Committee for the Office of the First Minister and deputy First Minister
Room 285
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9 October 2014

Submission to the Inquiry into Building a United Community (T:BUC)

The Equality Coalition is a network of over 80 trade unions and equality NGOs from across the nine 'section 75' categories and beyond and is co-convened by CAJ and UNISON. The Equality Coalition commissioned two expert briefing papers, written by Dr Robbie McVeigh, on key matters relating to the T:BUC legislation, and we enclose these papers by way of submission to the Committee's call for evidence.

The first paper **'Sectarianism in Northern Ireland: towards a definition in law'** was finalised in April 2014 after discussions with stakeholders and addresses this matter, including potential definitions, that could be used to define sectarianism within the T:BUC framework and in any legislation emerging from the strategy.

The second paper **'Good Relations in Northern Ireland: towards a definition in law'** was finalised in October 2014 after discussions with stakeholders in the context of the T:BUC strategy proposing an extended 'good relations' role for the Equality Commission and that there by a 'good relations' section in Equality Impact Assessments..

The Equality Coalition would be willing to provide oral evidence to the Committee.

Yours sincerely

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Sectarianism in Northern Ireland: Towards a definition in law

Expert paper by Dr Robbie McVeigh

April 2014

Special thanks go to UNISON for the financial support in developing this paper

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Sectarianism in Northern Ireland:

Towards a definition in law[1]

1.1. Introduction

[1]. The term sectarianism is used widely both academically and journalistically to name and address two main subjects. *First*, divisions within major religions – for example tensions within Islam between Sunni and Shia are commonly designated 'sectarian'; and *second*, divisions between and within political groups, particularly but not exclusively on the Left. In both cases the term at least implies an intimacy to the divisions involved – these are divisions between people who know each other rather than people who do not know each other. The term sectarianism does not feature greatly in human rights discourse.

[2]. In Ireland, Northern Ireland and Scotland the term sectarianism is widely used to name and address divisions between Protestants and Catholics, mostly, but not exclusively, related to Irishness. In this sense it is used routinely to describe incidents and processes. The standard use of the report that, 'the police are describing the incident as sectarian' provides some illustration of this commonsense understanding across Northern Ireland. Despite its everyday application in this context, however, the term is rarely defined. Moreover, despite the ubiquity of the term, it is poorly conceptualised.

[3]. While sectarianism per se has not been defined in law in either Ireland or the UK, aspects of sectarian identity have been defined in both legislation and through jurisprudence across different jurisdictions of the UK. Arguably the whole conflict in the north of Ireland can be characterised as 'sectarian'. Thus when 'dealing with' fair employment or 'community relations' or 'peace' itself, the target has often been sectarianism, at least in part. Consequently concepts like 'community background', 'religious identity', 'perceived religious identity' and 'political opinion' all help to frame notions of sectarianism in law. More broadly different targets – like 'anti-Irish racism', 'institutional racism' and 'institutional religious intolerance', all overlap with sectarianism and provide the building blocks of a definition in law.

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[1] A draft of this paper was presented at an Equality Coalition seminar in Belfast in March 2014. The paper was informed and improved by the discussion at that seminar. The draft was also improved by comments from Daniel Holder of CAJ and Professor Bill Rolston. Remaining errors of fact or judgement remain my own.

1.2. Undertheorisation

[4]. In Northern Ireland – despite both ongoing political tensions and previous conflicts being characterised as 'sectarian' – sectarianism has been under-theorised or underconceptualised (McVeigh 1992). There is no corpus of research and analysis to compare with, say, the body of work that exists on racism in Britain. One response to this discussion of an earlier draft of this paper sums this up perfectly:

> I welcome the fact that consideration is being given to defining sectarianism. I believe that the continuing failure to define or name the "elephant in the room" (i.e. sectarianism) serves to perpetuate the divisions that characterise NI society and has the knock-on effect that sectarian crimes go unpunished thus tending to normalise a level of racism/sectarianism that many newcomers say they find disturbing. In addition, from a public health perspective, there is emerging evidence that living in a divided society may contribute to the extremely poor mental and emotional wellbeing experienced by many within Northern Ireland. I appreciate that defining sectarianism and identifying the particular elements that can be outlawed will be fraught with difficulty but strongly believe that this is timely and that many will recognise and support the spirit and values behind the definition – when it is achieved.

[5]. This recognition of the impact of undertheorisation of sectarianism in one key area of Northern Ireland life might be applied equally to almost any other. Sectarianism continues to be the 'elephant in the room' – characterised by difficulty of find *any* practice to address its pervasive consequences. Defining sectarianism is a key part of changing this reality. Generally this accords with the principle of legal certainty, whereby particular concepts which may carry sanctions are set out with sufficient clarity in law to provide a framework where both the state and individuals to regulate their conduct. But alongside this there is a specific need to find ways of framing sectarianism that allow it to be countered. Of course no act of defining is perfect – the very complexity of a phenomenon like sectarianism means that any definition begs refutation. But this has been equally true of other forms of oppression and discrimination. As participants in the roundtable discussion noted, it may have been clear to affected persons what sexual harassment was, until there was a definition in law it was difficult to get a framework to move beyond protestations of subjectivity and effectively counter the phenomena.

[6]. Moreover, despite the undertheorisation of sectarianism, there is an expanding theoretical and research literature that helps throw light on the human rights and equality implications of the term. There is a literature suggesting that sectarianism is – or is much the same as – racism (Jarman 2012; McVeigh and Rolston 2007) and another literature that says it is

different from racism (Brewer and Higgins 1998). (Even without engaging with the text, titles like 'Race Relations in the Six Counties' (Moore 1972) or 'Holy War in Belfast' (Boyd 1969) give some sense of this disparity.) There is also a literature directly comparing the two phenomena (Brewer 1992; McVeigh 1998; McVeigh and Rolston 2007). Insofar as any substantive *difference* between racism and sectarianism is spelt out, the analysis is usually that the conflict in Ireland is predominantly religious – as the formally religious appellations 'Protestant' and 'Catholic' would suggest. For example, Bruce suggests:

> The Northern Ireland conflict is a religious conflict. Economic and social considerations are also crucial, but it was the fact that the competing populations in Ireland adhered and still adhere to competing religious traditions which has given the conflict its enduring and intractable quality. (1986: 249)

[7]. In this analysis it is argued that what sectarianism involves *is* theological dispute – a contemporary rehearsing of the explicitly theological differences within Christianity that characterised the Reformation, not only in Ireland, of course, but across Europe and beyond.

[8]. But this analysis only covers part of the story; there is a plethora of other evidence illustrating the more ethnic dimension to conflict in Ireland. The English/Irish and Settler/Native dynamic predates the Reformation and *ipso facto* looks more like 'race' than 'religion' – using the notion of descent we find both actual and perceived connections between present day 'Protestants' and 'Catholics' and historical, pre-reformation differences (McVeigh 2008). Moreover other labels – like 'Unionist' and 'Loyalist' or 'Nationalist' and 'Republican' – signify the political and ethnic elements which also constitute identities that appear formally theological.[2] Once the additional 'economic and social considerations' are added to the mix it becomes increasingly difficult to disentangle these different elements. This already suggests that we are dealing with *ethnicity* – which recognises just such an amalgam of different elements – rather than faith. Tellingly in the jurisprudence of 'fair employment', 'perceived religious identity' came to be more important than 'religious identity'. The ethnicity paradigm offers a holistic reading of inequality and discrimination in Northern Ireland that the 'religious conflict' approach cannot.

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[2] Furthermore, following the retirement of Ian Paisley, there is a dearth of 'political religious' figures in Northern Ireland. There is nothing akin to 'political Islam' among either major political tradition; indeed, politics in Northern Ireland appears generally more secular than, say, in the USA.

[9]. Moreover, over the last thirty years there has been a further tangible 'convergence' of these different elements – religion, political identity, institutional religious intolerance as well as race - across the different jurisdictions within the UK which make it even more difficult to isolate those elements that might make something a discrete 'religious conflict'. Thus the rise in and focus on Islamophobia and 'institutional religious intolerance' suggest lines of demarcation are already more blurred generally; recognition of anti-Irish racism, particularly in England and Scotland, the focus on the overlap between anti-Irish racism and anti-Catholicism in sectarianism in Scotland, the blurring of distinctions between racism and sectarianism within 'good relations' practice in Northern Ireland: all suggest definitively that what we are dealing with should be regarded as ethnicity – a concept which is embedded with all these complexities – rather than some abstract, discrete issue of 'faith'. Even if we stick to the crudest and most brutal manifestations of sectarianism in Northern Ireland, the widespread genocidal imperative, we find identities that look more like ethnicity than faith: 'Kill all Irish'; 'Kill all Taigs'; 'Kill all Huns'.

[10]. Despite this, some actors continue to resist the analysis of sectarianism in terms of ethnicity – not necessarily because it is 'really about' religion but rather because it is so exceptional that it can't be contained within any existing paradigm of analysis. This approach regards sectarianism as a phenomenon *sui generis* – so exceptional that this precludes inclusion in any broader equality analysis or agenda. The repudiation of ethnicity is particularly significant in terms of its implications for human rights discourse. If sectarianism is regarded as purely 'religious' then the appropriate mechanisms are weaker. The 'exceptionalism' approach largely pre-empts any protections at all. Not surprisingly, this kind of exceptionalism is usually adopted by those who want to exclude such issues from international protection – witness the Indian government approach to Dalits or the Irish government on Travellers. It involves the dangerous strategy of 'ethnicity denial' (McVeigh 2009). Crucially, the British Government has not taken this position on sectarianism.

[11]. It has also sometimes been argued that sectarianism should not be recognised as a form of racism in Northern Ireland for tactical reasons (McVeigh 1998). This is the notion that it is better not to recognise sectarianism as racism because it might 'confuse' intervention against other forms of racism. This is not without logic in a context in which BME communities are often placed in a vulnerable relationship with regard to larger Protestant and Catholic communities. This strategic argument is weak, however, in terms of human rights discourse.

[12]. Moreover, if it ever were the case that general anti-racism in Northern Ireland was served by the exclusion of sectarianism 'from the mix', this hardly now obtains. First, Northern Ireland achieved the 'race hate capital of Europe' tag despite this exclusion – so it has not worked very well as an anti-racism strategy. Recent allegations by the PSNI about the involvement of Loyalist paramilitaries in 'ethnic cleansing' continue to signal the intimacy of the connections between racist and sectarian violence (BBC News 2014). Second, the exceptionalism of sectarianism from race discourse has not seen the post-Macpherson advances implemented in Northern Ireland even in terms of BME communities (NICEM 2013). Finally, as already mentioned, the post-Good Friday Agreement state has very consciously integrated analysis and intervention on racism and sectarianism with respect to concepts such as 'good relations'. This has had a negative impact on anti-racism in Northern Ireland because it disconnects it from both best practice in other parts of the UK as well as international standards. Thus, while it may help to address sectarianism through wider analyses of racism, this can never be justified to 'dilute' the analysis of racism through its association with sectarianism. One obvious example of this can be found in the use of the term 'equity' instead of 'equality'. The importation of a *sui generis* term from the exceptionalist approach to sectarianism is profoundly problematic – anti-racism has always been centrally about equality not equity. In other words, the synthesis of racism and sectarianism within the 'good relations' paradigm has encouraged a 'lowest common denominator approach' and moved anti-racism as well as anti-sectarianism away from a focus on international standards and human rights compliant approaches.[3]

[13]. In short, the case for exceptionalism is poor and poorly made – it rarely moves beyond statements on the complexity of sectarianism, defined by its indefinability. Furthermore, no one has suggested that the conflict in Northern Ireland is *solely* a religious conflict. Like most conflicts it involves a complex mix of different elements including religion. So the issue is already nuanced – when people seek to force this issue they are really saying the conflict is *primarily* a religious conflict or primarily an ethnic conflict. From a human rights point of view this debate doesn't really matter. Providing that it is accepted that the conflict has an element of ethnicity then that 'bit' of the complex is deserving of protection by international mechanisms that address ethnicity and racism. (And by extension those 'bits' that are purely religious

[3] It bears emphasis that the notion of 'good relations' shares a similar lack of definition with even less grounding in international law, despite recent attempts in the UK to improve the robustness of the term (Johnson and Tatam 2009; Wigfield and Turner 2010). Given this lack of clarity, the statutory good relations duty on public bodies in GB definition in s149 of the Equality Act 2010 is the most useful as well as the closest to being definitive: *good relations …involves having due regard, in particular, to the need to—(a)tackle prejudice, and (b)promote understanding.*

should be protected by mechanisms that address religion like the Special Rapporteur on Religious Intolerance.)

[14]. It is also increasingly difficult to justify the need to separate different forms of inequality given the growing recognition of *intersectionality*. Intersectionality - sometimes 'intersectionalism' - is the analysis of the way forms of oppression and discrimination support and reinforce each other. This paradigm recognises that different inequalities compound each other in specific ways and insists that focussing on single issue discriminations often misses the reality of inequality for those who are most unequal and discriminated against. (Crenshaw 1989). The significance of intersectionality has been increasingly recognised in international human rights discourse (Thornberry 2008, 2013). In other words there is a general tendency towards accepting the overlap between racism and issues like religion, ethnicity and gender.

[15]. Before turning to the lessons of international mechanisms, however, it is useful to look at how sectarianism – and more widely, race and religion – is named and addressed across the different jurisdictions and equality regimes in the UK. As has been suggested, there has been a degree of convergence in all of these. But it is also possible to trace contradictions and disjunctions which illustrate precisely why international standards are necessary in supporting best practice in human rights and equality mechanisms.

1.3. Northern Ireland

[16]. The emergence of the state of Northern Ireland followed the partition of Ireland in 1920 on explicitly sectarian grounds – the state boundary was designed to secure a 'working' Protestant majority. Whether regarded positively as, 'a Protestant Parliament' and a 'Protestant State' or negatively as an 'Orange State', overt sectarian discrimination was embedded in the polity from the start. Much of the reformism of the last 50 years has been a movement away from that formal, explicit state endorsement of sectarian discrimination. To a large extent the periods of constitutional change since have been movements away from that specific form of institutional sectarianism.[4]

[4] This Northern Ireland state also repudiated any need for anti-racist legislation – mostly because of the dangers of 'readacross' to sectarian discrimination. The issue of the extension of the legislation to Northern Ireland was raised specifically during discussions leading up to the first Race Relations Act in 1965. The British Home Secretary was asked if the views of the Northern Ireland Government had been sought on the matter. The response of Frank Soskice was that, '[t]heir views have been sought, and they do not wish the Bill to apply to Northern Ireland'.

[17]. Both Direct Rule (1972-97) and the post-GFA state have been reformist in this way. Despite the absence of agreed definitions outlined above, there has therefore been a fair amount of intervention against some of the key indicators and consequences of sectarianism in Northern Ireland in the context of both Direct Rule and the post-GFA state. While much of this activity was couched in terms other than 'sectarianism' or 'anti-sectarianism', the reformist project has had dealing with the legacies of sectarian inequality at its core.

Anti-Discrimination - Fair Employment and Section 75

[18]. This kind of legislative reform began with incitement to hatred legislation in 1971 which was followed by a raft of administrative reforms under Direct Rule. Legislatively it was dominated by the Fair Employment Act 1976. The 1976 Act expressly addressed direct discrimination in employment issues. This was extended to indirect discrimination by the Fair Employment (Northern Ireland) Act 1989 and to goods and services by The Fair Employment and Treatment (Northern Ireland) Order 1998. It was extended to include an equality duty through Section 75 of the Northern Ireland Act (1998). This section imposed quality proofing across a range of equality issues as well as imposing a subordinate duty to promote good relations. The 1998 Order was amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003 in December 2003 to meet the requirements of the EU Framework Directive for Equal Treatment in Employment and Occupation. But the 1976 Act continued to define categories. (Thus '"political opinion" and "religious belief" shall be construed in accordance with section 57 (2) and (3) of the Fair Employment (Northern Ireland) Act 1976').

[19]. While this legislation was clearly designed to manage discrimination connected to sectarianism, it carried a wide range of targets and even further implications. It expressly protected people from religious and political discrimination. Through case law the scope of the Act extended to cover acts of political discrimination that had very little connection to the conflict in the north of Ireland.[5] In terms of religious discrimination, it covered acts that were clearly connected to discrimination that was immediately connected to notions of sectarianism. But it also extended to cases that were unconnected to conflict – like, for example, Christians being required to work on a Sunday. Finally, it extended to non-Christian religious groups that were in no way

[5] It is striking that case law on Fair Employment also opened it up to the broader, explicitly political, discrimination. Here the term is being used much more akin to the Left/Right political sectarianism indicated above. This kind of formally 'political discrimination' would be outwith most international protections from *ethnic* discrimination.

connected to Protestant/Catholic conflict, however defined. The Equality Commission for Northern Ireland provides a useful overview:

> The FETO outlines situations where individuals may complain that they have been discriminated against on grounds of religious belief and/or political opinion. It may be that individuals believe that they are treated less favourably than others because they are Catholic or Protestant or because they are perceived to hold either of these religious beliefs; or because they are perceived to be nationalist or unionist; or indeed individuals may be discriminated against because they do not hold any of these beliefs or opinions. Political opinion is not limited solely to Northern Ireland constitutional politics and may include political opinions relating to the conduct or government of the state, or matters of policy, eg, conservative or socialist political opinions. A political opinion which includes approval or acceptance of the use of violence for political purposes in Northern Ireland is excluded. Religious belief includes those of other religions, eg, Judaism, Islam and Eastern Orthodox Christianity, as well as other faiths and philosophies such as Hinduism, Buddhism and philosophical theism, to name a few. (2012: 3-4)

[20]. In the operation of the legislation, however, ethnicity clearly played a more significant role than either of the two manifest characteristics of the act – there were far more 'ethnic' cases than either religious or political. It is perhaps useful to think of this reality in terms of a simple Venn diagram – the interlocking circles were named by the categories 'religious belief' and 'political opinion' but most cases involved the intersection which was much more akin to notions of ethnicity. In other words, neither the politics nor the faith of most victims was as important as their 'perceived religion'. It was the ethnic categorisation of the victim as 'Catholic' or 'Protestant' rather than their politics or religious beliefs that caused them to be discriminated against. In Northern Ireland for example there was an obvious similarity with the operation of the Race Relations Act in Britain. Where religious categories overlapped with ethnic ones – as in the case of 'Jew', there was no issue that the category should be afforded the protection of the legislation. Even though 'Jew' is a formally religious label, the instruction 'no Jews need apply' was outlawed. In the majority of fair employment cases, the categories 'Protestant' and 'Catholic' were being used in precisely this ethnic sense.

Community Relations/Good Relations

[21]. A related but distinct paradigm also developed in the development of a community relations paradigm for addressing sectarian division in Northern Ireland. While this drew directly on US and UK community relations approaches to managing racism, it was resistant to identifying sectarianism as a racism. It played little part in the efforts to extend some form of British anti-racism relationship to Northern Ireland. This all changed, however, in the wake of the GFA.

[22]. When the Community Relations Council launched its *A Good Relations Framework: An Approach to the development of Good Relations* in 2006, 'dealing with' racism had been unambiguously integrated into the community relations/ good relations paradigm:

> Those who have worked on anti-racism and anti-sectarianism approaches in Northern Ireland have acquired decades of experience. The promotion of good relations requires that both these areas of expertise be joined together to provide an approach that will enable racism and sectarianism *to be addressed equally and together*. (2004: 5, emphasis added)

[23]. When the state's 'Good Relations' strategy emerged in the OFMDFM (Office of the First Minister and Deputy First Minister) *A Shared Future* document in 2005 (2005b), the synthesis was complete.[6] The blueprint for the 'Good Relations' response to racism and sectarianism was in place. This has largely continued. This 'convergence' is important since it further undermines the case for the exceptionalism of sectarianism – since the things are being addressed equally and together, it further begs the question of whether there is any substantive difference at all.

[24]. As we will see, developments in England and Wales and Scotland also continued to support convergence. The recognition of both 'anti-Irish racism' and 'institutional religious intolerance' alongside a broader acceptance of the rising importance of addressing Islamophobia encouraged a British version of what the international community had recognised as 'intersectionality'.

[25]. However, the continued failure to 'go the final step' and identify sectarianism as a form of racism carries with it many contradictions. For example, the PSNI, suggests in its 'hate crimes' definitions:

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[6] Although technically this emerged in a period of Direct Rule during a period of suspension of the devolved post-GFA institutions.

> The term 'sectarian', whilst not clearly defined, is a term almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican. [7]

This approach leads to *three* separate categories of hate crime – 'racist', 'sectarian' and 'religious'. These are thus recorded in the European Commission against Racism and Intolerance (ECRI) Report:

> In Northern Ireland, 990 incidents and 771 crimes with a racist motivation were recorded in 2008/09; 46 incidents and 35 crimes with a faith/religion motivation were recorded in the same period, and 1595 incidents and 1017 crimes with a sectarian motivation were recorded. While the figures for crimes with a faith/religion motivation showed a decrease on the previous year, crimes with racist motivations increased. Amongst the crimes recorded, around 40% of crimes with a racist or sectarian motivation were violent crimes, as were 17.1% of crimes with a faith/religion motivation.[8]

[26]. So in this definition of sectarianism the phenomenon is disconnected from both 'race' and 'faith/religion', whatever sectarianism is about, it isn't about either racism or religion. This is the clearest manifestation of the exceptionalist approach.

[27]. In contrast new interventions like the 'Together' document[9] appear to collapse the difference between racism and sectarianism in Northern Ireland almost completely (OFMDFM 2014). Here the new paradigm of 'good relations' is used to integrate racism and sectarianism and separate them from other rights and equalities constituencies and issues. They become 'twin blights' to be addressed together and, just as importantly, largely separately from other forms of discrimination or hate. Either way, it becomes increasingly difficult to ignore the profound overlap between 'religion' and race in much of this approach.

[28]. There are also specific reasons for looking at England and Wales and Scotland alongside the broad point that they are part of UK state reporting and implementation responsibilities. First there are issues in terms of good and bad practice – the Macpherson report and its outworkings remains a high

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[7] PSNI Annual Statistical Report: Report No. 3, Hate Incidents and Crimes, 1st April 2008 – 31st March 2009, pp4-5.
[8] ECRI Report on the United Kingdom (fourth monitoring cycle) CM(2010)10 add4, paragraph 126
[9] OFMDFM (May 2013) Together Building a United Community Strategy
http://www.ofmdfmni.gov.uk/together-building-a-united-community

water mark on racial justice. This episode was less connected to international standards than domestic politics and justice but there are crucial lessons to be learned from Macpherson as well as other lessons from the relatively progressive regime on race in England and Wales. Second, the issue of 'readacross' continues to impact anti-discrimination –it appears that sometimes reforms are not progressed because of the impact they might have on other political issues.[10] Finally, developments in England and Wales and Scotland illustrate important – and strikingly different – tendencies in the wider engagement with sectarianism. In England and Wales – post Macpherson there is a general tendency towards 'convergence' – a recognition of the overlap between the categories of 'religion' and 'race'; in Scotland a continuing struggle to make sense of the 'exceptionalism' of sectarianism as something that, however defined, isn't racism. Moreover, the currency in Britain of addressing 'institutional religious intolerance' in particular begs the question of what such an approach might bring to Northern Ireland. In this context, it is remarkable that the implications of the Mubarek Inquiry into the racist murder of a Muslim in custody do not seem to have informed policy in Northern Ireland at all. This kind of omission seems attributable – at least in part – to the ongoing desire to maintain racism and sectarianism as 'separated discourses'.

1.4. England and Wales

Race Relations Act 1976, Mandla v Lee and the Equality Act 2010

[29]. It bears emphasis that the 2010 Equality Act marked the formal convergence of race and religion (alongside other 'groups') in British anti-discrimination legislation. In other words, the festishing of the difference between racism and sectarianism in Northern Ireland appears very odd once the intersectionality embedded in contemporary approaches in the rest of the UK is recognised. This was already compounded by the outworking of Race Relations legislation, in particular the *Mandla v Lee* case which has become definitive in the jurisprudence of ethnicity:

> For a group to constitute an ethnic group in the sense of the 1976 Act, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more

[10] Here the failure to introduce anti-racist legislation in Northern Ireland is a classic example – this appeared less consequent on the concern to continue to discriminate legally against BME people in NI than on concerns that this might impact on sectarian discrimination.

> of them will commonly be found and will help to distinguish the group from the surrounding community. The conditions which appear to me to be essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, *often but not necessarily associated with religious observance*. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant: (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups. ([1983] 1 All ER pp. 1066-7, emphasis added).

[30]. The case itself concerns an identity which is at least as explicitly 'religious' as 'Protestant' and 'Catholic' in Northern Ireland – discrimination against a Sikh child because of his use of a religious symbol. Moreover it goes on to identify religion as a key element within the indication of ethnicity. Thus in the definitive UK test case on ethnicity, religion and religious identity is already inextricably connected to race. The Race Relations Act 1976 provided the template for the Race Relations (Northern Ireland) Order 1997. Mandla v Lee was a key referent in discussions leading up to the Order and proved crucial in the naming of Travellers as a group protected by the Order.[11]

Criminal Justice Act 1991

[31]. Section 95 of the Criminal Justice Act 1991 has resulted in comprehensive ethnic monitoring across criminal justice system in England and Wales. This states that:

> The Secretary of State shall in each year publish such information as he considers expedient for the purpose of facilitating the performance of those engaged in the administration of justice to avoid discriminating

[11] Ironically, if the Mandla case were brought in Northern Ireland it seems likely that it would be taken as a fair employment case - given the centrality of Sikhism to the case. In other words, the case that was definitive of ethnicity in England and Wales would not be recognised as race discrimination in Northern Ireland. Integrating race and fair employment law would avoid some of these more bizarre contradictions.

against any persons on the ground of race or sex or any other improper ground.

[32]. The consequent data brings together statistical information on the representation of BME people as suspects, offenders and victims within the Criminal Justice System and as employees/practitioners within criminal justice agencies. This allows appropriate critical engagement with other non-statutory actors on race and criminal justice. It provides key baseline data in order to examine the three core questions on race and criminal justice concerning victimisation, criminalisation and employment.

Table A: Overview of Race and the Criminal Justice System: Proportion of individuals in the CJS by ethnic group compared to general population, England and Wales 2012

	White	Black	Asian	Mixed	Chinese or Other	Unknown
Population aged 10 or	87.1%	3.1%	6.4%	1.7%	1.7%	-
Stop and Searches (s1)	67.1%	14.2%	10.3%	2.9%	1.3%	4.2%
Arrests	79.5%	8.3%	5.9%	3.0%	1.4%	1.8%
Cautions	83.9%	7.0%	5.2%	-	1.4%	2.6%
Court Proceedings (Indictable)	71.4%	7.8%	4.7%	1.9%	1.1%	13.1%
Convictions (indictable)	73.2%	7.5%	4.5%	1.8%	1.1%	11.9%
Sentenced to Immediate Custody (Indictable)	70.6%	8.9%	5.5%	1.9%	1.7%	11.4%

[33]. There is obviously a key question to what a similar overview might reveal in Northern Ireland – in terms of both BME and sectarian identities.[12] This would be important positive innovative addition to the state's contribution on racism and should be provided to meet existing international obligations on minimum standards.[13]

[12] Recent research in The Detail on sectarian disparities in the Prison Service offers one example of what this might look like. The key point is that this information should be provided upfront by the state as part of its equality duties – as it is in the CJS Race data - rather than extracted via Freedom of Information requests (McCracken 2014).

[13] For example, the Prison Review Team (2011) offers one example of what this might look like. But this kind of monitoring should be routine and should be made with regard to ethnicity as well as 'religion' or 'community background'.

Stephen Lawrence Inquiry and Macpherson Report

[34]. Macpherson defined 'racism' and 'institutional racism' thus:

> "Racism" in general terms consists of conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form. "Institutional Racism" consists of the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin.
>
> It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people. (MacPherson 1999: 6.4, 6.34).

[35]. Crucially Macpherson addressed the notion of institutional racism with specific reference to the criminal justice system. None of this analysis should suggest that Macpherson was 'perfect' – it diluted earlier definitions of 'institutional racism' and there are many more radical approaches to anti-racism. Recent revelations suggest that the inquiry was profoundly compromised by 'secret policing'. Moreover, it can hardly be claimed to have ended 'institutional racism' in the UK – or even the Metropolitan Police – over the past 15 years. Nevertheless, Macpherson represents a high watermark in UK state anti-racism and an important international model for both other states and other jurisdictions within the UK.

Mubarek Inquiry and Keith Report

[36]. Finally the discussion of sectarianism in Northern Ireland should also pay specific attention to the *Mubarek Inquiry*. This engaged with institutional racism in the British prison service in some detail. It also has wider implications in terms of the interface of race and religion and criminal justice – these are particularly important obviously in terms of Northern Ireland:

> The Inquiry's terms of reference did not, of course, permit it to investigate generally how Muslim prisoners are treated in prison. It is an important topic which should be properly investigated by professionals in the field. But the perception that Islamophobia is on the rise highlights the fact that the definition of institutional racism adopted by the Stephen Lawrence Inquiry focused on discrimination and prejudice because of a person's colour, culture or ethnic origin. It did not refer to the person's religion. There is no reason why institutional prejudice should be limited to race, and thought should be given by the

> Home Office to recognising the concept of institutional religious intolerance. (Keith 2006: Volume 2: 617)

[37]. In consequence, Keith argues, 'Since the Stephen Lawrence Inquiry's definition of institutional racism was accepted by the Government, there is no reason why it should not be adapted to define institutional religious intolerance':

> The collective failure of an organisation to provide an appropriate and professional service to people because of their religion. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping which disadvantage people of a particular religion. (Keith 2006: Volume 1 546, 62.27)

[38]. Thus there is a general tendency towards 'convergence' or intersectionality in the context of England and Wales:

> The Ministry of Justice Head of Profession for Statistics is responsible for the content and timing of Statistics on Race and the Criminal Justice System, and takes very seriously the view of users of the publication. Police data on racially or religiously aggravated offences have been published in the report since 2002 and tables showing the figures for individual police force areas have been published since 2003. Due to the way in which police figures are recorded, it is not possible to separate offences that are racially aggravated from those that are religiously aggravated…. The religion and belief of defendants and victims has been collected by the Crown Prosecution Service since April 2007, and we are assessing data quality for inclusion in the next publication. The Ministry of Justice's chief statistician is responsible for the timing and content of statistical releases and will ensure that if the data are of sufficient quality it will be published.[14]

[39]. Thus while the British model fails to disaggregate racially and religiously-aggravated offences, the interest in recording and identifying both is not specific to Northern Ireland. Moreover, convergence between race and religion categories appears to be increasing.

[14] House of Lords, Written answers and statements, 22 October 2010 Hansard source (Citation: HL Deb, 22 October 2010, c205W)

1.5.Scotland

[40]. Scotland followed a slightly different path following the Macpherson Report. Although Scotland had a devolved criminal justice system and was not directly addressed by the Stephen Lawrence Inquiry, there was a period of intense activity in Scotland in response to Macpherson (Scottish Executive 1999; Scottish Parliament 2000; Stephen Lawrence Inquiry Steering Group 2001.) It bears emphasis that this contrasts starkly with the absence of similar intervention in Northern Ireland (NICEM 2013).

[41]. More specifically there has also been recent intervention on sectarianism with much closer reference to Northern Ireland – addressing relations between Protestants and Catholics in Scotland with frequent reference to the politics and culture of Northern Ireland (Scottish Government 2013) (This follows similar work by Scottish NGOs like Nil By Mouth (2014). From the perspective of the *Advisory Group on Tackling Sectarianism in Scotland*:

> Sectarianism in Scotland is related to, but distinct from, racism and other forms of religious bigotry such as anti-Semitism or Islamophobia. We do not make any judgement here that sectarianism is more or less serious than any other form of discrimination or hostility, but believe that it, too, should be acknowledged and acted against in a systematic way and on the basis of evidence. (2013: 13)[15]

[42]. The working definition of 'intra-Christian sectarianism' is:

> Sectarianism in Scotland is a complex of perceptions, attitudes, beliefs, actions and structures, at personal and communal levels, which originate in religious difference and can involve a negative mixing of religion with politics, sporting allegiance and national identifications. It arises from a distorted expression of identity and belonging.
>
> It is expressed in destructive patterns of relating which segregate, exclude, discriminate against or are violent towards a specified religious other, with significant personal and social consequences. (2013: 18)[16]

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[15] However the Advisory Committee also insists, 'Anti-Irishness, in a cultural sense, is clearly a form of racism and should be named as such' (2013: 18).

[16] European Commission against Racism and Intolerance (ECRI) – Final report on the United Kingdom adopted by ECRI at its 50th plenary meeting (15-18 December 2009), paragraph 126

[43]. The emphasis on religion in the Scottish definition appears odd. Especially since the definition appears to be at pains to insist that it is not about religion. In further 'Notes on the working definition':

> It is always difficult to compress complex concepts into short working definitions; the process risks losing nuance and, ultimately, intelligibility. Here we outline some reflections on the working definition to aid understanding…. Our definition does not presuppose that those who engage in sectarian behaviour are currently religious believers or have religious motivation; only that the original difference had a religious element. In some circumstances that element may now be lost, leaving, perhaps, only 'them' and 'us' opposition. (2013: 18)

[44]. This ambiguity appears bizarre since what is often regarded as the paradigmatic example of Scottish sectarianism – the 1923 Church of Scotland publication *The Menace of the Irish Race to our Scottish Nationality* – makes the race and nationality element explicit. This is a religious institution, making a broadly religious intervention but its concern is unambiguously about 'race'. It is important obviously to continue to learn from the Scottish process but it might be suggested that some of the limitations of the definition follow from not situating the work in terms of international standards. More positively the response of the Scottish Government to Macpherson provides an example of how a devolved administration might respond more proactively to the notion of 'institutional racism'.

1.6. UN and Council of Europe

[45]. In short, recent developments within the different jurisdictions of the UK suggest a broad convergence of race and religion based discriminations but they also, less helpfully, continue to confuse different elements. Fortunately recent work in Northern Ireland has seen sectarianism increasingly rooted in international standards. In fact, to some extent the broader ongoing discussion around the nature of sectarianism is a moot point with regard to human rights discourse since any ambiguity has been removed by recent decisions of the UN and Council of Europe.

In other words in terms of human rights and equality discourse, there is no ambiguity – *for the purposes of human rights law sectarian identity is to be regarded as an ethnicity and sectarianism as a form of racism.* This emerges from general trends on race and ethnicity as well as specific discussion of racism in Northern Ireland.

[46]. Thus generally ethnicity has been read broadly and exclusively. Regarding the question of who belongs to which group, it is the opinion of the Committee

on the Elimination of Racial Discrimination (CERD) that the identification of individuals as being members of a particular racial or ethnic group, 'shall, if no justification exists to the contrary, be based upon self-identification by the individuals concerned'.[17]

[47]. In other words should either Protestants or Catholics self-identify as an ethnic group this would be enough to bring them into CERD in the absence of justification to the contrary. Moreover, either group can self-identify in this way so it would be enough for one group to so identify. It is also clear that justification to the contrary should involve a higher standard of proof. If a state is to so justify, it has to do it in a robust and non-arbitrary manner. Thus, for example, India maintains the position that discrimination based on caste falls outside the scope of the ICERD Article 1 and the Convention is not applicable in this case. However, taking note of such argument and after having an extensive exchange of views with the State party, the Committee still "maintains its position expressed in general recommendation No. 29" and "reaffirms that discrimination based on the ground of caste is fully covered by article 1 of the Convention." The Irish Government has been similarly criticized for its failure to recognise Traveller ethnicity.

[48]. In terms of the specific case of sectarianism in Northern Ireland in international human rights discourse, there has been a process of discussion at both UN and Council of Europe levels. The Northern Ireland Human Rights Commission reiterating the position that sectarianism needs to be recognised as a form of racism put this to CERD to make clear that sectarian discrimination falls under Article 1(1) of the Convention, Which would make clear sectarianism is to be placed within the international framework for tackling racism in all its forms. In relation to this issue the Committee decisively ruled:

> Sectarian discrimination in Northern Ireland and physical attacks against religious minorities and their places of worship attract the provisions of ICERD in the context of "intersectionality" between religion and racial discrimination (CERD 2011: 2)

[49]. The Concluding Observations of the Committee also raised the specific concern that official anti-sectarian strategies in Northern Ireland ignore the

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[17] Although CERD jurisprudence suggests that this is slightly more complicated. The ICERD practice is not to include any group solely differentiated on religion as falling under its definition of racial discrimination – it will only do so where there is overlap with the other indicators of ethnicity in article 1(1). 'Protestants' and 'Catholics' in Northern Ireland do overlap in this way – given descent, national identity and so on - this is where the 'intersectionality' issue comes from (Thornberry 2008).

CERD and the Durban Declaration frameworks. They asked the UK to re-examine this and specifically look at applying CERD/Durban to anti-sectarianism policy and to report back to the Committee at the next examination as to the advisability of adopting a holistic approach to all.

[50]. Later in 2011 the Council of Europe Advisory Committee on the Framework Convention for National Minorities directly addressed the exceptionalist approach:

> [T]he Advisory Committee finds the approach in the CSI Strategy to treat sectarianism as a distinct issue rather than as a form of racism problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards. Similarly, the CSI Strategy has developed the concept of "good relations" apparently to substitute the concept of intercultural dialogue and integration of society. (CoE 2011: 25)[18]

[51]. The key point is that this issue doesn't have to be endlessly reworked. The key international bodies have already accepted the analysis that sectarianism is a form of racism. The UK does not appear to dispute this approach (In contrast, for example, to the Irish approach to Traveller ethnicity with CERD). While there may remain outstanding definitional issues in Scotland and the Republic of Ireland which will have implications for Northern Ireland, the key work is already completed. The core definition is that 'sectarianism is a form of racism'.

1.7. Defining sectarianism

[52]. In grounding any definition, it is important to note the distinction between *ethnicity* (alongside other identity grounds like religious or national identity) which is either 'good' or neutral and to be protected and *racism* (which is generally accepted as 'bad' and which should be eradicated). Both of these elements are central to the defining process in racism and yet they involve very different dynamics. Thus if the process is focussed on *ethnicity* as a qualifier for protection from racism we get something akin to the Mandla v Lee judgement on ethnicity in England and Wales outlined above.

[53]. If, in contrast, we focus on *racism* we get something like the definitive UNESCO *Declaration on Race and Racial Prejudice*:

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[18] As if to further illustrate 'intersectionality', this document also describes sectarianism as 'anti-Irish racism'. While some sectarianism in Scotland is unambiguously anti-Irish racism, some isn't and requires a broader, more inclusive categorisation (like 'sectarianism' or 'ethnicity').

> 1. Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.
>
> 2. Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalised practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.
>
> 3. Racial prejudice, historically linked with inequalities in power, reinforced by economic and social differences between individuals and groups, and still seeking today to justify such inequalities, is totally without justification. (UNESCO, 1978).

[54]. There are explicit (and implicit) definitions of both ethnicity and racism in the ICERD process. In the context of Northern Ireland, therefore, defining begs two separate questions. First, are the categories 'Protestant' and 'Catholic' ethnicities (or, alternatively, 'races' or 'colours' or 'languages' or 'nationalities' or 'national or ethnic origins')? Second, is sectarianism a form of racism? As suggested above, the literature is in comprehensive agreement that inequality and discrimination in Northern Ireland has *something* to do with ethnicity – this in itself is a sufficient standard of proof for protection under international mechanisms. Ethnicity is probably the most permissive of all these categories, so it is the simplest to address but we can also observe in passing that discrimination and inequality in Northern Ireland has also included many of the other CERD and ECRI categories.

[55]. In other words, providing we accept that there is no reasonable case for arguing that sectarianism has *nothing* to with ethnicity and racism, we have a starting point for a more constructive engagement with international standards and practices on racism. Regarding sectarianism as a form of racism is the intellectually soundest and most practical approach. In this context the *defining work falls on the word racism rather than the word sectarianism*.

[56]. For example, the Committee on the Administration of Justice (CAJ) draws directly on The Council of Europe specialist body in the field, the European Commission against Racism and Intolerance (ECRI) to move this forward (CAJ 2013a). ECRI, in its recommendation on key elements of legislation against racism and racial discrimination, defines racism as follows:

> "racism" shall mean the belief that a ground such as race,[19] colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

[57]. Thus using the ICERD definition we get something like the CAJ suggestion:

> Sectarianism shall mean the belief that a ground such as religion, political opinion, language, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. (CAJ 2013a)[20]

[58]. By implication there is something about group identities in Northern Ireland that qualifies them for protection from racism – in other words, the 'perceived religions' 'Protestant' and 'Catholic' are ethnicities in the context of Northern Ireland. As we have observed, other categories – such as 'national identity' or 'race' - would clearly apply even if ethnicity did not. For example, the instruction that, 'No Irish need apply' would be unlawful currently in Northern Ireland as it is in England and Wales. In such a case, at minimum, those citizens of Northern Ireland who hold Irish passports would have recourse to protection by the Race Relations Order on the grounds of both race and national identity.

[59]. This point also begs the question of some of the practical difficulties of defining sectarianism in law. The current 'separated discourses' approach to race and sectarian equality legislation at least raises the issue of having different legislative regimes for different categories of equality. At present, this is dealt with by trying to keep the regimes separate. For example, the RRO is framed as *not* including any group defined by religious belief and political

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[19] ECRI qualifies the use of the term Race by stating "Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation."

[20] 'CAJ, 'urges the definition of sectarianism in legislation to draw on international standards relating to racism and draws attention to the above definition, itself derived from recommendations from the Council of Europe specialist agency'. Committee on the Administration of Justice, August 2013.

opinion. Likewise FETO does not allow claims on nationality.[21] Of course, the simple solution to this is to accept that sectarianism is a form of racism and integrate anti-racism within one ethnicity and racism regime. Such integration should take place on a best practice rather than a lowest common denominator approach. In other words, disparities between the ant-racist and anti-sectarian regimes should be resolved on a 'levelling up' rather than a 'levelling down' basis. In fact, there has been an ongoing discussion regarding a commitment to a single equality act for Northern Ireland - and this could have led to an easy resolution of this issue.

[60]. This does not mean of course that sectarianism should *not* be regarded as a *specific form* of racism. In other words there is every reason to continue to use the term 'sectarianism' as a discrete subset of all racisms in Northern Ireland. This approach helps name the specificity of the dynamic between Protestants and Catholics in Northern Ireland whilst acknowledging that this belongs within the wider paradigm of ethnicity and racism. Like 'antisemitism' or 'Islamophobia' or 'antigypsyism', the recognition of specificity facilitates understanding and addressing of specific features within the context of broader work.[22] In the context of England and Wales anti-Irish racism has been used in just this way to distinguish between the experience of the Irish in Britain and BME groups.

[61]. Likewise, interventions on antisemitism will be different from interventions on antigypsyism, not because they are not both forms of racism but because the specificity of their impacts sometimes demands a differential approach. In other words, there remains a point in continuing to engage with the question of the specificity of sectarianism beyond recognition that it is a form of racism.

[62]. It is also the case the BME communities will want to maintain recognition of the specificity of their experience of racism in Northern Ireland and the continued use of the term sectarianism in the sense above allows this to happen.

[63]. Moreover, it is likely that definitional issues will continue to be live in Northern Ireland because the issue of specificity will be regarded as central to anti-sectarian practice. In this context, the definition of sectarianism still remains important. (In other words, we cannot let the word racism do *all* the work.) In this vein the Institute for Conflict Research (ICR) suggests:

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[21] This also suggests that the simplest legislative device to remove the separation of racism and sectarianism in discrimination law in Northern Ireland would be to remove either or both of these exclusions from existing legislation.

[22] CERD's own work on 'people of African descent' is a further example specific to the ICERD process.

> Sectarianism should be considered as a form of racism specific to the Irish context. Sectarianism is the diversity of prejudicial and discriminatory attitudes, behaviours and practices between members of the two majority communities in and about Northern Ireland, who may be defined as Catholic or Protestant; Irish or British; Nationalist or Unionist; Republican or Loyalist; or combinations thereof. (Jarman 2012: 10)

[64]. My own definitional work is broadly similar to these approaches. It also makes clear the centrality of violence to the dynamics of sectarianism.[23] This focus on violence is at least a reminder of why international protection matters so much. While much of the discussion focuses on discrimination or 'good relations, in Northern Ireland sectarianism is most brutally characterised by – and experienced as – violence. This includes assault, intimidation and widespread population movement, 'ethnic cleansing' and a society divided by 'peace walls' – alongside the ubiquity of the aforementioned 'genocidal imperative'. In practical terms this means that the criminal justice system should be at least as central to anti-sectarianism as anti-discrimination or 'good relations' mechanisms.

[65]. It is perhaps useful to try and conceptualize these different dimensions to sectarianism as help to the defining process (see Table B below). The key issue is that any definition must be capable of embracing the *totality* of sectarianism – it is dangerous and counterproductive to equate it solely with one aspect – such as discrimination or 'good relations'. Moreover, while generally we might expect a synergy between these dimensions, this isn't necessarily the case. Crucially any definition must be able to encompass and critique what the state does or does not do – alongside the widespread tendency to focus on 'evil' behaviour by individuals or communities. It bears emphasis that each of these areas can learn from existing good practice on race and racism in the UK and elsewhere.

[23] I have suggested the following definition: 'Sectarianism in Ireland is that changing set of ideas and practices, including, crucially, acts of violence, which serves to construct and reproduce the difference between, and unequal status of, Irish Protestants and Catholics'. (McVeigh 1995: 643).

Table B: State responses to Sectarianism in Northern Ireland		
Criminal Justice	Discrimination	Good Relations
Addresses sectarian violence and intimidation. Key issues include sectarian hate crime and 'chill factor' but also full gamut of race and criminal justice issues addressed by Macpherson Report. It should therefore be able to engage reflexively with the notions of 'institutional sectarianism' and 'institutional racism'. It should provide baseline data that is at least as robust as CJS statistics on race.	Addresses sectarian discrimination. Key issues includes discrimination in employment and goods and services (including crucially housing and education). Includes traditional fair treatment interventions against sectarian discrimination. It should provide baseline data that is at least as robust as EHRC statistics on ethnicity.	Addresses community/good relations between 'Protestants' and 'Catholics' Key issues include need to define good relations interventions in context of any legally grounded definition of sectarianism. Should abandon 'exceptionalism' and focus on the process of 'tackling prejudice' and 'promoting understanding'.

[66]. Broadly, however, there is not a huge difference between the CAJ and ICR definitions and either of them should be able to address the full range of manifestations of sectarianism from 'institutional racism' to 'good relations'. The CAJ offers a definition rooted in international law; the ICR focuses more on the specificity of the dynamic in Northern Ireland. Crucially both definitions recognise that sectarianism should be seen as a form of racism. The ICR process shows an ongoing engagement with the notion of sectarianism as a form of racism - by both NGOs and the statutory sector - particularly significantly key actors in the criminal justice system CJS (Jarman 2012). Moreover both approaches recognise that there is a pressing need for clarity of definition in support of anti-sectarian practice. Whatever the nuance here, the key point is that *there should be a definition of sectarianism embedded in law*.

[67]. On this the 'Together' strategy states that, 'appropriate consensus will be sought around issues including a definition of sectarianism in the draft legislation emerging from the strategy' (OFMDFM 2014: 19). CAJ and others welcomed this important aim, and stressed the importance of correctly defining sectarianism in legislation. In the present context, despite the term being regularly used by public authorities, there is often no official definition. At other times restrictive or vague definitions are adopted that tend to defer to limited interpersonal manifestations of sectarianism - particularly hate crimes. The tentative definition offered in Together threatens to continue this process:

> For the purposes of this Strategy, sectarianism is defined as: threatening, abusive or insulting behaviour or attitudes towards a

> person by reason of that person's religious belief or political opinion; or to an individual as a member of such a group. (OFMDFM 2014: 19)[24]

[68]. As has already been suggested, it is neither helpful nor sustainable to argue in terms of the e*xceptionalism* of sectarianism. As is detailed above, the primary treaty bodies dealing with anti-racism at United Nations and Council of Europe level have both stated that sectarianism in Northern Ireland should be treated as a specific form of racism. Moreover we can suggest that this approach is much more likely to make the notion of ethnicity 'work' in Northern Ireland. It is important that the concept is made 'fit for purpose' in terms of the provision of baseline data. Currently the census defines ethnicity primarily in terms of *colour* – thus 98.21% of residents are defined solely as 'white'.[25] This does nothing to capture the ethnic complexity of Northern Ireland and nothing to help construct policy or practice on ethnicity. There is an urgent need to find a methodology for 'deconstructing whiteness' in order to provide a statistical basis for equality work – as well as all the many other issues that might correlate with ethnicity. Regarding 'Protestants' and 'Catholics' as separate ethnicities would allow a much more nuanced and accurate approach to ethnicity and equality in contemporary Northern Ireland.

[69]. It is important to suggest that the reference to international human rights principles need not be the whole story on understanding sectarianism as a form of racism. International law indicates the minimum standards established by the international community and these, of course, should be adhered to. It is, however, possible to suggest that the British state position post-Macpherson provided a stronger, more proactive definition of racism, particularly *institutional racism*. It would be odd, therefore, to ignore this in the context of another part of the UK, particularly in the context of reporting to international mechanisms. The recognition of institutional racism was the major step forward in the Macpherson process in England and Wales. It is possible to suggest that it has not been adopted in NI with regard to either racism against BME groups or sectarianism. While meeting the minimum standards enforced by international mechanisms would be an important first step towards better anti-sectarian practice in Northern Ireland, there is every reason to simultaneously integrate best practice definitions from England and Wales.

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[24] This definition was put forward for the NI 2011 Justice Act – to define not sectarianism per se – but sectarian chanting at sports matches. It almost went through but fell as it was argued that this definition might outlaw 'legitimate' political chanting at football matches. Practice in Scotland has seen similar difficulties with 'acceptable' and 'unacceptable' expressions of political opinion.

[25] Source: NI Census 2011: Table KS201NI: Ethnic Group.

[70]. Finally, in terms of international standards and the ongoing debate around defining sectarianism in Northern Ireland, perhaps the most questionable aspect of existing definitions is the use of *political opinion* as a proxy indicator for ethnicity. (This element is also retained in the CAJ definition.) 'Political opinion' is included as a 'ground' in anti-discrimination law in NI because it was and is a basis for indirect discrimination (or more simplistically because the legislator's intent was to prevent the defence of 'I didn't discriminate because s/he was Protestant/Catholic but because s/he was nationalist/unionist').

[71]. More generally, however, it is usual to regard 'political identity' as a formal choice – in the same way that most religious belief is a formal choice. Whether such choices need the same level of protection as ethnicity from international law is a moot point. This becomes even more problematic at the point at which such choices undermine other people's human rights. For example, it would seem difficult to persuade most people that the right to be a Nazi Party member is deserving of international protection.

[72]. In the ICCPR, for example, 'political or other opinion' is protected separately from race. Moreover, international standards do not include political opinion in constructions of ethnicity. In other words, the international practice is that ideological/party affiliation shouldn't sit within 'race' and ethnicity protections. This may be a separate philosophical discussion and it bears emphasis that the 'political opinion' ground was included within the fair employment paradigm for good reason. My own opinion, however, is that this should be removed from race and equality precisely because it does not sit easily with international practice. Arguably, once sectarianism is regarded as a form of racism, and the categories 'Protestant' and 'Catholic' as ethnicities, the reasons for the inclusion of 'political opinion' in fair employment legislation are removed.

1.8. Ethnicity Denial

[73]. It is important that once the implications of ICERD and CoE rulings are understood that they are followed through. While it is both positive and crucial to see that there appears to be no current ethnicity denial by the UK state regarding Northern Ireland Protestants and Catholics, there is some evidence of resistance by some non-state actors. Despite the evidence, ethnicity denial continues through the exceptionalism of sectarianism approach. In this context it is useful to look at some of this debate in terms of broader international law on ethnicity. First, because this helps further clarify issues around 'ethnicity denial' and what it is appropriate for governments to both do and not do in terms of repudiating the ethnicity of different groups. Second, because the current position of some NGOs and the NI Government position

has profoundly negative implications for international law and practice on this issue (McVeigh 2009).

[74]. As we have already seen, the general principle of ethnicity recognition is well established in international law. Article 27 of the International Covenant on Civil and Political Rights establishes that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

[75]. This approach is confirmed by the UN Human Rights Committee: 'The question of the existence of minorities is addressed by the Human Rights Committee in its general comment No. 23 (1994) on the rights of minorities, which elaborates that "the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria". This approach is further supported by CERD and ILO confirmation of the principle of 'self-identification'.[26]

[76]. The issue of ethnicity denial was further interrogated in the 2011 Mission to Rwanda. Ethnicity was not to be ignored or denied even for the best reasons (legacy of genocide):

> 12. While the independent expert recognizes the unique history of Rwanda, the policies of the Government must be assessed as against the State's obligations under international human rights law. Article 27 of the International Covenant on Civil and Political Rights establishes that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group,
>
> to enjoy their own culture, to profess and practise their own religion, or to use their own language". The question of the existence of minorities is addressed by the Human Rights Committee in its general comment No. 23 (1994) on the rights of minorities, which elaborates that "the

[26] The Committee on the Elimination of Racial Discrimination stated in its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group (art. 1, paras. 1 and 4) that "such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned". The International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries also recognizes the principle of self-identification. Article 1, paragraph 2, states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply".

existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria".

13. Considering identification with particular racial or ethnic groups, the Committee on the Elimination of Racial Discrimination has stated in its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group (art. 1, paras. 1 and 4) that "such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned"….

14. The right of individuals to freely identify themselves as belonging to an ethnic, religious or linguistic group is therefore well-established in international law. It is also notable that the existence of a common language or culture does not necessarily negate the possibility of ethnic difference, but may rather be evidence of assimilation of different population groups over generations. Domestic law relevant to ethnicity, identity, minority status, equality and non-discrimination should recognize such rights and ensure that no individual or group suffers from any disadvantage or discriminatory treatment on the basis of their freely chosen identity as belonging to (or not belonging to) an ethnic, religious, linguistic or any other group. (McDougall 2011)

[77]. In short, the protection of ethnic identity is well grounded in international law. Moreover, ethnicity denial – even when it occurs for professedly positive reasons - is not tolerated by international human rights mechanisms. It bears emphasis that neither non-state actors nor *governments should deny ethnicity without careful assessment of the evidence and without consideration of the implications of such a policy*. There is no evidence that the UK government would want to deny the recognition of sectarianism as a form of racism in the CERD and CoE analyses nor any indication that it would refuse to supply appropriate data to either body to help it ensure best practice in delivering equality for Protestant and Catholics in Northern Ireland. But if this were to occur it would be a very serious matter with significant consequences.

1.9. Conclusions

[78]. There has been an increasing focus on race and *intersectionality* in recent years. Recent discourse and practice across difference jurisdictions in the UK has also supported the idea of *convergence* between religious and race discrimination. This further compounds the implicit intersectionality between religion and race embedded in UK law since at least *Mandla v Lee* and copperfastened by the 2010 *Equality Act*. In this context, racism is a clearer and better descriptive for sectarianism in Northern Ireland than 'institutional

religious intolerance'. 'Perceived religious identity' or 'community background' as it is understood in Northern Ireland reflects ethnicity rather than 'faith'. Moreover, following the deliberations of CERD and CoE, even if some academics and good relations practitioners want to continue the wider debate about sectarianism in Northern Ireland *sui generis*, in terms of international law and discourse the process is concluded. Thus the current reality is that whatever else continues, in the context of reporting to and meeting international obligations, the UK and NI governments must operate on the basis that sectarianism is a form of racism and that 'perceived religion' or 'community background' is an ethnicity.

[79]. More generally it is possible to suggest that intellectual integrity and practice would be improved if the conclusions of the international human rights community were to be accepted and applied in other contexts, notably in 'good relations' approaches. Those who engage in ethnicity denial would do well to remember the advice of the NI Human Rights Commission: 'This risks non-human rights compliant approaches, and non-application of the well-developed normative tools to challenge prejudice, promote tolerance and tackle discrimination found in international standards. In particular, it seriously limits the application of ICERD to Northern Ireland, and therefore obligations on the state to tackle sectarianism along with other forms of racism' (2011). More broadly, accepting sectarianism as a form of racism means that much of the *defining work falls on the word racism rather than the word sectarianism*. Thus what is best and most effective in anti-racist analysis and practice can be mobilised to address sectarianism without losing recognition of the specificity attached to the term.

[80]. For the most part the objections to the 'sectarianism is a form of racism' thesis appear to be practical. There clearly are concerns that integrating race and fair employment law would produce contradictions such as uneven protections between different inequalities and 'double dipping' – the attempt to bring a case on the grounds of both fair employment and ethnicity. But both of these objections have been around since the advent of anti-discrimination legislation and neither of these is insurmountable. Moreover there is now a simple template in the operation of the single equality act in the UK. From a human rights point of view, we would expect protections to be 'evened' *up* rather than *down* but this is a technical rather than jurisprudential issue.

[81]. The only other argument that is offered is a 'tactical' one – it is suggested that it is in the interests of either BME groups or Protestants and Catholics to separate the politics of racism from the politics of sectarianism in Northern Ireland. It is dangerous to go too far down the road of 'tactical' discussions of the meanings of terms – international law definitions tend towards 'minimum standards' and they rightly point towards just conclusions however politically

unpalatable the consequences. Nevertheless the key issues in terms of ethnicity and Northern Ireland bear discussion in terms of their broader political impact. First, the tactical approach has not resolved profound issues in terms of BME communities and human rights – Northern Ireland remains in a 'pre-Macpherson state' with widespread and routine 'ethnic cleansing' of BME communities. Second, the notion that human rights discourse alienates Protestants and unionists has changed somewhat in the post-GFA state – certainly the application of protections to sectarian identities is much more likely to offer practical protection to Protestants now than it did thirty or forty years ago when Protestant/Catholic inequality was much more one-sided and absolute.

[82]. This final point that bears emphasis, initially in sociological and political terms but with human rights implications. Traditionally in Northern Ireland anti-discrimination was a paradigm that was seen to disproportionately 'advantage' Catholics. In so far as Catholics were disadvantaged by institutional sectarianism, this was probably broadly true. Although of course this should not matter in terms of human rights discourse, it was central to political discourse around rights and equality. In principle, of course, both Protestants and Catholics were and are protected by anti-discrimination measures and this, of course, is how it should be. But in the new form of state emerging in Northern Ireland, the practical implications of this dynamic have changed and continue to change. In this context such protections may be just as important in reality – as well as principle – to Protestants as Catholics. As Catholics increasingly form the majority in the education sector and the workforce and the state itself, human rights and ethnic equality measures may become as practically important to Protestants in the future as they were to Catholics in the past.

[83]. The Northern Ireland state in 2014 is very different to the one that repudiated the need for anti-racism legislation in 1965 (McVeigh 2013). It is possible to suggest that this new, post-GFA state faces its central challenge in addressing ethnicity and racism. The unwanted sobriquet of 'race hate capital of the world' is one indication of a profound problem with racism while on-going political crisis around culture and identity illustrate the continued potential for widespread sectarian conflict. In other words making sense of the specificity of the dynamics of ethnicity and racism is not a minor footnote to understanding contemporary Northern Ireland – it is crucial to the success of the historic compromise of the GFA.

In this context securing a legal definition of sectarianism grounded in international law is central to human rights and equality and, ultimately, to peace itself.

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Good Relations in Northern Ireland:

Towards a Definition in Law

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October 2014

Special thanks go to UNISON for the financial support in developing this paper

Contents

Good Relations in Northern Ireland: Towards a definition in law[1]

Introduction

[1]. This paper gives effect to the commissioning of an expert briefing paper on 'Good Relations in Northern Ireland: towards finding a definition in law'. The paper was to be presented at an Equality Coalition roundtable discussion. The paper was required to cover matters such as: the evolution, interpretation, application and impact of the 'good relations' paradigm in Northern Ireland from its inclusion as s75(2) of the Northern Ireland Act 1998, through a 'shared future' to the 'Cohesion, Sharing and Integration (CSI) and 'Together: Building a United Community (T:BUC)' strategy; the relationship between 'good relations' on human rights and anti-racism (including sectarianism) goals; the definition of 'good relations' in law in Great Britain and recent debates on incorporating a definition in Northern Ireland. While it stands alone, it can be usefully read in tandem with a previous paper 'Sectarianism in Northern Ireland: Towards a definition in Law', also commissioned by the Equality Coalition.[2] There are key areas of overlap and many of the challenges of finding a definition in law for good relations are mirrored in the similar attempts to define sectarianism.

[2]. Recent discussions in Northern Ireland have confirmed that there is little consensus on what good relations involves. There is arguably even less agreement on any definition in law although most actors agree on the *need* for a definition.[3] Unfortunately, there is little immediate assistance for any such definition in wider international law – this is not a term that can draw immediately on any existing template. Unlike with human rights or equality, there are no obvious 'minimum standards' on good relations to which we might appeal. Of course, good relations appears to be a societal good – it is hard to be 'against it'. It references a whole

[1] A draft of this paper was presented at an Equality Coalition roundtable in Belfast in September 2014. The paper was informed and improved by the discussion at that roundtable. Since the roundtable was conducted under Chatham House Rules in order to encourage unfettered dialogue, individual contributions are not identified but their contribution is much appreciated. The draft was also improved by comments from Daniel Holder of CAJ, Emma Patterson-Bennett of the Equality Coalition, Patricia McKeown of UNISON and Professor Bill Rolston. Remaining errors of fact or judgement remain my own.

[2] Expert Briefing Paper by Dr Robbie McVeigh Sectarianism in Northern Ireland Towards a definition in Law published by the CAJ-UNISON convened Equality Coalition.

[3] This consensus on the need for definition was echoed in the roundtable discussion. While participants brought very different perspectives on good relations to the discussion, there was broad consensus on the requirement for definition.

series of social objectives - like reconciliation, integration, sharing or interdependence – that are both hard to oppose and hard to define. Each of these words has multiple interpretations. Like peace itself, the notion of 'good relations' seems to straddle a whole continuum from the absence of conflict to the presence of justice.

[3]. At best the good relations paradigm comes from a different perspective than human rights and equality; at worst, it can be an *alternative to* human rights and equality. For example, its predecessor community relations paradigm emerged when African American resistance to racism was causing widespread unrest across America cities. But it was not referenced when African Americans were enslaved, or when segregation was entrenched in legislation or when lynching was widespread. In other words, the 'goodness' of relations can be very one-sided and subjective. It is telling that the community relations intervention in the USA, as characterised by Lyndon B Johnson, was to be a *solution to the civil rights movement* rather than a solution to institutional racism (CRS 2014).

[4]. In general, therefore, there are broad concerns regarding the tension between community/good relations approaches to conflict and division and those based on equality and human rights. In Northern Ireland this has taken more concrete form around the potential of community and good relations approaches to undermine the equality and human rights obligations of the Good Friday Agreement (GFA) – although the primacy of the equality duty remains embedded in law. Moreover there has been a specific concern in Northern Ireland around the practical 'misuse' of the good relations duty to avoid or evade equality obligations (CAJ 2013, 2014, 2014a).[4] There are also specific concerns around the ability of the paradigm to address - rather than disguise - ongoing racist violence against Black and Minority Ethnic (BME) communities across Northern Ireland (McVeigh and Rolston 2007).

[5]. These issues acknowledged, there is no getting away from the likelihood that good relations will continue to frame policy in Northern Ireland. There is a developing practice around the paradigm - in Great Britain as well as Northern Ireland. The British model provides a key comparator for work in Northern Ireland. This 'GB approach' emerged from race equality work which has employed the community relations paradigm since the 1960s. Moreover, the term good relations *is* defined in law in England and Wales and Scotland and this remains a key referent in discussions in Northern Ireland. This wider good relations work helps us resist the tendency in Northern Ireland towards *exceptionalism* - the insistence that good relations are both profoundly important and undefined and undefinable. If the good relations paradigm is to be given an increased statutory importance, it needs to be

[4] For example, CAJ and others have been specifically concerned by the ECNI decision to use Equality Impact Assessments (EQIAs) towards good relations objectives (CAJ 2014: iii).

grounded in a definition that meets the basic principles of clarity of law and allows meaningful measurement across objective indicators of success or failure.

The evolution of the community relations paradigm

[6]. The community relations paradigm emerged from the federal state response to civil rights protests in the USA. The US Community Relations Service was created by the Civil Rights Act of 1964 and remains within the US Department of Justice.[5] It describes its contemporary mission thus:

> *The Community Relations Service (CRS) helps local communities address community conflicts and tensions arising from differences of race, color, and national origin. CRS also helps communities develop strategies to prevent and respond to violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion or disability. (CRS 2014)*[6]

[7]. The term 'community relations' was subsequently adopted in the context of early British 'race relations' interventions. The Race Relations Act of 1968 introduced and resourced a national, statutory Community Relations Commission and a series of local Community Relations Councils. A related but distinct intervention appeared with the development of a community relations paradigm for addressing sectarian division in Northern Ireland (McVeigh 2002; McEvoy et al. 2006, Morrow 2013). The appeal of the paradigm in terms of the Northern Ireland conflict was obvious – institutionalised violence and discrimination was resulting in widespread unrest and unambiguously 'bad' relations between different communities. As McEvoy et al suggest: 'From its inception, particularly to the more progressive elements of Unionism, community relations was arguably always a softer and more palatable alternative to rights discourse with its inevitable critique of the state'. (2006: 86)

[5] As CRS records: '"It could be one of the longest and most far reaching steps toward an ultimate solution to the civil rights movement that can be taken." With those words, then-Senate Majority Leader Lyndon B. Johnson, on January 20, 1959, introduced a bill to establish the Community Relations Service. Five years later, CRS was established under Title X of the Civil Rights Act, which President Johnson signed into law on July 2, 1964' (CRS 2014).

[6] In response to recent events in Ferguson, Missouri, the US Attorney General announced: 'In order to truly begin the process of healing, we must also see an end to the acts of violence in the streets of Ferguson. Those who have been peacefully demonstrating should join with law enforcement in condemning the actions of looters and others seeking to enflame tensions. To assist on this front, the Department will be dispatching additional representatives from the Community Relations Service, including [CRS] Director Grande Lum, to Ferguson. These officials will continue to convene stakeholders whose cooperation is critical to keeping the peace' (US Department of Justice 2014).

[8]. While this emerging paradigm drew directly on US and UK community relations approaches to managing racism and anti-racism, it was resistant to identifying sectarianism as a racism. This was ironic since the analysis was almost identical. For example, the template for community relations intervention in Northern Ireland - 'Community Conflict Skills' (Fitzduff 1988) - was borrowed from a US manual on community relations which focussed solely on race. Despite the obvious resonances, however, community relations proved reluctant to address the racism experienced by BME communities in Northern Ireland.[7] It consequently played little part in the efforts to extend some form of British race equality legislation to Northern Ireland. This all changed, however, in the wake of the GFA *even though neither community relations nor good relations had featured in the GFA negotiations.*

[9]. The shift from community relations to good relations was a change imposed by the Northern Ireland Act 1998 rather than emerging organically from anti-racism and community relations practice. Even as late as 2004, the Northern Ireland Community Relations Council reported that: 'an agreed definition for the promotion of good relations does not exist' (2004:6). Nevertheless, when the Community Relations Council launched its *A Good Relations Framework: An Approach to the development of Good Relations*, 'dealing with' racism had been unambiguously integrated into the community relations/ good relations paradigm:

> *Those who have worked on anti-racism and anti-sectarianism approaches in Northern Ireland have acquired decades of experience. The promotion of good relations requires that both these areas of expertise be joined together to provide an approach that will enable* ***racism and sectarianism to be addressed equally and together****. (2004: 5, emphasis added)*

[10]. Historically the paradigm was neither a rights- nor an equality-based approach to racism but rather a state-led conflict management approach to addressing widespread social unrest consequent upon racism. In other words, good relations does not easily sit within a rights-based framework. This said, in both the US and Great Britain it is clearly connected to racism and the consequences of racism – which suggests at least some overlap with the conflict in Northern Ireland. Moreover, while it emerged from other dynamics, it is constantly in dialogue with rights and equality based approaches. In England and Wales and Scotland the community/good relations paradigm evolved *within* race equality legislation – it was a subset of wider attempts to address racial discrimination and inequality. In this sense 'relations' were regarded as integral to the equality project. It was fairly obviously that 'race relations' – including both racist and anti-racist violence - could not be managed without some movement towards equality and human rights that at least addressed the most egregious aspects of racial inequality. Thus in both Northern

[7] Thus the definitive CRC publication 'Approaches to Community Relations Work' made no reference to race or racism (Fitzduff 1991).

Ireland and Great Britain notions about improved 'relations' tended to be integrated with state equality projects. But this has not found much wider resonance. For example in the UK Johnson and Tatam suggest:

> *Good relations do not seem to have much salience beyond the UK at this stage; and even that is somewhat limited as we come to discuss later. Indeed, some international contacts with whom we explored the idea felt unable to contribute much due to the fact that good relations was a 'very Anglo-Saxon' concept. (2009: 26)*

[11]. This remains a legitimate analysis. It might be argued that the failure to find any wider audience for good relations is evidence enough of the limitations of the concept. From this perspective, good relations might be better repudiated than defined and institutionalised. But such an approach would have to disregard the currency that the paradigm continues to have in Northern Ireland.

Moreover, it would have to posit some better paradigm for addressing the issues currently bundled around good relations. Unlike the case with equality and human rights, there is no simple alternative international template.

Interculturalism: good relations in international law?

[12]. Many organisations, including CAJ, have been keen to anchor Northern Ireland policy development in terms of best practice internationally. In particular, it is argued that equality and human rights work should be grounded in international law. This draws on a vast well of international experience as well as providing a key template of 'minimum standards' for any local legislation. Unfortunately the notion of 'good relations' does not feature in international law. As Johnson and Tatam suggest:

> *There is a lack of international material that has a direct bearing on good relations. Many of the concepts described above have an international resonance – in particular contact theory, social capital and human security. Some others, notably community cohesion and integration … are increasingly being used internationally having started off as intellectual approaches rooted in British circumstances. As such, we have found **nothing** that could be directly applicable to the idea of 'good relations' as set out in the [UK] Equality and Human Rights Commission's mandate. (2009: 26, emphasis added)*

[13]. This idea that there is *nothing* that is directly applicable to good relations stands in stark contrast to the way in human rights and equality measures can be directly linked to international law. This is not completely surprising, however. As we have already seen, its antecedent 'community relations' paradigm emerged from a conflict management paradigm rather than from equality or human rights discourse. There is little hard law to support the specific process in Northern Ireland.

[14]. Arguably, however, something akin to 'good relations' is at least implicit in some of the founding principles of international law. For example, in the Preamble to the UN Charter we find: 'We the peoples of the United Nations determined... to practice tolerance and live together in peace with one another as good neighbours'. Beyond this kind of fairly vague sentiment, however, there is not much immediate help in international law for any attempt to ground the concept in law in Northern Ireland. The nearest concept which does find support in international law and practice is the notion of 'interculturalism' or 'intercultural dialogue'. This analysis is supported by Wigfield and Turner in their work on good relations in Britain who – in contrast to Johnson and Tatam – note the resonance with interculturalism (2010: 7).[8]

[15]. The notion of *interculturalism* (sometimes also 'interculturality' or 'intercultural dialogue') has been particularly promoted by the Council of Europe, not least as an alternative to 'multiculturalism' (Barrett 2013). But it is also used by the European Union and the United Nations. Interculturalism shares some of the ambiguity attached to 'good relations' – it is definitively *not* a well-defined legal construct. Nevertheless it clearly resonates with aspects of good relations and it has a much wider international reference. Essentially the notion of Interculturalism encourages exchange and interaction rather than either assimilation or segregation. It embraces openness to change from 'both sides' of any cultural interface - the majority population as well as from minority groups.

[16]. The CoE/European Commission Intercultural Cities project provides a useful definition:

> *Rather than ignoring diversity (as with guest-worker approaches), denying diversity (as with assimilationist approaches), or overemphasising diversity and thereby reinforcing walls between culturally distinct groups (as with multiculturalism), interculturalism is about explicitly recognising the value of diversity while doing everything possible to increase interaction, mixing and hybridisation between cultural communities. Interculturalism is also about addressing issues of cultural conflict or tension (religious customs and requirements, communitarianism, women's rights etc.) openly though public debate, with the involvement of all stakeholders. (CoE 2014)*

[17]. This approach has brought good relations in Northern Ireland onto the radar of different international bodies in reference to implications on anti-racist work. For example in 2011 the Council of Europe Advisory Committee on the Framework

[8] Interculturalism has also been a particularly significant paradigm in the Republic of Ireland – for example, the national body was named 'National Consultative Committee on Racism and Interculturalism'. This has become less influential, however, as this state anti-racist infrastructure has been largely dismantled over recent years.

Convention for National Minorities directly addressed the exceptionalist approach to sectarianism in Northern Ireland:

> *[T]he Advisory Committee finds the approach in the CSI Strategy to treat sectarianism as a distinct issue rather than as a form of racism problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards. Similarly, the CSI Strategy has developed the concept of "good relations" apparently to substitute the concept of intercultural dialogue and integration of society. (CoE 2011: 25)*

[18]. In other words, the CoE is making it clear that *with regard to racism at least* the specificity of good relations work in Northern Ireland does not permit abandoning the broader lessons of an interculturalist approach.

[19]. As was argued in *Sectarianism in Northern Ireland: Towards a definition in Law* (McVeigh 2014), the crucial point is that this issue does not have to be endlessly reworked. The key international bodies have already accepted the analysis that sectarianism is a form of racism. It is sensible to let the word racism do most of the 'work' in Northern Ireland. In other words, once sectarianism is regarded as a form of racism, we can get on with the work of addressing racism rather than worrying endlessly about definitions of sectarianism. But this also means that the discipline of anti-racist paradigm should be applied to 'good relations'. In this context it does at least overlap with the notion of interculturalism or intercultural dialogue. Moreover, the international monitoring bodies are at least encouraging 'good relations' to be seen in this way. Neither is this process all one way. There is some evidence that government in Northern Ireland has been addressing this point. For example, there is reference to interculturalism in the TBUC strategy: 'We believe that an approach based on intercultural dialogue can help facilitate greater integration and build a more united community' (OFMDFM 2013: 79, 88-9).

[20]. Thus interculturalism may well offer a way forward in terms of practice that at least overlaps with 'good relations' and is grounded in international law and practice. The key point is that international monitoring bodies are saying that good relations is not enough on racism and sectarianism. Moreover OFMDFM are at least acknowledging this issue in the TBUC strategy. There is certainly a window of opportunity for further work in this vein, especially as it dovetails with developments in good relations in England and Wales and Scotland. This does not, however, mean that any convergence of good relations and interculturalism is a silver bullet that might end tensions and difficulties associated with the definition of good relations in Northern Ireland. The interculturalism paradigm is a far from finished article anywhere. While it is an increasingly important international term and it does provide a wider frame of reference for Northern Ireland based work, it does not provide a simple template for good relations work – nor any simple transferable definition. It is important, however, that the development of definitions for good relations makes

explicit the resonance between the two terms and encourages ongoing dialogue with best practice on Interculturalism in Europe and elsewhere in the world.

The evolution, interpretation, application and impact of the 'good relations' paradigm in Northern Ireland

[21]. Broadly there were three key stages in the evolution of good relations paradigm in Northern Ireland. First it was named in legislation in Section 75(2) of the Northern Ireland Act 1998. This new phase in 'relations' interventions by the state did two key things that continue to frame discussions around good relations in Northern Ireland. First – drawing on developments in Britain around race equality - it signalled that '*good relations*' rather than '*community relations'* was the defining concept in this new statutory approach. Second, it made clear that this notion of good relations was to *include* race alongside Protestant/Catholic relations and *exclude* other equality grounds.

[22]. Later the role of good relations expanded further and it became the key framing device for 'normalisation' in Northern Ireland in the *A Shared Future* document of 2005. Finally, it became a leitmotif of the attempts to address ongoing tensions and conflict (within both government and wider society) through the recent TBUC strategy. In this sense good relations is now at least symbolic of what holds the new state together. The interpretation and meaning of good relations has changed markedly over this period so it is useful to trace this evolution in depth.

Section 75(2) of the Northern Ireland Act 1998

[23]. Even though the term good relations was not mentioned in the GFA, it was integrated into the Northern Ireland Act 1998 through which the British Government provided the legal context for the implementation of the agreement. Section 75 of the Northern Ireland Act 1998 placed a key statutory equality duty on public authorities. This was the outworking of the British State commitments on equality that had been central to the GFA:

> *(1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity—(a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; (b) between men and women generally; (c) between persons with a disability and persons without; and (d) between persons with dependents and persons without.*

[24]. But Section 75 then went on to introduce a new and somewhat unexpected good relations duty:

(2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

[25]. There are a number of important dimensions to this. First, the term appeared in law for the first time in Northern Ireland.[9] Second, it integrated 'anti-sectarianism' and 'anti-racism' for the first time. Third, the hierarchy between equality and good relations was firmly and clearly established – the legislation makes it clear that equality 'trumps' good relations in the sense that good relations must be promoted without prejudice to equality. In other words, it is explicit that equality must take precedence if there is a contradiction between equality and good relations.

A Shared Future 2005

[26]. When the state's 'Good Relations' strategy emerged in the OFMDFM (Office of the First Minister and Deputy First Minister) *A Shared Future* document in 2005 (issued under direct-rule), the importance of good relations had been fleshed out and foregrounded. This was now presented as a 'Policy and Strategic Framework for Good Relations in Northern Ireland'. There was some attempt to envision this approach:

The establishment over time of a normal, civic society, in which all individuals are considered as equals, where differences are resolved through dialogue in the public sphere, and where all people are treated impartially. A society where there is equity, respect for diversity and a recognition of our interdependence.

[27]. The document also engaged with the Community Relations/Good Relations overlap:

There was criticism that the terms 'community relations' and 'good relations' were not properly defined. 'Community relations' refers specifically to division between the Protestant and Catholic communities in Northern Ireland. 'Good Relations' refers to Section 75 (2) of the Northern Ireland Act 1998 which includes persons of different religious belief, political opinion or racial group. (2005: 63)

[28]. Importantly therefore the racism/sectarianism synthesis within good relations was complete.[10] The blueprint for an integrated 'Good Relations' response to both racism

[9] Shortly before the 1998 Act, the Race Relations (Northern Ireland) Order 1997 was introduced and for the first time protected ethnic minorities from discrimination. Article 67 of the Order does place a statutory duty on local councils only, to eliminate unlawful discrimination and to promote equality of opportunity and 'good relations' between different 'racial groups'. This provision is rarely used.

[10] Although technically this emerged in a period of Direct Rule during a period of suspension of the devolved post-GFA institutions.

and sectarianism was in place. This has largely continued. This 'convergence' is important since it further undermines the case for the exceptionalism of sectarianism. Since racism and sectarianism are being addressed equally and together while other equality issues are being excluded, it further begs the question of whether there is any substantive difference between racism and sectarianism *at all*.

[29]. *A Shared Future* also addressed the relationship between equality and good relations directly:

> *Concern was expressed that the equality agenda would be suppressed to promote the good relations agenda. However, we regard equality of opportunity and good relations as complementary and believe that good relations cannot be based on inequality, between different communities or ethnic groups. To add emphasis to this point, the new policy and strategic framework has included as a fundamental principle: "***Progress towards a shared society must be built upon the significant progress that has been achieved in promoting equality of opportunity and human rights***." (Original emphasis)*

[30]. The document also acknowledged contradictions of this approach in terms of other equality constituencies. Many people were concerned that 'good relations' would not explicitly address homophobia or sexism within the paradigm. Nevertheless, the paradigm was located very specifically within the Section 75 categories – in this sense it was specifically about race and sectarianism and specially not about other forms of inequality or hate crime or violence:

> *This new good relations policy and strategic framework aims to address particular manifestations of community division between the Section 75 (2) categories – persons of different religious belief, political opinion or racial group. This does not diminish the importance of other equality categories and this document represents just one facet of a multi-dimensional approach to the promotion of equality of opportunity and good relations. (2005: 62)*

The TBUC strategy 2013

[31]. The most recent development in evolution of the good relations paradigm in Northern Ireland is the *Together: Building a United Community* (TBUC) Strategy, published in May 2013. This draft strategy, 'reflects the Executive's commitment to improving community relations and continuing the journey towards a more united and shared society'. It bears emphasis that good relations is by this stage absolutely central to the presentation of policy – at least symbolically:

> *The Together: Building a United Community Strategy outlines a vision of "a united community, based on equality of opportunity, the*

desirability of good relations and reconciliation - one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance".

[32]. The document makes it clear that the strategy represents a 'major change in the way that good relations will be delivered across government'. A key action of the strategy will be the establishment of an independent and statutorily-based organisation to provide advice to government and to challenge all levels of government in terms of its performance in improving good relations:

The Equality Commission already fulfils a similar role in terms of monitoring public authorities against the statutory duties in Section 75 of the NI Act 1998. We will therefore establish an Equality and Good Relations Commission to change their roles and responsibilities to include good relations, this will incorporate the existing role and new good relations role. This will place significant functions currently under CRC on a statutory basis.

[33]. The document also confirms the difference between equality and good relations but insists that equality remains central to the strategy:

Therefore, in our decision making and policy implementation, we regard the promotion of equality of opportunity as an essential element in the building of good community relations and consider that good relations cannot and should not be built on a foundation of inequality.

[34]. Despite this, however, the concept appears as elusive as ever when definition is required:

In relation to the draft legislation to establish the Equality and Good Relations Commission we will seek to find an appropriate consensus around a definition of sectarianism, based on this Strategy, to be included in that legislation.

[35]. A new Equality and Good Relations Commission is regarded as key to this process:

In order to achieve this we will amend the remit, roles and responsibilities of the existing Equality Commission and incorporate the following functions into an Equality and Good Relations Commission: Advice and challenge to Government; Research and evaluation on good relations issues; Scrutiny; Scrutiny of and challenge to District Council Good Relations Delivery Programme; and Regional advisory role to individuals and groups working on good relations issues.

[36]. TBUC also details the statutory duties of the Equality and Good Relations Commission which flow from these augmented functions:

> • To challenge and scrutinise Government in its progress towards meeting the commitments and aims of this Strategy;
>
> To scrutinise and provide advice on action plans arising from this Strategy;
> • To enforce and investigate as appropriate where there is a failure to comply with section 75(2);
> • To promote good relations across all sections of the community and support the development of best practice across the public service and the private sector;
> • To commission appropriate research in order to inform the implementation and delivery of this Strategy;
> • To carry out an assessment of progress against the objectives of this strategy and produce a report to the Assembly every two years;
> • To provide advice and scrutiny to the Ministerial Panel in the development of the District Council Good Relations Programme;
> • To challenge District Councils in respect of their performance against Good Relations Action Plans;
> • To submit an annual work plan to OFMDFM and report on progress against agreed targets;
> • To facilitate the sharing of best practice on a North-South, East-West, European and international level; and
> • To connect actions to promote good relations at a regional, sub-regional and localised level. (2013: 105-6)

[37]. Throughout this sweeping plan, however, there is a profound failure to address the question of just what this good relations work involves. Without a definition – and in the face of very different perceptions of what it *should* mean – this is a recipe for disaster. Moreover, the continued failure to 'go the final step' and identify sectarianism as a form of racism in line with the recommendations of the international bodies carries with it many contradictions. In integrating racial justice with sectarianism which remains undefined and good relations which remains undefined, the strategy threatens to do more harm than good.

[38]. These contradictions are at their most extreme when they overlap with issues that should be more central to criminal justice. Since 'hate crime' might be regarded as the quintessential example of 'bad relations', it is unclear why some equality constituencies should be addressed by good relations while others should not.[11] The

[11] This issue is raised throughout TBUC – particularly in terms of homophobia and the LBGT community. Thus TBUC acknowledges: 'Lesbian, gay, bisexual and transgender people have and do play a role in building good relations across our community. This was highlighted extensively throughout the public consultation when a number of individuals and representatives of lesbian, gay and bisexual groups, and transgender people, spoke of the need to apply good relations principles more widely across all s75 groupings (2013: 16-17).

TBUC document appears to collapse the difference between racism and sectarianism in Northern Ireland almost completely (OFMDFM 2014). Here the new paradigm of 'good relations' is used to integrate racism and sectarianism and separate them from other rights and equalities constituencies and issues. They become 'twin blights' to be addressed together. But, just as importantly, they are presented as something to be addressed separately from other forms of discrimination or hate. In direct contrast, the construction of 'hate crime' in Northern Ireland creates an unusual profusion of categories. The PSNI, approach leads to *three* separate sub-categories of hate crime connected to racism and sectarianism (and therefore, presumably, to good relations) – 'racist', 'sectarian' and 'religious'.[12] In all there are six hate crime categories recorded by the Police Service of Northern Ireland (PSNI) - sectarian, racist, homophobic, faith/religion, disability and transphobic. Yet only three of these is presented as directly negative in terms of good relations in the TBUC strategy. This contrasts starkly with the situation in the UK where the application of good relations 'extends to all equality strands, including social class' (Wigfield and Turner 2010: 9).

The relationship between 'good relations' and human rights, equality and anti-racism goals

[39]. There is an ongoing ontological tension in terms of discussions of what precisely good relations is about. This is one of the reasons that an acceptable definition is proving so elusive. At the heart of this is the tension between two contradictory formulations of good relations. First, there is the idea that good relations is really about human rights and equality and anti-racism – in other words it should be understood solely or primarily in terms of these goals. (Here the approach is best captured by the work on good relations of the Equality and Human Rights Commission (EHRC) in Great Britain – it is perhaps not surprising that an equality and human rights commission would define good relations in terms of equality and human rights.) At the other end of the spectrum is the notion that good relations is essentially separate from both human rights and equality. This is most highly developed in the work of Tom Hadden– which suggested that issues of 'sharing and separation' were both *different from* and *just as important as* issues of equality (Boyle and Hadden 1994; Hadden et al 1996). This approach acknowledged that sometimes one might take precedence over the other (CAJ 2013: 6-11).

[40]. This difference was in effect recognised in the Northern Ireland Act 1998, although it also made clear that equality obligations retained primacy over those of good relations. It has also been present in some of recent debates in which the notion of the 'equal importance' of equality and good relations was to the fore. Much of the time, however, this ontological difference is implicit in the positions that different

[12] PSNI 'Hate Crime' http://www.psni.police.uk/index/advice-and-legislation/advice_hate_crime.htm

actors take on good relations. And often is simply assumed that they cannot but be complementary. But there are obvious contradictions. For example, human rights and equality were – alongside security – presented as two of the three pillars of the Good Friday Agreement. Neither 'community relations' nor 'good relations' played any significant part in the agreement. Yet every Council across Northern Ireland has one or more centrally funded 'good relations' officers - there is no equivalent programme for equality or human rights officers[13].

[41]. The notion of good relations is equally complex and contradictory in terms of its relationship with racism and anti-racism. As we have seen community relations in Northern Ireland began as a paradigm that explicitly disavowed any connection with racism. From this perspective it was 'about' 'Protestant and Catholic communities' and sectarianism was defined as something other than racism. This has changed more recently as anti-racism has been grafted on – sometimes completely unthinkingly – to the existing community relations paradigm as it rebranded as good relations. Where this becomes particularly problematic is the point at which it begins to distort anti-racism in Northern Ireland (McVeigh and Rolston 2007). For example, it is not hyperbole to suggest that relations between white communities and BME communities are at an all-time low in Northern Ireland. It can be suggested that the BME communities have lived the peace process in reverse – surviving the worst of the conflict by being to an extent removed from unionist/nationalist tensions – yet seeing the ratcheting up of racist violence in the context of 'peace' as Northern Ireland becomes routinely characterised as the 'race hate capital of Europe'. As racist violence escalated across Northern Ireland through 2014, the PSNI finally publicly confirmed that the UVF is behind some of this violence.

We might expect that this would indicate pathologically 'bad relations' in anybody's book. Yet it has provoked little sense of crisis – and little action - across the state or politics or the contemporary 'good relations' infrastructure. Despite the rhetoric of TBUC, addressing increasing racist violence appears to be a job for someone else – it is not good relations work.

[42]. In this sense, good relations work continues to distort anti-racism in a profoundly problematic way. It is emblematic of this reality that within the OFMDFM 'racial equality' is situated within the *Good Relations and Building a United Community* 'theme' rather than the *Equality, Human Rights and Social Change* 'theme'.[14] It might be suggested that anti-racism is primarily about 'equality, human rights and

[13] Thus the outworking of policy often compounds the difference between equality and good relations objectives.

14 OFMDFM 'Equality and Strategy' http://www.ofmdfmni.gov.uk/index/equality-and-strategy.htm. Arguably this should not be an either/or – anti—racism should straddle equality and good relations. But if it is to be either/or, race equality work should sit within an equality rather than a good relations paradigm.

social change' not about 'good relations' almost anywhere else in the world. But this is not simply about symbolism. Despite the frequent 'Northern Ireland is the race hate capital of Europe' warnings, BME communities have had to wait for over five years for a new Race equality strategy. In other words, in Northern Ireland at least, all the focus on good relations has proved to be singularly ineffective in driving any effective anti-racist strategy. And this is a society where the police are acknowledging that a terrorist group is leading a campaign of racist violence and 'ethnic cleansing' against migrants and people of colour.[15]

[43]. Meanwhile, in GB the trajectory has been somewhat different. Community relations there was always primarily about racism. As the good relations paradigm took over, other equality constituencies were grafted onto the core project of improving relations between different ethnic groups. In other words, while the good relations paradigm has extended to cover a whole range of other equality constituencies, its practice remains grounded in anti-racist work. Writing in 2009, Wigfield and Turner suggest:

> *the closest form of good relations that is currently in operation relates specifically to race under the Race Relations Act (1976) (as amended in 2000) under which public authorities have a general statutory duty to promote race equality. The duty has three distinct parts: to work to eliminate unlawful racial discrimination, to promote equality of opportunity and, crucially for the GRMF [Good Relations Measurement Framework],* ***to promote good race relations****. Johnson and Tatam (2009) rightly point to the importance of the guide for public authorities on promoting good race relations, which was produced by the CRE in 2005. The guide identified five key principles which were all necessary to achieve good race relations:* ***Equality*** *– equal rights and opportunities for everyone in all areas of activity.* ***Respect*** *– acceptance of the individual right to identify with, maintain and develop one's particular cultural heritage, and to explore other cultures.* ***Security*** *– a safe environment, free from racism, for all.* ***Unity*** *– acceptance of belonging to a wider community, and of shared values and responsibilities, rooted in common citizenship and humanity.* ***Cooperation*** *– interaction by individuals and groups to achieve common goals, resolve conflict and create community cohesion. All five of these principles are directly relevant to achieving good relations…. (2009:4-5)*

[44]. The tension between the situation in Northern Ireland and Great Britain is also marked in terms of the *focus* of good relations work. In England and Wales in particular, good relations has reference to the whole range of statutory equality constituencies *as well as class*. In contrast, in Northern Ireland, good relations has

[15] BBC News. 2014. UVF 'behind racist attacks in Belfast' 3 April 2014. http://www.bbc.co.uk/news/uk-northern-ireland-26871331

been very firmly - if clumsily and arbitrarily - constructed as something that refers solely to sectarianism and racism. So the grounding in anti-racism of a broad good relations paradigm in Britain contrasts starkly with a much narrower good relations paradigm in Northern Ireland - which has palpably failed to intervene effectively in a situation of 'bad relations' characterised by racist violence.

[45]. Of course it may be argued that this is a consequence of poor practice rather than a bad paradigm. At present existing legislation accepts, at least implicitly, that there is no necessary correlation between equality and good relations – they are formulated as different, if related, things. There is nothing unusual in this – unless good relations were a direct function of equality, we might expect that the two are not always complementary.[16] In other words, despite the insistence of many good relations practitioners, there are situations in which the equality and community relations agendas maybe directly antagonistic. By the same token, we can suggest that there is no necessary correlation between good relations and human rights. But if this is the case, it becomes clear that legal protection from racism is likely to come primarily through equality and human rights measures, not through the good relations paradigm. In this context, it is important that good relations does not undermine human rights or equality protections in any way.

The definition of 'good relations' in law in Great Britain

[46]. There are specific reasons for looking at England and Wales and Scotland beyond the broad point that they are part, alongside Northern Ireland, of UK state reporting and implementation responsibilities on human rights and equality. First, there is the issue of overlap and synergy between definitions. When the term 'community relations' was defined in law in the 1968 Race Relations Act, the connection to race was explicit: *"community relations" means relations within the community between people of different colour, race or ethnic or national origins'*. When the term 'good relations' first appeared in legislation in the 1976 Race Relations Act it also remained unambiguously within the broad ambit of race equality. The CRE and others were given a statutory duty, 'to promote equality of opportunity, and good relations between persons of different racial groups generally'. But this specificity has changed over time. The UK reading of good relations is now a particularly permissive one. As Wigfield and Turner confirm:

> *Although the concept of good relations has, to some extent, emerged from the desire to achieve good race relations in Britain and as a way to challenge sectarianism and racism in Northern Ireland, it is important to emphasise that the GRMF extends to all*

[16] For example by analogy, we might suggest that bussing in the US had an important positive impact in terms of equality since it improved the quality of education of many African Americans. But the 'race' rioting that accompanied such bussing was almost definitively negative for 'community relations'.

equality strands, including social class. Indeed, the introduction of a good relations duty across the seven equality strands on all public authorities within the Equality Act 2010 augments the widening of good relations beyond race relations and religious belief. Good relations is thus intended to cover in a non-exclusive and non-normative way the interaction and coexistence of economically, culturally and socially diverse populations in the UK. (2010: 9)

[47]. Second, there are issues of 'read across' between Britain and Northern Ireland - in terms of both good and bad practice. Scotland provides an additional comparator as a devolved administration managing the tensions between national and regional dynamics around good relations (Dobbie 2010; EHRC Scotland 2012). In the Scottish case, this has led to the contemplation of jettisoning the concept altogether:

The primary barrier to evidencing good relations is perhaps the issue of conceptualisation and language…. [T]he terminology of good relations is not well understood outside of the equality movement. To achieve recognition of good relations, or to further community cohesion work, we may need to consider dropping the phrase almost entirely from our lexicon, or accept that it has a limited compliance-centred application. (EHRC Scotland: 7)

[48]. Either way, it is particularly important to pay close attention in Northern Ireland to good relations practice within the relatively progressive regime on race in Great Britain.[17] This is not, of course, a one-way process. Ironically, perhaps, much of the development of the good relations paradigm in England and Wales references the development in Northern Ireland (Johnson and Tatam 2009: 26-9). Thus, the EHRC review suggests: 'A lot of the initial work on defining good relations and the essential prerequisites necessary for good relations has been undertaken in Northern Ireland' (Wigfield and Turner 2010: 15).

[49]. From this departure, however, the paradigm that emerges in Great Britain looks significantly different. First, it is clearly located in anti-racist discourse. Second, it now references all equality constituencies. Third, it specifically references its relationship to human rights and equality. (For example, the Equality Act 2006 defines good relations very specifically in terms of 'respect' for human rights and equality. At this point, however, it is not clear what the added value of the label 'good relations' is. It is essentially suggesting that equality and human rights are positive in themselves – which most people would support – but adding little extra to the notion of good relations.) Finally, the term is defined in law. This is obviously significant since, as we have seen, there is little else to anchor the term to in terms of international discourse beyond the work that we have mentioned on interculturalism. It is also significant since it occurs within another jurisdiction of the UK. Legislation

[17] See, for example, Wigfield and Turner's review of the GRMF (2013). It seems obvious that this kind of analysis should be informing good relations practice in Northern Ireland.

does not have to be identical across the different devolved administrations, obviously, but it would seem ridiculous to offer a definition in law in Northern Ireland that was significantly removed from the existing legal definition for England and Wales and Scotland.

[50]. On this front there have been recent attempts in Great Britain to improve the robustness of the term (Johnson and Tatam 2009; Wigfield and Turner 2010). It has found more precise definition in recent equality legislation. For example, the Equality and Human Rights Commission was created by the Equality Act 2006 which provided it with a 'good relations' mandate to build:

> *...mutual respect between groups based on understanding and valuing of diversity, and on shared respect for equality and human rights.*

[51]. Section 10 of the 2006 Act defined the Commission's responsibilities in respect of promoting good relations, as to:

> (a) promote understanding of the importance of good relations:
> (i) between members of different groups, and
> (ii) between members of groups and others
> (b) encourage good practice in relation to relations:
> (i) between members of different groups, and
> (ii) between members of groups and others
> (c) work towards the elimination of prejudice against, hatred of, and hostility towards members of groups, and
> (d) work towards enabling members of groups to participate in society.

[52]. This broad approach to good relations was confirmed by the Public sector equality duty included in the 2010 Equality Act:

> (1)A public authority must, in the exercise of its functions, have due regard to the need to—
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

[53]. This Act also offered a definition of good relations:

> *Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to— (a) tackle prejudice, and (b) promote understanding.*

[54]. It has been noted that this formulation also includes a subtle shift from 'promoting' to 'fostering' good relations (EHRC Scotland 2012: 4). If anything, however, this makes the approach even more lacking in conceptual rigour. Finally the Act made explicit the 'protected characteristics' – essentially the core equality constituencies to be addressed by good relations interventions:

> *The relevant protected characteristics are—age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.*

[55]. It bears emphasis that these protected characteristics are much wider than those in Northern Ireland. In addition, as Wigfield and Turner make clear:

> *Although socio-economic status/class was not listed as one of the equality strands, it is increasingly recognised that it needs to be taken into account and has implications for good relations. It is also being added to the other measurement frameworks. (2010: 3)*

[56]. Given the lack of clarity and agreement in Northern Ireland, adapting the statutory good relations duty on public bodies in GB definition in s149(5) of the Equality Act 2010 is the closest to being definitive: *good relations …means having regard, in particular, to the desirability of —(a) tackling prejudice, and (b) promoting understanding.*

[57]. Finally there are important lessons for Northern Ireland in the process of the EHRC generating a Good Relations Measurement Framework (GRMF) for Great Britain (Wigfield and Turner 2010). The GRMF aims to produce a set of indicators that collectively 'paint a comprehensive picture of the current state of good relations in Great Britain, for England, Scotland and Wales, and in individual localised areas'. The Commission's stated aims are that the GRMF will:

- contain indicators that paint a comprehensive picture of the current state of the nation in terms of good relations;
- have the confidence of the Commission and its major stakeholders, including the government, statisticians and academics; and
- be developed through a consultative process to support legitimacy. (Johnson and Tatam 2009: 1)

[58]. The EHRC report outlines the Good Relations Measurement Framework which comprises four key domains and associated indicators (Wigfield and Turner 2010). These indicators were arrived at through a complex methodological process involving a quantitative review, focus groups and stakeholder discussions.

The four domains selected to measure good relations are: *attitudes; personal security; interaction with others;* and *participation and influence*. The report also discusses the reasons for the selection of each domain and indicator, considers how well these can be measured by existing research and identifies gaps in the evidence.

[59]. Clearly the GRMF has vitally important lessons for Northern Ireland. We would expect the TBUC strategy to invite a similar degree of objective measurement and assessment. It bears emphasis, however, that this Framework for Great Britain is based upon the relatively tight definition of good relations contained in the 2010 Act. The farther the Northern Ireland definition of good relations from the Great Britain definition, the lesser the relevance of lessons from interventions like GRMF. The looser and woollier the definition used, the less easy it is to provide any measurement at all.

Recent debates on incorporating a definition in Northern Ireland

[60]. In the absence of any definition of good relations in law, there are a number of fairly vague, sometimes overlapping, sometimes contradictory definitions. Many of these are a survival of the old community relations paradigm with racism crudely tacked on – or ignored altogether. But there has been some new work in this area since 1998. For example, the Assembly Code of Conduct states*, "Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law".*

[61]. Since the ECNI is supposed to take responsibility for this process in the TBUC proposals, its current views are particularly salient. The Equality Commission's 'working definition' of good relations as set out in its Good Relations Guide (2007) is:

> *The growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of the society but seek to promote respect, equity and trust and embrace diversity in all its forms.*

I have been critical of this type of definition in the past, in particular in its divergence from the post-GFA equalities framework (McVeigh and Rolston, 2007, page 15). What is most striking however is that the working definition diverges significantly from how the same paradigm is defined in the rest of the formal jurisdiction. This threatens to return Northern Ireland to a pre-1997 situation in which people find themselves in a substantially different, and markedly weaker, race equality regime.

[62]. The ECNI has also made interventions to encourage wider adoption of its broad framing of good relations:

> *We recognise that neither 'good relations' nor 'promoting good relations' is defined in legislation nor is there a commonly agreed definition. The Commission has however set out in its guidance for public authorities on guidance on promoting good relations its working definition of good relations in order to provide further clarity to public authorities:*

"the growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms."

[63]. In addition:

we are of the view that 'promoting good relations' is not primarily concerned with 'acting justly' or 'promoting a culture of respect for the law'. We also consider that the draft code does not fully capture good relations as a positive and dynamic concept. Instead we consider that good relations is concerned with proactive steps that embrace diversity and promote respect, equity and trust.[18]

[64]. There has also been recent discussion in the context of Assembly discussion at the Further Consideration Stage of the Local Government Bill.[19] At this point there appeared to be a desire for consensus on definition from both unionists and nationalists. In other words, at least the need for definition was recognised.

[65]. However, the ensuing discussions suggested that there was unlikely to be an immediate consensus on any definition. For example, Anna Lo spokesperson for the Alliance suggested:

We are not convinced that a definition is required, if no definition is required in the Northern Ireland Act and as there has already been 15 years' worth of good work with the legal framework that exists. More than that, I am deeply concerned that the amendment makes no reference to reconciliation, integration or sharing. Those must all be part of our approach to good relations, and we cannot leave them out. To do so would be to roll back valuable good relations work and would limit good relations work far too narrowly. A comprehensive definition is needed if one is to be applied at all. This definition is not good enough and could undermine work done so far.

[66]. This contrasts starkly with the position adopted by Colum Eastwood speaking in response for the SDLP:

[18] A CAJ briefing also argues that at times a 'literal and face value' definition of 'good relations' has been operationalised whereby the duty is engaged by actions the 'other side' takes umbrage with. CAJ states that "Such good relations discourse does not tend to make reference to grievances of the representatives of ethnic minorities, and hence in practice is about the competing views of the representatives of unionism and nationalism" and voices concerns the duty could simply become a political veto. The example given is the Equality Commission investigation into the naming by Newry council of a play park after IRA hunger striker Raymond McCreesh. The Investigation Report states that "the good relations duty is 'certainly engaged' in the context of both a complaint by the Orange Order to the Council and that there has been 'much public discussion in the context of good relations and a shared future'" (CAJ, 2014a).

[19] http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/01-April-2014/

I would have loved to have read your definition of good relations, but you made no attempt to define it in the Bill. We did, and we did it on the basis of ensuring that objective need and equality will not be trumped by good relations or anything else. However, we stand by the principles of community relations and good relations, and we will not allow them to be used to veto policies on the basis of need and to stop equality becoming a central part of our society and this Government. People fought very hard to ensure that we have a rights-based approach in this society and that we can develop that. All the work around the Good Friday Agreement — not everybody in this room says they agree with it, but they are all here — was about ensuring a rights-based approach. That was because we have a history in this society of not having had that approach. People in this city and in the North of Ireland had to fight and march in a peaceful and democratic way even to be allowed to use their vote. I think that people very clearly understand why equality is an essential part of this.

[67]. Thus even two of the most committed supporters of the 'good relations' paradigm appear poles apart on the issue of definition. CAJ and others made interventions in this context (CAJ 2014). In the event the Minister put forward a clause which stated "the reference to improving the social well-being of the district includes promoting equality of opportunity in accordance with section 75 of the Northern Ireland Act 1998 and, without prejudice to this, having regard to the desirability of promoting good relations;" which, as the Minister told the assembly was "framed to ensure that the type of existing safeguards between equality and good relations in section 75 of the Northern Ireland Act 1998 are maintained." All parties accepted this formulation which now stands as section 66(3) (a) of the Local Government Act 2014.

[68]. In this context, cross-party support for any new definition appears unlikely in the immediate future. As it stands consensus is reached only in the sense that political actors are forced back to the 1998 legislation which protects the primacy of equality but provides no definition of good relations.

[69]. There are a number of salient points here. First, the notion that a definition is not needed is ridiculous. The basic principle of clarity in law means that the increasing statutory prominence of good relations must take place in a context in which people are clear about what kind of behaviours are being made unlawful or inappropriate. The very fact that there is such a contradictory discussion confirms the need for definition. It seems impossible to have an intervention which is presents as having such relevance yet incapable of defining itself. This becomes ever more problematic as it is suggested that good relations assumes the enhanced status suggested in the TBUC strategy. If good relations cannot be defined in Northern Ireland, it would be better to jettison the term completely and accept that most of what it attempts to achieve is already implicit or explicit within equality and human rights work.

[70]. Second, as we have seen, there *is* already a simple, functioning definition in law in the UK. Although this definition did not attract sufficient cross-part support to be included in the Local Government Act, this remains the best option available. Unless there is unanimity across the Assembly, it seems inappropriate to generate a definition of good relations which is itself divisive. It would be ironic if the definition of good relations were itself to become a manifestation of 'bad relations'. In this context, the simplest and best solution is to adopt the definition already embedded in UK law – at least until some other 'appropriate consensus' is reached. In other words, in the absence of any other definition, adapting the statutory good relations duty on public bodies in GB definition in s149 of the Equality Act 2010 remains the best template: good relations …means having regard, in particular, to the desirability of — (a) tackling prejudice, and (b) promoting understanding.

[71]. Finally, this definition is useful because it emerged from a race equality paradigm. This should reinforce the reality that 'good relations' – as framed by the Northern Ireland Act – *should* be as responsive to bad relations between ethnic groups as bad relations between Protestants and Catholics. Yet ongoing racist violence played almost no role in recent debates. There are two ways to remedy this – either the good relations paradigm transforms its capacity to address the contemporary reality of racism in Northern Ireland or it absolves itself of this responsibility. In other words, if good relations cannot address the profound challenge of contemporary racism, the concept may have to be disarticulated again and represented as 'community relations' between Protestants and Catholics once more.[20]

[72]. But this raises its own contradictions since the notion that sectarianism is a form of racism is now recognised by the key international bodies. Moreover, as we have seen, the trajectory in Britain is completely in the opposite direction – good relations is becoming ever more permissive in its target interventions. Certainly the paradigm in Northern Ireland cannot have it both ways. Either good relations is solely about Protestant/Catholic relations and these are so exceptional that they require an entirely separate approach from anti-racism; or the paradigm must accept the discipline that comes from working on racism. If good relations in Northern Ireland continues to include anti-racism then the paradigm cannot be allowed to distort work on racism in the negative way that it has over recent years. In terms of the *sui generis* approach, there are plenty of arguments to suggest that this is not a sensible option.[21] It is much more practical for Government to continue to integrate approaches to anti-sectarianism with broader anti-racism as they have done over recent years. This is precisely the approach supported by CERD and CoE through

[20] For example, this could be achieved relatively easily legislatively by removing the 'or racial group' element from Section 75 (2) which would leave good relations in Northern Ireland in the more traditional domain of pre-GFA 'community relations'.

[21] These are discussed in more depth in the parallel Equality Coalition document 'Sectarianism: Towards a Definition in Law' referenced in footnote One.

their recognition of sectarianism as a form of racism. But this means that the core values of anti-racism – including those laid down in international law – have to obtain.

And this means that equality and human rights must remain central to racial justice. Other dynamics – like 'equity' or 'sharing' should not be allowed to dilute or undermine this project.

Conclusions

[73]. Good relations is about to enter a new phase in Northern Ireland through the outworking of the TBUC strategy. For good or ill, the paradigm is becoming a defining feature of consensual politics in the new Northern Ireland. Negatively it appears as the lowest common denominator in unionist/nationalist power sharing since almost everybody can subscribe to the broad goal of 'good relations'. It is, however, important not to be too dismissive of this reality – in a post-conflict situation all of the processes referenced by good relations – sharing, reconciling, understanding, integrating – present genuine challenges. In such circumstances a 'soft' approach to the causes of division may be the most obvious one available, especially if politics is being driven by the need to establish 'sufficient consensus'. This means that the good relations paradigm is unlikely to go away – in this context it is important that it is made to work as effectively as possible in support of the equality and human rights of all citizens of Northern Ireland. A key part of making it work is having a definition in law.

[74]. Alongside a functioning definition, it is important to pay closer attention to other jurisdictions which are addressing broader similar issues in different ways. In particular, the trajectory of good relations practice in England and Wales and Scotland is significant because it appears more and more dissimilar to that in Northern Ireland. In this context, it seems bizarre to further institutionalize a form of good relations in Northern Ireland that is increasingly divergent from the model in Great Britain. In the absence of international standards, the British good relations model provides the default standard. Any deviation from this – in terms of definition, scope or monitoring frameworks – should be justified in terms of something more substantive than political expediency or Northern Ireland exceptionalism. Beyond this there are lessons from the US and Australia and other countries that continue to make use of the community relations paradigm. It is also important to draw on the lessons from the interculturalism model which has more grounding in international law and practice and is much more current at EU level. In other words, a key corrective to Northern Ireland 'exceptionalism' is the recognition that most other societies are engaging with similar questions to those bundled around 'good relations'. Moreover, they are often addressing these in more innovative and more radical ways.

[75]. The community/good relations paradigm has always been positioned in an uneasy relationship with equality and human rights. There is no natural synergy between rights-based and community relations-based approaches and at times they may be directly antagonistic. Moreover, good relations has had a specific problem in addressing racism in Northern Ireland. While it has arguably subsumed race equality since 1998, it has been very poor at delivering anything approaching 'good relations' for Northern Ireland's BME population. Despite the affinity between race equality and good relations in Britain, in Northern Ireland good relations has singularly failed to acknowledge - let alone address - the commonly-held characterisation of Northern Ireland as the 'race hate capital of Europe'. In a context in which the police service themselves are identifying racist violence as being orchestrated by illegal paramilitary organisations and characterising this as 'ethnic cleansing', the good relations paradigm has failed to generate an appropriate response to racism.

There needs to be a more appropriate rights- and criminal justice-based response to racism in general and racist violence in particular. In this sense there was more integrity to the 'old' community relations approach in Northern Ireland– it did not pretend to have any competence in addressing racial equality or racist violence. This issue should be resolved in framing any definition of good relations in law.

[76]. Finally, the TBUC strategy threatens to make a rod for its own back in terms of the failure to define either sectarianism or good relations.[22] In terms of good relations in particular it appears nonsensical to further institutionalize and legalize a paradigm that cannot define itself and which has failed to situate itself in terms of international law and standards. But it also seems unlikely that the wished for 'appropriate consensus' on any new definition is going to be achieved, at least in the short-term. In absence of any existing or likely cross-community consensus on a definition for good relations in Northern Ireland, adapting the statutory good relations duty on public bodies in the GB definition is the most useful available: *good relations …means having regard, in particular, to the desirability of —(a) tackling prejudice, and (b) promoting understanding.* This definition should inform any further development of the good relations paradigm in Northern Ireland.

[22] The previous paper argued that the solution to this problem of definition with sectarianism is to start from the position of CERD and CoE and recognise that 'sectarianism is a form of racism'. With this approach the 'work' of defining falls on racism – which already has a well-established rights- and equality-based paradigm to draw on (McVeigh 2014).

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