are arguments that will resonate strongly with anyone familiar with global debates on the deployment of such special measures. However, judged by practical outcomes, the scheme has arguably achieved several of its original objectives, with Catholic representation (police officers) increasing significantly (to the target figure from 7%) in a short period of time.

Part of the challenge for critical assessment is the need to acknowledge advances as well as the transformational changes still required. Evidence suggests that sceptical notes must be injected into the analysis above (Ellison, 2007, 2010; Ellison and O’Rawe, 2010; Nolan, 2012). Ellison (2010: 243) urges caution and questions ‘whether the change process to date warrants some of the eulogies ascribed to it’. While he accepts some of the claims to success, he is less persuaded by the outcomes at the ‘cross-community participative level’, and questions who the ‘Catholics’ are in these figures (Ellison, 2010: 269; Ellison, 2007: 257). This caution about the more elaborate claims made is significant and necessary, and is reflective of an overall view that for all the positives the Patten report itself was ‘not perfect’ and implementation

has not had all the intended impacts (Ellison, 2007: 244). The general figures mask variable practices, trends that evidence insufficient cultural transformation and ongoing discussion about the operational effectiveness of all the accountability mechanisms. The debate is also progressing in a deteriorating security situation, with police officers once again becoming targets for armed attacks.

Targeted measures can make an impact in securing some 'equality outcomes' over a relatively short period of time. There is evidence to suggest that such reform can result in cultural changes in institutional settings that have wider equality impacts; for example the increase in the number of women police officers. However, the institutional culture of policing in Northern Ireland requires further extensive transformation and continuing critical assessment is required (Ellison, 2010; Ellison, 2007; Nolan, 2012).

### **Conclusion: Mobilizing against Neo-Liberalism?**

The argument of this article is that mobilization in the right political and social context can prevail even against dominant economic orthodoxies. While it is important not to overgeneralize from one limited experience, there may well be lessons. Social activism that is transnational and international in scope and ambition can impact on the practical deployment of group-based approaches and challenge neo-liberal thinking. It is possible for social actors to influence the way that 'business is done' around the world. There are limits, but the mere fact that it is possible is instructive.

Positive and directed approaches have been operationalized in Northern Ireland – often in difficult political and economic contexts, and in the face of resistant orthodoxies. For many of those involved, this remains an attempt to enrich the conversation locally and globally about what social and economic development should aspire to in the 'age of human rights and equality'. The challenge for Northern Ireland now and in the future may be to remember these lessons, as impoverished neo-liberal versions of economic and social progress re-emerge.



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