

Monitoring Equality – Reflexive Regulation, Planning Systems, and the Role of Discrimination Law: Lessons from Northern Ireland

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This article considers the evolution of two different frameworks within Northern Ireland designed to promote equality of opportunity and eradicate unfair discrimination in the fields of employment and housing. With respect to employment, the article will show that a reflexive regulatory framework, backed by individual rights, and in existence since the early 1990s successfully steered employment practices within the region in a direction that had a measurable and positive impact in terms of addressing discrimination and under-representation in the Northern Ireland labour market. Within the field of public housing this article will show that a de jure commitment to eradicating unfair practices with respect to the planning and allocation of housing through a regulatory framework based on direct state action was undermined by another agenda within government which had security and counter-insurgency as its primary objective. This approach in effect steered the planning and provision of public housing in a direction that directly and indirectly discriminated against the minority Catholic community. A key factor in contributing to the success of the fair employment regulatory framework was the existence of monitoring data that featured prominently in debates about the extent to which equality goals and timetables were being realised and which allowed for independent empirical analysis. Similarly, one of the key factors in the success of the defensive planning agenda was the lack of hard data in the public domain highlighting practices that were both directly and indirectly discriminatory, and leading in some cases to patterns of inequality being viewed as a result of greater cohesion within the Catholic community, and a desire for self-segregation. This article concludes by arguing that if the reflexive regulatory framework that has been in place with respect to the promotion of equality within the field of housing and urban planning since 1998 is to have any hope of success then it is imperative that data relating to patterns of housing inequality are published widely in the same way that data on employment equality has become part of the equality landscape in Northern Ireland. The article concludes by arguing that

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the findings from Northern Ireland highlight more generally the way in which urban planning practices can serve to discriminate, both directly and indirectly, against minority communities and calls for a greater level of engagement between equality and discrimination law theorists and practitioners within the field of urban planning.

1. Background

Protection against discrimination on grounds of religious belief within Northern Ireland goes back to the establishment of the State itself with the 1920 Government of Ireland Act prohibiting the Northern Ireland Parliament from discriminating in the areas where the Parliament had power to legislate, as well as prohibiting² both preferences and disabilities on account of religious belief when executive power was exercised.³ Until the repeal of the Act in 1973 this constitutional safeguard was invoked only once in relation to religious discrimination.⁴ These formal protections were, however, expected to be merely the “tip of an iceberg” of constitutional and political conventions designed to provide a new political order for the region, based on “tolerance, restraint, and mutual respect”.⁵ Notwithstanding the aims of those involved in the establishment of the Northern Ireland State, overt religious discrimination against the minority Catholic population became a feature of life in the region from the early 1920s until the late 1960s.⁶ Serious rioting followed a number of protests by a burgeoning civil rights movement demanding an end to discrimination, and the introduction of fair housing and job allocation for Catholics in the late 1960s which in turn led the Government of Northern Ireland at the time to establish a commission of inquiry to investigate the causes and nature of these disturbances. The subsequent report of the inquiry⁷ (the “Cameron report”) concluded that:

2 Government of Ireland Act 1920, Section 5.

3 *Ibid.*, Section 8(6).

4 *Londonderry C.C. v McGlade* [1929] NI 47.

5 McCrudden, C. “Northern Ireland and the British Constitution”, in Jowell J. and Oliver, D. (eds.), *The Changing Constitution*, Oxford University Press, 1989, p. 3.

6 See, for example, Brewer, J. with Higgins, G., *Anti-Catholicism in Northern Ireland: 1600-1998*, Macmillan, 1998; O’Dochartaigh, N., *From Civil Rights to Armalites: Derry and the Birth of the Irish Troubles*. Cork University Press, 1997; Purdie, B., *Politics in the Streets: The Origins of the Civil Rights Movement in Northern Ireland*, Blackstaff Press, 1990; Morison, J. and Livingstone, S., *Reshaping Public Power: Northern Ireland and the British Constitutional Crisis*, Sweet and Maxwell, 1995; Farrell, M., *Northern Ireland: The Orange State*, Pluto Press, 1976; Cormack, R., and Osborne, R. *Discrimination and Public Policy in Northern Ireland*, Clarendon Press, 1991. Several commentators have disputed, if not the existence of discrimination against Catholics, then certainly the degree to which it was prevalent, see, for example, Bloomfield, K., *Stormont in Crisis: A Memoir*, Blackstaff, 1994; Whyte, J., “How much discrimination was there under the Unionist regime 1921-1968?” in Gallagher, T. and O’Connell, J. (eds.), *Contemporary Irish Studies*, Manchester University Press, 1983.

7 Government of Northern Ireland, *Disturbances in Northern Ireland: Report of the Cameron Commission Appointed by the Government of Northern Ireland*, Cmd 532, 1969.

Upon the immediate and precipitating causes of the disorders which broke out (...),[was] a rising sense of continuing injustice and grievance among large sections of the Catholic population in Northern Ireland (...) in respect of (i) inadequacy of housing provision by certain local authorities (ii) unfair methods of allocation of houses built and let by such authorities, in particular; refusals and omissions to adopt a 'points' system in determining priorities and making allocations (iii) misuse in certain cases of discretionary powers of allocation of houses in order to perpetuate Unionist control of the local authority.⁸

The report also found that there had been many cases in which councils had withheld planning permission, or caused needless delays to a housing project where they believed that the construction of that project would be to their electoral disadvantage.⁹ In relation to employment the report also referred to:

[C]omplaints, well documented, of discrimination in the making of local government appointments, at all levels but especially in senior posts, to the prejudice of non-Unionists and especially Catholic members of the community.¹⁰

Subsequent civil disorder within Belfast was considered by another committee of inquiry set up by the Hon. Mr. Justice (later Lord) Scarman which was restricted to looking at the detail of the events relating to the disturbances rather than investigating the wider causes of the trouble. The “Scarman Report” did however provide some important material on the patterns of displacement resulting from the violence that erupted finding that of 1,820 displaced households (i.e. those forced to move as a result of violence and intimidation), 1,505 (82.7%) were Catholic, and 315 (17.3%) were Protestant.¹¹ Overall, the number of Catholic households at the time in Belfast was almost 29,000, with 88,000 Protestant households, meaning that 5.3% of Catholic households overall were displaced, compared with 0.4% per cent of Protestant households.¹² This pattern was to be repeated over the next few years so that between 1969 and 1973, in the face of rioting, bombings and shootings, an estimated 60,000 Belfast residents were forced to leave their homes, moving from vulnerable and destabilising interface areas to neighbourhoods where their community was dominant.¹³ A fur-

8 *Ibid.*, Para 229(a)(1), p. 91.

9 *Ibid.*, Para 140.

10 *Ibid.*, Para 229(a)(2), p. 91.

11 Government of Northern Ireland, *Violence and Civil Disturbances in Northern Ireland in 1969, Report of Tribunal of Inquiry, Vol. 1, Lord Scarman*, Cmd. 566, 1972, Para 31.22.

12 *Ibid.*, Para 31.24.

13 Northern Ireland Housing Executive, *Building a Better Belfast*, 1991; Boal, F.W., “Segregating and Mixing: Space and Residence in Belfast”, in Boal, F.W., and Douglas, J.N. (eds.), *Integration and Division: Geographical Perspectives on the Northern Ireland Problem*, Academic Press, 1982, pp 249-280; Boal, F.W., “Belfast: A City on Edge” in Clout, H., (ed.) *Europe’s Cities in the Late Twentieth Century*, Royal Dutch Geographical Society, 1994.

ther report published by the Northern Ireland Community Relations Commission recorded a minimum of 8,000 households moving between 1969 and 1973 with Catholics again disproportionately affected (38% of Catholic movers mentioned sectarian violence as a reason for moving while 14% of Protestant movers did likewise).¹⁴ This report concluded that the minority religious community (Catholics) were not only more likely to have had to make a house move because of the violence in Belfast than Protestants, but that “Professional” and “White Collar Catholics” were just as likely to have had to make a “troubles” move as their co-religionists in the manual occupation categories,¹⁵ a phenomenon which the authors of the report attributed to the fact that middle class Catholics were the least segregated group and therefore more likely to be isolated (or to perceive themselves as isolated) when violence in the city broke out.¹⁶ It is also important to note that the destination of those fleeing their homes differed significantly between the two communities with Protestants tending to move out to the newer housing areas on the city’s margins and Catholics crowding into the west of the city and the older housing in North Belfast.¹⁷

It was in the context of this explosion of violence, population movements, clear evidence of overt religious discrimination on the part of local councils, the Stormont Government itself, and a rising sense of grievance on the part of the Catholic community that the UK Government instigated a programme of reform.¹⁸ This article compares and contrasts two different regulatory frameworks that were subsequently adopted by the UK Government to eradicate discrimination and promote equality of opportunity in the labour market, and in the provision of public sector housing. By comparing these two different approaches, this article will argue that important lessons can be drawn for attempts to eradicate discrimination and promote equality within Northern Ireland more generally, the most important of which is the need for a robust equality monitoring process in order to measure the extent to which measures that have been adopted are effective. The article will also argue that the experience of Northern Ireland provides important lessons about the conditions necessary for ensuring the success of reflexive regulatory frameworks more generally, as well as highlighting the need for equality and non-discrimination law to consider more generally urban planning policies and practices in terms of shaping patterns of inequality and discrimination.

14 Darby, J., *Intimidation in Housing*, Northern Ireland Community Relations Commission, 1974.

15 *Ibid.*

16 *Ibid.*

17 Community Relations Commission Research Unit, *Flight: A Report on Population Movement in Belfast during August*, 1971.

18 Foster R.F., *Modern Ireland 1600–1972*, Penguin, 1988; Foster, R.F., (ed.), *The Oxford History of Ireland*, Oxford University Press, 1989; Hayes, M., *Minority Verdict: Experiences of a Catholic Civil Servant*, Blackstaff Press, 1995; Lee, J., *Ireland 1912–1985: Politics and Society*, Cambridge University Press, 1989; Whyte, J., *Interpreting Northern Ireland*, Clarendon Press, 1990; Wright, F., *Northern Ireland: A Comparative Analysis*, Gill and Macmillan, 1987.

2. Regulating Employment Equality in Northern Ireland

In 1972 the UK Government established a Working Party to examine discrimination in employment practices in the private sector in Northern Ireland.¹⁹ The Fair Employment (Northern Ireland) Act 1976 incorporated the major recommendations of the subsequent report of the Working Party making direct discrimination on religious or political grounds unlawful, and creating a new Fair Employment Agency (FEA) responsible for receiving and investigating complaints of discrimination, and for conducting investigations on the extent of equality of opportunity.²⁰ In addition, a new Northern Ireland Constitution Act in 1973 established the Standing Advisory Commission on Human Rights (SACHR) to advise the Secretary of State on the adequacy and effectiveness of the law in preventing discrimination on the grounds of religious belief or political opinion and in providing redress for persons aggrieved by discrimination on either ground.²¹

Concern at the perceived inadequacies of these measures continued through the mid-1980s fuelled by a number of factors, including the publication in July 1985 of statistics²² showing marked differences between the characteristics of the Protestant and Catholic sections of the community in Northern Ireland in such areas as employment and housing, which underlined the fact that in spite of the reforms introduced in the early 1970s substantial inequalities between the two groups remained.²³ The SACHR asked the Policy Studies Institute (PSI) to undertake a programme of research in order to establish whether equality of opportunity existed between the two communities in the areas of employment, economic wellbeing and housing.²⁴ The final PSI reports were published in four parts under the general title “Equality and Inequality in Northern Ireland” with parts one, two, and three dealing with differences between Catholics and Protestants in employment and unemployment;²⁵ employment policies and practices in the workplace;²⁶ and people’s attitudes towards discrimination and inequality.²⁷ These were published at the same time as a major report by SACHR on fair employ-

19 Ministry of Health and Social Services, *Working Party on Discrimination in Employment in the Private Sector of Employment, Report and Recommendations*, 1973.

20 Fair Employment (Northern Ireland) Act 1976.

21 Northern Ireland Constitution Act 1973, Section 20.

22 *Continuous Household Survey: Religion PPRU Monitor 2/85*, June 1985.

23 Standing Advisory Commission on Human Rights (SACHR), *Religious and Political Discrimination and Equality of Opportunity in Northern Ireland: Report on Fair Employment*, Her Majesty’s Stationary Office (HMSO), Cm 237, 1987, Para, 1.5.

24 *Ibid*, Para 1.8.

25 Smith, D., *Equality and Inequality in Northern Ireland Part 1: Employment and Unemployment*, PSI Occasional Paper 39, Policy Studies Institute, 1987.

26 Chambers, G., *Equality and Inequality in Northern Ireland Part 2: The Workplace*, PSI Occasional Paper 39, Policy Studies Institute, 1987.

27 See above, note 25.

ment, in October 1987.²⁸ Crucially, the 1987 report into employment inequality embraced a regulatory framework designed to address both individual and group justice, with the former evidenced by recommendations for enhanced measures of redress for claims of individual unfair discrimination through the creation of a new Fair Employment Tribunal (FET)²⁹ and the latter by recommendations that employment differentials between the two communities should be reduced and that affirmative action measures to address under-representation in certain cases should be part of the overall framework for promoting employment equality between the two communities.³⁰ These reports paved the way for the passage of another, much tougher Fair Employment (Northern Ireland) Act in 1989 which retained elements of the formal, anti-classification approach to non-discrimination that had been enshrined in the earlier Fair Employment (Northern Ireland) Act of 1976 but which also incorporated elements of the more substantive or group justice approach towards addressing inequality by adopting the objective of creating more integrated workplaces.³¹ In order to achieve this objective, the 1989 Act contained a number of innovative and highly controversial measures that included: the introduction of compulsory workforce monitoring, requiring employers to measure the composition of their workforce and to submit periodic reviews of the composition of their workforce to a new statutory enforcement agency, the Fair Employment Commission (FEC); and the requirement on employers to make a determination as to whether or not they were achieving “fair participation” in their workplace.³² Where “fair participation” was not deemed to be happening, the 1989 Act allowed for limited affirmative action measures to be undertaken in order to ensure “fair participation.”³³

The SACHR subsequently carried out a further review of employment equality in the mid-1990s that looked at the experience of the operation of the Fair Employment (Northern Ireland) Act 1989 and of the Fair Employment (Northern Ireland) Act 1976 publishing another report in 1997 entitled “Employment Equality: Building for the Future”.³⁴ As with the situation in the 1980s, SACHR also commissioned external research to inform its work.³⁵

28 See above, note 23.

29 Bell, C., “The Case Law of the Fair Employment Tribunal (FET)”, in Magill, D., and Rose, S., (eds.), *Fair Employment Law in Northern Ireland: Debates and Issues*, SACHR, 1996.

30 See above, note 23.

31 McCrudden, C., “Affirmative Action and Fair Participation: Interpreting the Fair Employment Act 1989”, *Industrial Law Journal*, Vol. 21, 1992.

32 McCrudden, C., “The Evolution of the Fair Employment (Northern Ireland) Act in Parliament”, in Cormack, R., and Osborne, R., (eds.), *Discrimination and Public Policy in Northern Ireland*, Clarendon Press, 1991.

33 For a discussion of the particular provisions in the Northern Ireland legislation relating to positive action see above, note 31; Burke, K., “Fair Employment in Northern Ireland: The Role of Affirmative Action”, *Columbia Journal of Law and Social Problems*, Vol. 28, 1994.

34 SACHR, *Employment Equality: Building for the Future*, Cm 3684, HMSO, 1997.

35 Rose, S., and Magill, D., (eds.), *Fair Employment Law in Northern Ireland: Debates and Issues*, SACHR, 1996; McLaughlin, E., and Quirk, P., (eds.), *Policy Aspects of Employment Equality in Northern Ireland*, SACHR, 1996.

Furthermore, the Northern Ireland Affairs Committee directed its attention to matters relating to inequality in Northern Ireland, reviewing of the operation of the Fair Employment (Northern Ireland) Act 1989 ten years after the Act had arrived on the statute books.³⁶ The 1989 Act also of course generated a considerable volume of material itself in terms of findings from the courts and tribunals with the FET issuing a series of important judgments throughout the early 1990s on a number of matters relating to employment discrimination including for example sectarian harassment,³⁷ failure on the part of employers to ensure a “neutral working environment”,³⁸ failure by employers to take seriously sectarian threats to employees,³⁹ and the presence of flags and emblems which had the effect creating a hostile working environment⁴⁰ with the FET particularly active in developing the Fair Employment Code of Practice’s approach to a “neutral working environment” in relation to harassment cases.⁴¹ In addition, from 1990 the FEC began work with employers on the implementation of affirmative action agreements, and each year the FEC published a summary of results of workplace monitoring by community background, all of which became the subject of debate and academic study.⁴² In 2004, the Equality Commission for Northern Ireland⁴³ took the opportunity to commemorate the fact that almost 30 years had passed since the Fair Employment (Northern Ireland) Act of 1976 had appeared on the statute books by commissioning a number of essays published under the title “Fair Employment in Northern Ireland: A Generation On”.⁴⁴ In other words, the decades since the passage of the 1989 Act were characterised by a substantive volume of work, from a wide range of sources, including statutory agencies, academics, and Parliament, assessing the extent to which the regulatory framework put in place had succeeded in ending religious discrimination and promoting equality of opportunity in the

36 Northern Ireland Affairs Committee, *Session 1998–99 House of Commons Fourth Report, Vol.1 95–1*, 2000.

37 FET, *Duffy v Eastern Health and Social Services Board*, 20 November 1991, (1992) IRLR, 251; FET, *Grimes v Unipork*, 17 February 1992.

38 FET, *Brennan v Short Bros. Plc*, 20 November 1995. See also FET, *Neeson v Securicor Ltd.*, 21 September 1993.

39 FET, *Shaw v Greenan Inns Ltd. t/a Balmoral Hotel*, 22 May 1998.

40 FET, *Brannigan v Belfast City Council*, 16 January 2002.

41 Fitzpatrick, B., “Review of Fair Employment Case Law”, in Osborne, B., and Shuttleworth. I., (eds.), *Fair Employment in Northern Ireland: A Generation On*, Blackstaff, 2004.

42 McCrudden, C., Ford, R., and Heath, A., “The Impact of Affirmative Action Agreements”, in Osborne, B., and Shuttleworth. I., (eds.), *Fair Employment in Northern Ireland: A Generation On*, Blackstaff, 2004.

43 The Fair Employment Commission (FEC) was replaced by the Equality Commission for Northern Ireland by Section 73 of the Northern Ireland Act 1998.

44 Osborne, B., and Shuttleworth. I., (eds.), *Fair Employment in Northern Ireland: A Generation On*, Blackstaff, 2004.

Northern Ireland labour market.⁴⁵ Moreover, a central feature of these debates was robust data monitoring that allowed for external scrutiny of Catholic and Protestant representation in the labour market.⁴⁶ This data also allowed for empirical analysis of the impact of the fair employment legislation to be carried out which showed that the fair employment legislation had succeeded in creating more integrated workplaces and reducing discrimination on grounds of religion.⁴⁷

3. Equality, Non-Discrimination, and Housing in Northern Ireland

In terms of the regulatory framework put in place to eradicate unfair discrimination in public housing, the key development in the early 1970s was direct action on the part of the State with the establishment of a central housing authority, the Northern Ireland Housing Executive (NIHE), responsible for ensuring that all public authority house building and allocation was provided on the basis of an objective points system based on housing need.⁴⁸ Again however, as with employment, data published in the mid-1980s had indicated that substantial differences with respect to housing provision between Catholics and Protestants continued⁴⁹ and consequently the SACHR research programme included an examination of this issue. Following the publication of parts one to three of the PSI reports into employment, part four of the PSI's report that dealt with housing was published in June 1989⁵⁰ and was subsequently addressed in a second SACHR report in 1990.⁵¹

The final PSI report was very clear that while the research that had been carried out into the issue of housing was a substantial improvement on that which had existed previously,

45 Harvey, C., "Contextualised Equality and the Politics of Legal Mobilisation: Affirmative Action in Northern Ireland", *Social and Legal Studies*, Vol. 21, 2012, pp. 23–50; Eversley, D., *Religion and Employment in Northern Ireland*, Sage, 1989; Edwards, J., *Affirmative Action in a Sectarian Society*, Avebury, 1995; Osborne, B., "Progressing the equality agenda in Northern Ireland", *Journal of Social Policy*, Vol. 32, 2003, pp. 339–360; McCrudden, C., (ed), *Anti-Discrimination Law*, Ashgate, 2004; McCrudden, C., Ford, R., and Heath, A., "Legal regulation of affirmative action in Northern Ireland", *Oxford Journal of Legal Studies*, Vol. 24(3), pp. 363–415.

46 Every year a summary of annual workforce monitoring returns was published, first by the FEC, and subsequently by the Equality Commission for Northern Ireland (ECNI), see, for example, ECNI, *Monitoring Report No. 20 – A Profile of the Monitored Northern Ireland Workforce: Summary of Monitoring Returns 2009*, 2010.

47 See above, note 42, pp. 119–147; McCrudden, C., Muttarak, R., Hamill, H., and Heath, A., "Affirmative Action without quotas in Northern Ireland", *The Equal Rights Review*, Vol. 4, 2009, pp. 7–14.

48 The Housing Executive Act (Northern Ireland) 1971.

49 See above, note 22.

50 Smith, D., and Chambers, G., *Equality and Inequality in Northern Ireland Part 4: Public Housing*, PSI Occasional Paper 47, Policy Studies Institute, 1989.

51 SACHR, *Religious and Political Discrimination and Equality of Opportunity in Northern Ireland. 'Second Report'*, HMSO, Cm 1107, 1990.

resources available and lack of hard data did not allow for a conclusive answer into some of the broader questions relating to housing inequality.⁵² The report did however, publish some important findings showing the extent to which inequalities between the two communities in the area of housing remained. In relation to density of occupation for example, the PSI study found that although Catholic households tended to be substantially larger than Protestant ones, Catholics did not tend to occupy larger accommodation: in fact, the number of rooms occupied by Protestant households was, on average, slightly larger than the number occupied by Catholic households. In relation to overcrowding, measured in the PSI study by the bedroom standard,⁵³ the final report found that, overall, 5% of Protestant households and 16% of Catholic households were overcrowded.⁵⁴

The report acknowledged that while there was a tendency for working class families to be living at a higher density of occupation than middle class families and that to some extent, the difference between Protestants and Catholics in density of occupation was associated with the social class distribution of the two groups, most of the difference remained when comparisons were made within socio-economic groups.⁵⁵ Among tenants of the Housing Executive, the study found that 17% of Catholic households compared with 7% of Protestant households had fewer bedrooms than the standard. In addition, the proportion of Housing Executive tenants with extra space was higher among Protestant households (59%) than among Catholic households (45%). The report concluded therefore, that Protestant families within the public sector tended to have a higher quality of accommodation than Catholic families.⁵⁶ Among those renting privately, the PSI study concluded that Catholics paid more than Protestants for poorer accommodation⁵⁷ while in terms of access to housing the report found that within the Belfast urban area “Catholic applicants had a considerably lower chance of being re-housed than Protestant applicants”⁵⁸ with an almost 2:1 disparity between the two communities.⁵⁹ In terms of the operation of the points system for the allocation of housing, the report concluded that the findings of the research suggested that after taking account of housing need the disparity in chances of re-housing between Protestants and Catholics were inequitable, since Catholic applicants had a lower chance of being re-housed although they

52 See above, note 50, p. 5.

53 Bedroom Standard: Each household requires a given number of bedrooms, depending on the number of adults and children, and their composition in terms of age, sex and marital status, and their relationships to each other. Once the standard number of bedrooms required has been determined, the actual number can be compared with it, to show whether there is overcrowding or under-occupation. The exact definition of the bedroom standard is given in the annual report of the *General Household Survey*, published by HMSO.

54 See above, note 50, p. 15.

55 *Ibid.*

56 *Ibid.*, p. 16.

57 *Ibid.*, p. 17.

58 *Ibid.*, p. 42.

59 *Ibid.*, p. 43.

tended to display greater housing need.⁶⁰ The report also concluded that a comparison between allocations and applicants seemed to show a clear disparity in the chances of being rehoused between those preferring Protestant and Catholic areas, in favour of the Protestant group, with the contrast increased rather than reduced when the comparisons took account of the household type and the level of housing need.⁶¹

The PSI study concluded that: the public housing system did not succeed in delivering equal opportunities to Catholics and Protestants; there was unequal access; the two groups occupied housing of unequal quality; and the housing system itself tended to encourage segregation.⁶² The report also concluded, however, that there was no evidence from the findings of the study of direct or intentional discrimination, nor of indirect discrimination by the NIHE against Catholic applicants or tenants.⁶³ Significantly though, the report stated that until this study had been undertaken, it was widely accepted that the public housing system was equitable, even though the NIHE had never produced any information about the results it delivered to Protestants and Catholics.⁶⁴ The PSI study concluded that if the NIHE intended to secure equality of opportunity in the future for Protestant and Catholic applicants and tenants, the organisation had to move towards explicitly and openly monitoring the results of its policies and that a failure to do so would highlight the fact that legislation on religious and political discrimination in Northern Ireland did not extend to housing.⁶⁵

a. Monitoring Equality

Significantly, the finding by the PSI research that the public housing system did not succeed in delivering equal opportunities to Catholics and Protestants was absent from the 1990 SACHR Report. In fact, most of the data outlined above was also absent, in particular the finding that there was an almost 2:1 disparity in the re-housing chances of those preferring Protestant and Catholic estates, although the SACHR report did allude to allocations “being lower” in Catholic areas.⁶⁶ The SACHR went to some lengths to highlight the fact that the PSI study had found no evidence of direct or indirect discrimination by the NIHE and this was in effect the theme that informed the overall conclusions of the report.⁶⁷

60 *Ibid.*, p. 44.

61 *Ibid.*, p. 45.

62 *Ibid.*, p. 47.

63 *Ibid.*

64 *Ibid.*

65 *Ibid.*

66 See above, note 51, Para 2.18.

67 *Ibid.*

It is worth noting the two different approaches taken by the 1987 SACHR report into employment equality, which subsequently gave rise to the 1989 Fair Employment (Northern Ireland) Act, with that adopted by the later 1990 SACHR report into housing particularly in light of the fact that if anything, the evidence presented to SACHR showed even higher levels of inequality in relation to housing than employment. The one group justice measure that was taken up in the 1990 SACHR Report, however, was the need for monitoring by community background and this was to provoke a significant level of disagreement between SACHR and the NIHE.⁶⁸ One of the key questions that the PSI study had addressed was whether the NIHE should move in future towards formally monitoring the results of its policies in order to measure the impact of these policies in terms of patterns of inequality between Protestants and Catholics.⁶⁹ In this context, the PSI report distinguished between formal policy and informal practice pointing out that while it was the formal policy of the NIHE that the organisation was blind to religion, informally, and in practical terms, housing managers in Northern Ireland inevitably had to be constantly aware of sectarian divisions and to think in terms of housing developments as “Protestant”, “Catholic”, or “mixed”.⁷⁰ The PSI study conceded that after a prolonged period of civil disturbance and population movement it was very difficult for housing managers to think or behave as though all housing was in principle openly available to all applicants and referred to previous work carried out by Singleton who found that:

*Segregation of Protestants and Catholics has led to an implicit recognition of the inevitability of allocating dwellings on the basis of ‘two’ waiting lists, one Catholic and the other Protestant (...). The NIHE has in many instances had no option but to sort its waiting list into Roman Catholic and Protestants and provide separate housing sites in different parts of towns for the two groups.*⁷¹

The PSI research concluded that one consequence of residential segregation was that many new housing developments would be identified by housing managers as providing dwellings for either Protestants, or for Catholics, even at the planning stage, and that this was an important background to analysis of access to housing by the two groups.⁷² The question that the PSI report addressed therefore was not whether housing managers should be blind to religion – an issue that the authors of the report considered to be one which everyone knew could not be the case, but rather, whether the NIHE should formally acknowledge the need to assess the outcomes of policies on patterns of inequality for the two communities.⁷³ The subsequent SACHR report conceded that since the publication of the PSI research, there had been a number of dis-

68 *Ibid.*, Para 4.53.

69 See above, note 50, p. 4.

70 *Ibid.*

71 Singleton, D., “Housing Allocation Policy and Practice in Northern Ireland”, *Housing Review*, Vol. 34, 1985, p. 11.

72 See above, note 50, p. 4.

73 *Ibid.*

cussions on this issue between SACHR officials and both board and staff members of the NIHE and that SACHR had been advised that, although the NIHE had no plans to record information on the religious affiliation of its tenants and applicants, the NIHE would in future seek information on religion as appropriate in its sample surveys and other research work.⁷⁴

According to SACHR, the view within the NIHE was that systematic monitoring would create an erroneous impression that religious affiliation was part of the decision making process and that if it were required by Government to change its stance there would be hostile public reaction.⁷⁵ SACHR concluded that while fully aware of these factors, it nonetheless remained of the opinion that while research of the kind which the NIHE envisaged might provide useful information on trends and patterns, it was unlikely to be an adequate substitute for the regular monitoring that SACHR considered necessary to provide the detailed statistics needed to help define and isolate those policies or practices which may be creating differences of outcome related to religious affiliation.⁷⁶ SACHR also felt that regular monitoring would assist in research on the cumulative effect of other factors and might even prove more cost effective than relying on research samples.⁷⁷ SACHR also took the view that the precise details of the particular monitoring system that ought to be adopted were a matter for both technical and public debate and accordingly recommended that the best process for monitoring the NIHE's policies and practices be studied further.⁷⁸ SACHR was in no doubt therefore that procedures for ensuring that the way the decision making process impacted on each of the two main communities should be introduced.⁷⁹ As noted above, the 1987 SACHR report had been quite unequivocal in relation to monitoring in the area of employment, recommending that monitoring be used to identify the particular section of the community or tradition with which an individual was most closely associated. It recommended that employers record the perceived religious affiliation of employees and others, and not necessarily seek to ascertain their actual beliefs.⁸⁰ This recommendation had of course, by the time that the 1990 SACHR report was published, been enshrined in law through the Fair Employment (Northern Ireland) Act 1989.

b. Different Approaches to Equality and Non-Discrimination

In seeking to understand the more individual justice approach adopted by SACHR in 1990 there are a number of relevant factors to consider. Firstly, a number of key figures involved

74 See above, note 51, Para 4.53.

75 *Ibid.*

76 *Ibid.*

77 *Ibid.*

78 *Ibid.*

79 *Ibid.*

80 *Ibid.*, Para 9.13.

in producing the 1987 report had departed from the organisation by the time of the 1990 report, including James O'Hara, the chair of SACHR at the time of the 1987 report, and Christopher McCrudden, who had played a key role in critiquing the work of the earlier FEA⁸¹ and was actively involved at the time in ensuring that the key findings of the 1987 report were translated into law via the Fair Employment (Northern Ireland) Act 1989. It is also important to note that the 1987 employment report contained a dissenting view, with three Commissioners dissociating themselves from some of the main findings and concluding that:

*In no circumstances should the elementary mistake be made of confusing equality of opportunity with equality of result: two very different matters, both in concept and in practice.*⁸²

Essentially the dissenting Commissioners remained wedded to an individual justice or formal approach to equality and non-discrimination that rejected the need for monitoring data of any kind within employment and which considered that equality and non-discrimination law should focus simply on eradicating direct discrimination.⁸³ The views of the dissenting Commissioners were in effect overruled by majority of the other SACHR Commissioners, so that the final report in 1987 adopted quite a group justice approach. However the dissenting note illustrates the differing perspectives on these matters within SACHR itself during this period.

There were also a significant number of commentators outside SACHR who attributed Catholic inequality to higher birth rates within that community, and other demographic factors, and who considered that addressing these inequalities should not be a matter for discrimination law.⁸⁴ Crucially, the differing views on the individual versus group justice approaches to promoting equality, as with many other debates in the region, also played out as part of the wider "meta-conflict" about the constitutional status of Northern Ireland⁸⁵ which of course served to increase the level of controversy that these debates gave rise to. It is also impor-

81 McCrudden, C., "Law Enforcement by Regulatory Agency: The Case of Employment Discrimination in Northern Ireland", *Modern Law Review*, Vol. 45, No. 6, 1982.

82 The "Dissenting View" appeared at the end of the final report of 1987 and recorded "specific dissent" with a number of key recommendations including those to do with workforce monitoring. In effect the three Commissioners concerned accepted much of what was in the report, however were not prepared to endorse other aspects of the findings. See above, note 23, p. 185.

83 For a further discussion of the formal or individual justice model see Bingham, T., *The Rule of Law*, Penguin, 2010; McCrudden, C., "Equality and Non-Discrimination", in Feldman, D., (ed.), *English Public Law*, 2nd Edition, Oxford University Press, 2009; Balkin, J., and Siegel, R., "The American Civil Rights Tradition: Anti-classification or Anti-subordination?", *Miami Law Review* Vol. 58, No. 9, 2004.

84 Compton, P.A., "The Changing Religious Demography of Northern Ireland: Some Political Implications", *Studies*, Vol. 78, Winter, 1989; Compton, P.A., Coward, J., Wilson-Davis, K., "Family Size and Religious Denomination in Northern Ireland", *Journal of Biomedical Science*, Vol. 17, 1985.

85 McGarry J., and O'Leary, B., *Explaining Northern Ireland*, Oxford University Press, 1995.

tant to note that the MacBride campaign in the United States, operating from the mid-1980s, played a key role in shaping the employment debate in Northern Ireland and in particular persuading the Conservative Government under Margaret Thatcher of the need for a more group justice regulatory framework to promote equality and eradicate discrimination.⁸⁶ Again, however, the MacBride campaign was exclusively concerned with employment – no equivalent external pressure was brought to bear in the area of housing. Moreover, a significant amount of political controversy was being generated within Northern Ireland at the time of the publication of the 1990 report about the proposals to enhance the legal framework around employment equality, not least with respect to the introduction of compulsory monitoring in the workforce as the legislation was beginning to come into effect. In addition, the 1990 report states that discussions were taking place between SACHR officials and those within the NIHE in order to try and persuade the NIHE to adopt a system for monitoring the impact of policies on equality of opportunity.⁸⁷ In this context, SACHR may well have considered that a “softer” approach in their final report may have been more effective in terms of persuading the NIHE towards their thinking on this issue and that publishing data which the NIHE were clearly sensitive about would have been counterproductive. The likelihood is that all these factors played a role in shaping the final content of the 1990 report, however, what one can state with certainty and the benefit of hindsight is that the period between publication of the final PSI report on housing inequality in 1989 and the publication of the second SACHR report in 1990 proved a watershed in how inequality between Catholics and Protestants in Northern Ireland was framed. In effect, the publication of the second SACHR report in 1990 marked the point at which debate about housing inequality disappeared from legal, academic, and political consideration.

From 1990 onwards, discrimination and inequality between the two communities in Northern Ireland as a subject of political, non-governmental, and academic focus related *de facto* to labour market policies and practices, a situation that persists largely to the present day. Moreover, as the next section will also show, a narrative also emerged at that time, which has also remained until the present day, that discrimination in the area of public housing had been addressed and that the problem facing policy makers was how to manage a situation in which two communities chose, of their own volition, to live apart in separate areas.

4. Planning, Housing, and Conflict Management

The open and public nature of the fair employment debate since the early 1990s, with regular scrutiny of robust workforce monitoring figures detailing patterns of inequality, and findings of discrimination by courts and tribunals, in many ways could not be more of a contrast to

86 McCrudden, C., “Human Rights Codes for Transnational Corporations: What can the Sullivan and MacBride Principles Tell Us?”, *Oxford Journal of Legal Studies*, Vol. 19, 1999; McNamara, K., *The MacBride Principles: Irish America Strikes Back*, Liverpool University Press, 2009; Needham, R., *Battling for Peace*, Blackstaff, 1998.

87 See above, note 51, Para 4.53.

the debates surrounding patterns of housing inequality and the role of urban planning in shaping these patterns. In order to fully understand the extent to which these debates have differed, it is necessary to consider a number of documents recently uncovered from the Public Record Office for Northern Ireland which show the extent to which the security agencies used the concept of “defensive planning”⁸⁸ as a counter-insurgency strategy and the ways in which this process discriminated both directly and indirectly against members of the Catholic community in Northern Ireland across several decades. The origins of this strategy can be traced back to October 1970 when the then Government of Northern Ireland established a Joint Working Party on Processions in order to examine areas of confrontation and provide recommendations towards future government policy on how best to spatially manage the emerging conflict. Significantly, the final report of this Working Party (marked “secret”) concluded that:

We would consider it essential to provide in the re-development [of the city] for the maximum natural separation between the opposing areas (...) [P]rudence would point to the wisdom of some sort of physical “cordon sanitaire” (...) [T]he Urban Motorway Project is of considerable significance (...) [T]he effect will be to create a wide (in places as much as 100 yards) cleared belt to the west side of the City Centre.⁸⁹

The Working Party considered that the Ministry of Home Affairs, the government department responsible for security and law and order at that time, should be given an opportunity to consider:

[A]ny plans for substantial development or re-development (both for housing and for industry and commerce) at an early stage, consulting the security forces and other departments where necessary.⁹⁰

In relation to housing redevelopment, the report stated:

Plans for housing adjacent to the main lines of confrontation between the two communities, where not already approved, should be revised to provide more open space, particularly on either side of the new natural barrier.⁹¹

The report concluded that:

88 Newman, O., *Defensible Space: Crime Prevention Through Urban Design*, Macmillan, 1972.

89 Government of Northern Ireland, *Future Policy on Areas of Contention, Second and Final Report of the Joint Working Party on Processions etc.*, [CAB/1634/1], April 1971, Para 39.

90 *Ibid.*, Para 41.

91 *Ibid.*, Para 42(b).

[T]here may be no alternative to increasing rather than discouraging segregation of the two communities through the creation of natural barriers.⁹²

The subsequent implementation of this strategy can be traced by examining additional documentary sources from the 1980s. Of particular interest are the activities of another hitherto secret entity called, the Standing Committee on Security Implications of Housing Problems in Belfast (SCH) that reveal much about how the policy of defensive planning in Northern Ireland was implemented. The SCH comprised a number of government agencies including the Belfast Development Office, which was at the time the main agency within government responsible for urban development, and the Department of the Environment (DOE), the government department responsible for planning, housing and urban affairs. Significantly, the SCH also contained representatives from the Northern Ireland Office (NIO), the government department responsible for law, order, and security as well as representatives from the security forces i.e. the then police force for Northern Ireland the Royal Ulster Constabulary (RUC) and the British Army. The RUC and British Army representatives on the SCH were among the most senior figures within the police and military establishment in Northern Ireland at that time - with the RUC represented by Deputy Chief Constable (DCC) McAtamney and Assistant Chief Constable (ACC) Chesney and the British Army represented by Brigadier Crowfoot (39th Infantry Brigade, British Army HQ) who chaired the meetings.⁹³

In terms of the activities of the SCH, examination of the minutes of a meeting dated Thursday 19 February 1981 indicate that the Draft Belfast Housing Plans were presented and that the plans were “fully discussed and comments sought from those present”.⁹⁴ In the course of this meeting, Mr. John Semple (DOE) explained that the Draft District Housing Plan for the whole of Belfast had been in preparation since the previous summer (i.e. from mid-1980) and that the DOE had themselves identified a number of security implications arising from the plan and were now seeking the views of the security authorities on these and any other potential difficulties⁹⁵. The meeting ended with agreement that:

[T]he immediate priority was for the Police and the Army to examine the proposals in greater depth and alert DOE to any points of security interest which might need further consideration.⁹⁶

92 *Ibid.*, Para 49.

93 Letter from Eddie Simpson, Assistant Secretary, Housing and Urban Affairs, Department of the Environment (DOE) on 6 May 1981.

94 Minutes of a meeting of the Standing Committee on Security Implications of Housing Problems in Belfast (SCH), Thursday 19 February 1981.

95 *Ibid.*

96 *Ibid.*, p. 3.

In a subsequent letter from ACC Chesney to Eddie Simpson, Assistant Secretary, Housing and Urban Affairs (DOE) on 26 February 1981, ACC Chesney indicated that the Belfast Draft Housing Plan, introduced at the meeting of 19 February 1981 had been subsequently discussed with the RUC and 39th Infantry (British Army) and that his letter contained the combined views of both parties, i.e. the police and the army, in relation to the proposals.⁹⁷ This letter outlined a range of issues across Belfast that the security forces considered needed to be addressed and gives an indication of the degree to which the security forces were involved in the planning of housing in the city at that time. The submission for example stated that proposed new housing for members of the Catholic community in West Belfast should be delayed, and welcomed the fact that land which was available for new housing in North Belfast would instead be used for commercial development, thereby eliminating a potential security problem that might arise were housing to be provided on the site which would be occupied by members of the Catholic community. In the south of the city, the submission expressed concern about the changing demographics of the Lower Ormeau Road (i.e. that the area had become more Catholic) and the security implications that might arise as a result of any additional housing development within the area, which it was felt might lead to increased opposition among Catholic residents to traditional Protestant marches in the area.⁹⁸

The minutes of the SCH meetings also provide some interesting insight into the problems that arose for the security forces with respect to the Poleglass housing development on the outskirts of the city that was designed to alleviate the over-crowding and housing need within Catholic West Belfast. The location of the site of the Poleglass development, outside Belfast and within the boundaries of the staunchly Unionist-controlled Lisburn Borough Council (LBC), created particular difficulties not least given that the Protestant and Unionist elected representatives controlling LBC did not welcome the addition of a large number of Catholic, Nationalist, social housing tenants as additions to their constituency. At a meeting of the SCH on 30 June 1980 a number of problems in the Poleglass housing complex were considered with Mr. John Semple reporting on the non-co-operation of LBC in providing services and facilities to the area.⁹⁹ At a further meeting of SCH on 19 February 1981, it was noted that LBC continued to oppose and obstruct the new housing, which included stalling over the granting of pub licences. Significantly, at this meeting DCC McAtamney intervened and stressed the “high importance to the provision of pubs in the area as the demand for such facilities was otherwise likely to be met by clubs with paramilitary associations.”¹⁰⁰ This intervention illustrates another important dynamic that existed within security policy at the time: denying the opportunity for organisations like the Provisional IRA to gain income through the operation of illegal drinking clubs in a particular area “trumped” concerns about offending the wishes

97 Letter from ACC Chesney to Eddie Simpson, Assistant Secretary, Housing and Urban Affairs on 26 February 1981.

98 *Ibid.*

99 Minutes of a meeting of the SCH on 30 June 1980.

100 *Ibid.*

of Unionist councillors who were hostile to the very existence of the Poleglass development and its Catholic residents per se.

5. Defensive Planning and Patterns of Inequality

The above decisions clearly had a significant impact on patterns of inequality in relation to housing, which becomes apparent when considering the nature of housing need in Belfast and the demographic changes that took place within the city during the 1970s. A useful starting point is a document produced by the Corporate Planning Department of the NIHE in 1980 outlining housing plans for the city, which highlights the differing housing needs of the two communities within Belfast at that time.¹⁰¹ This document states:

*[A]s a generalisation (...) Protestant areas tend to have a crude surplus of dwellings which leads to the abandonment of less popular dwellings (...) waiting lists are small (...) vacant land and dwellings aid clearance in Redevelopment Areas.*¹⁰²

The document went on to find that within Catholic areas:

*[T]here are very few dwellings available for allocation; over-occupation is common; there is a shortage of available space for new building; most allocations are made to people in the priority groups; clearance in Redevelopment Areas is very slow and difficult and there is a high incidence of large families with dependent children in Catholic areas.*¹⁰³

Clearly this document illustrates the impact that the mass population movements of the early 1970s, outlined in the introduction, had on the housing needs of the two communities within the city.¹⁰⁴ With Protestants tending to move out to the newer housing areas on the city's margins and Catholics crowding into the west of the city and the older housing in North Belfast, this clearly led to a marked increase in housing need for members of the Catholic community – as indicated above. In other words, the patterns of housing need between the two communities were totally different, with housing need much more acute within the Catholic community due to a much lower availability of vacant land within Catholic areas on which to build new housing. It was against this backdrop therefore that security assessments were made which, as shown above, sanctioned the use of vacant land in North Belfast for commercial development rather than housing, delayed the construction of new housing in West Belfast, and which viewed with concern the further expansion

101 Corporate Planning Department, Northern Ireland Housing Executive, *Draft Introduction to the Seven Districts Housing Statements*, ENV/21/1/39/A, 1 October 1980.

102 *Ibid*, Para 3.4 (i).

103 *Ibid*, Para 3.4 (ii).

104 See above, note 11, 14, and 17.

of the Catholic community in south of the city. Clearly there are two common denominators in these security assessments, one of which was that housing should either not be built at all, or that housing construction should be delayed. The second common denominator was that in all these instances, the housing in question was needed for members of the Catholic community. It is important to point out that from the discussions of the SCH¹⁰⁵ there is no evidence that the security forces were *intending* to discriminate against Catholics on grounds of their religion. Clearly, however, the effect of the security policy was not to build houses in a number of locations “but for” the religion of the occupants of the houses. In other words, the policy operated in a way that was directly discriminatory in line with the “but for” test of direct discrimination provided by the House of Lords in *James v Eastleigh Borough Council*.¹⁰⁶

The view that security, rather than religious discrimination, provided the motive for the security forces is also supported by considering the minutes of the meetings of the SCH¹⁰⁷ with respect to the Poleglass development. In this case, the discriminatory actions of the LBC, in terms of trying to frustrate the development happening at all, were overruled by a security agenda which wanted the development to take place, and which aimed to ensure paramilitary organisations were not able to open drinking clubs in the area to raise funds for their activities. What was happening in effect was that the Catholic community were facing discrimination on the part of Unionist councillors, who didn’t want Catholics living in certain areas *per se*, and discrimination from the security forces who didn’t appear to have any overtly sectarian motive, but who operated a security policy which produced in some cases a similar outcome – i.e. less Catholic housing. One can of course also argue that overall security objective, as outlined in the original document from the early 1970s¹⁰⁸ was indirectly discriminatory with respect to the Catholic population given that at the heart of the policy was a desire to segregate the two communities using vacant land and infrastructure as a “buffer”. In a context in which the Catholic community had significantly greater demand for housing, such an objective would clearly impact disproportionately on that community – given that this would clearly reduce the amount of land available for housing.

6. The Conflict, Planning and Housing Debate

What is significant, however, is that the secret activities of the SCH took place without any analysis or scrutiny by any outside agencies, including of course the SACHR. Again, it is important to emphasise that there is no evidence that members of the SACHR were aware of the SCH, or indeed had any role in suppressing investigations into these activities. As outlined above, there were a number of other factors that shaped the approach of SACHR to this is-

105 See above, notes 97 and 99.

106 *James v Eastleigh Borough Council* [1990] 2 AC 751.

107 See above, note 99.

108 See above, note 89, Para 39.

sue. It does seem, however, that the decision of the SACHR not to publish data on key housing inequalities contributed more generally to housing inequality falling off the agenda for campaigners and researchers. Moreover, the fact that housing disappeared off the research agenda for the SACHR after 1990, more easily allowed for these kinds of practices to continue unchecked. Admittedly, debates about the extent to which the security forces were covertly involved in urban planning arose periodically in the press, largely as a result of alleged “leaks” of official documents¹⁰⁹ which led to speculation over the years¹¹⁰ that the security forces altered road networks, influenced building plans and decided where new social housing developments could, and more importantly, could not be built.¹¹¹ Significantly, however, most academic commentators, particularly those within the field of urban planning strongly refuted these arguments, stating that there was no evidence of security force involvement in the design and building of new housing estates or the manipulation of territory and community boundaries within the city and that regeneration initiatives and new housing in Belfast were influenced solely by community household surveys along with community consultation programmes.¹¹² In fact quite a number of these observers have described the planning system in Northern Ireland as “colour blind”¹¹³ or even “autistic”¹¹⁴ and therefore impervious to outside influences such as those outlined above, arguing instead that a technocratic ethos developed within the planning system in Northern Ireland from the 1970s onwards in response to allegations of discrimination in the 1960s, and that this new ethos prioritised impartiality and neutrality. Murtagh for example argues that the Northern Ireland planning service imported technical values and practices from Britain and disregarded the particular problems

109 Letters from the DOE concerning alleged security force involvement in planning were leaked to The Guardian (13 March 1982), and to the Irish News (15 March 1982). Subsequent articles in the press concerning this matter are found in The Belfast Telegraph (15 March 1982); Built Environment (17 March 1982), The Belfast Newsletter (15 March 1982); The Irish News (23 March 1982); and The Guardian (6 April 1982 and 13 April 1982); For articles citing leaks see Cowan, R., “Belfast’s Hidden Planners”, *Town and Country Planning*, June 1982; Hillyard, P., “Law and Order” in J. Darby (ed.), *Northern Ireland: The Background to the Conflict*, Appletree Press, 1983; Faligot, R., *Britain’s Military Strategy in Ireland: The Kitson Experiment*, Brandon, 1983.

110 Stollard, P., “The Architecture of No-man’s Land”, *Architect’s Journal*, Vol. 180, No. 31, 1984, pp. 24–39; Pawley, M., *Terminal Architecture*, Reaktion Books, 1998, pp. 93–111; Brown, S., “Central Belfast Security Segment”, *Area* Vol. 17, No. 1, 1985; Byrne, J. *The Belfast Peace Walls: The Problems, Policies, and Politics of the Troubles Architecture*, unpublished DPhil Thesis, University of Ulster, 2011.

111 Dawson, G., “Planning in the Shadow of urban civil conflict: a case study from Belfast”, Working Paper, University of Liverpool, Department of Civic Design, 1984; Dawson, G., “Defensive planning in Belfast”, *Irish Geography* Vol. 17, 1984, pp. 22–41.

112 Anson, B., “Response to Architecture in No-man’s Land”, *Architects Journal*, Vol. 180, No. 37, 1984, pp. 47–48; Murtagh, B., *The Politics of Territory: policy and segregation in Northern Ireland*, Palgrave, 2002.

113 Bollens, S., *Urban Peace-Building in Divided Societies: Belfast and Johannesburg*, Westview Press, 1999.

114 Ellis, G., “The City of the Black Stuff: Belfast and the Autism of Planning”, in McEldowney, M., Murrar, M., Murtagh, B. and Sterrett, K. (eds.), *Planning in Ireland and Beyond: multidisciplinary essays in honour of John V. Greer*, School of Environmental Planning, Queen’s University, 2005, pp. 261–271.

that the conflict gave rise to so that planning within Belfast was “planning for anywhere”.¹¹⁵ It is also important to note that the official line from the Government has always been to deny that the security forces had any specific role in the planning process in Northern Ireland.¹¹⁶

7. Housing Inequality, Group Injustice and Social Cohesion

It is also important to note that while there has been no shortage of literature highlighting the extent to which Belfast is characterised as a “divided city”¹¹⁷ and the difficulties that the NIHE have faced in terms of addressing housing need faced with the extent of that division,¹¹⁸

115 Murtagh, B., “Planning for Anywhere: Housing Policy in Northern Ireland”, *Housing Studies*, Vol. 13, No. 6, 1998, pp. 83–839.

116 Scope Magazine, “Who designs the City?”, Northern Ireland Council for Voluntary Action, 1982.

117 Hamilton, J., Hansson, U., Bell, J. and Toucas, S., *Segregated Lives: Social Division, Sectarianism and Everyday Life in Northern Ireland*, Institute for Conflict Research, 2008; Anderson, J. and Shuttleworth, I., “Sectarian Demography, territoriality and political development in Northern Ireland”, *Political Geography*, Vol. 17, No. 2, 1998, pp. 187–208; Boal, F.W., “Integration and Division: sharing and segregation in Belfast”, *Planning Practice and Research*, Vol. 11, No. 2, 1996, pp. 151–158; Boal, F.W., “Belfast: walls within”, *Political Geography*, Vol. 21, 2002 pp. 687–694; Boal, F. W., “Territoriality on the Shankill-Falls Divide, Belfast”, *Irish Geography*, Vol. 41, No. 3, 2008; Boal, F.W., “The Urban Residential Sub-community: A conflict interpretation”, *Area*, Vol. 4, 1972, pp. 41–79; Doherty, P., “Ethnic segregation levels in the Belfast Urban Area”, *Area*, Vol. 21, No. 2, 1989, pp. 151–159; Lloyd, C., “Analysing the spatial scale of population concentrations by religion in Northern Ireland using global and local variograms”, *International Journal of Geographical Information Science*, Vol. 26, No. 1, 2012, pp. 57–73.

118 Murtagh and Carmichael for example have pointed to the fact that 68% of electoral wards in Northern Ireland have a population in which more than 70% of the residents belong to one community or the other while Shirlow has pointed out that the demographic characteristics of Protestants and Catholics differ significantly in interface areas with Catholic communities characterised by higher than average family sizes, higher fertility rates and a more youthful demographic structure while the Protestant population is older, with smaller household sizes and lower than average fertility rates with the effect that in highly segregated space, very different housing need profiles are reflected in terms of the number, size, type and location of accommodation required. See Murtagh, B. and Carmichael, P., *Sharing Place: A Study of mixed housing in Ballynafeigh, South Belfast*, NIHE, 2006; Shirlow, P., “Belfast: a segregated city” in Coulter C. and Murray M. (eds.), *Northern Ireland After The Troubles: A society in transition*, Manchester University Press, 2008. See also Power, J. and Shuttleworth, I., “Intercensal Population Change in the Belfast Urban Area 1971–91: The Correlates of Population Increase and Decrease in a Divided Society”, *International Journal of Population Geography*, Vol. 3, 1997, pp. 91–108; Shuttleworth, I., “Are Northern Ireland’s Communities Dividing? Evidence from geographically consistent census of population data, 1971–2001”, *Environment and Planning A*, Vol. 41, No. 1, 2009, pp. 213–229; Shuttleworth, I. and Anderson, J., “Demographic Change Through Conflict: Belfast from the 1960s to 2001”, Conference Paper, 2011; Shuttleworth, I., Barr, P. and Gould, M., “Does Internal Migration in Northern Ireland Increase Religious and Social Segregation? Perspectives from the Northern Ireland Longitudinal Study (NILS) 2001–2007”, *Population, Space and Place*, Vol. 19, 2013, pp. 72–86; Shuttleworth, I. and Lloyd, C., “Exploring the implications of changing census output geographies for the measurement of residential segregation: the example of Northern Ireland 1991–2001”, *Journal of the Royal Statistical Society A*, Vol. 174, Part 1, 2011, pp. 1–16; Shuttleworth, I. and Lloyd, C., “Analysing average travel-to-work distances in Northern Ireland using the 1991 census of population: the effects of locality, social composition, and religion”, *Regional Studies*, Vol. 39, 2005, pp. 909–922.

most commentators have attributed the patterns of segregation within the city as arising from individual preferences.¹¹⁹ Brett is fairly typical of this kind of view, stating that:

*The fact that the two communities largely prefer to live apart, in territories divided in many places by so-called “peace lines”, is very much to be regretted; the divisions will not begin to disappear until trust and confidence can be restored; but at least, bad housing is no longer a serious cause of unrest and violence.*¹²⁰

As well as being a renowned commentator on housing and architecture, Brett was himself Chairman of the NIHE during the period 1979 - 1984, and was on the board for several years before assuming the role of Chair.¹²¹ This was of course during the period covered by the examination of the minutes of the SCH (above) which shows that in several important respects, it is a mistake to consider that the communities “largely preferred to live apart” given that one community, i.e. the Catholic community, were adversely impacted upon by a range of factors including the actions of LBC, and the security forces. Several other commentators, particularly those from within the Protestant community, have attributed the segregated nature of social housing in Northern Ireland to a greater degree of social cohesion and solidarity within the Catholic community that originates from Catholic Church doctrine.¹²² From this perspective, Catholic communities are seen as being more “united”, “stronger” and “cohesive” than their individualistic Protestant co-religionists.¹²³ This view has also been expressed by British government Ministers and used to justify the development of a strategy aimed at targeting financial assistance specifically towards working class Protestant communities in spite of the fact that objective data from government had shown the highest levels of deprivation to be within Catholic areas.¹²⁴ In many ways these views are not dissimilar to comments in the 1970s and

119 Hughes, J., Campbell, A., Hewstone, M. and Cairns, E., “What’s there to fear? – A Comparative Study of Responses to the Out-Group in Mixed and Segregated Areas of Belfast”, *Peace and Change*, Vol. 33, No. 4, 2008; Hughes, J., Campbell, A., Hewstone, M. and Cairns, E., “Segregation in Northern Ireland”, *Policy Studies*, Vol. 28, No. 1, 2007, pp. 33–53; Knox, C., “Cohesion, Sharing and Integration in Northern Ireland”, *Environment and Planning C: Government and Policy*, Vol. 29, 2011, pp. 548–566; Gaffikin, F., McEldowney, M. and Sterrett, K., “Creating Shared Public Space in the Contested City: The Role of Urban Design”, *Journal of Urban Design*, Vol. 15, No. 4, 2010, pp. 493–513; Rafferty, G., “Embracing the Creation of Shared Space: Considering the Potential Intersection between Community Planning and Peace-building”, *Space and Polity*, Vol. 16, No. 2, 2012, pp. 197–213.

120 Brett, C., “Victorian and Edwardian Belfast: Preserving the Architectural Legacy of the Inner City”, in Neill, W. and Schwedler, H. (eds.), *Urban Planning and Cultural Inclusion: Lessons from Belfast and Berlin*, Palgrave Macmillan, 2001, p. 98. See also Brett, C., *Housing a Divided Community*, Institute of Public Administration, 1986.

121 *Ibid.*

122 Dunlop, J., *A Precarious Belonging: Presbyterians and the Northern Ireland Conflict*, Blackstaff, 1995; McKay, S., *Northern Protestants: An Unsettled People*, Blackstaff, 2000.

123 *Ibid.*

124 CAJ, *Equality in Northern Ireland: the Rhetoric and the Reality*, 2006, p. 134.

1980s from Unionist politicians that Catholic under-representation in the labour market was attributable to the lack of a Protestant work ethic and a greater willingness to claim benefits. Such arguments, prominent within the employment debates of the early 1980s are much less widespread now, in no small measure due to the high profile findings of discrimination in the workplace by the courts and tribunals received in the press, and the rise in the Catholic percentage of the workforce as a result of the fair employment framework.

It is clear however, that the lack of published data showing the level of overcrowding that continues to exist, and the extent to which secretive planning practices such as those outlined above served to concentrate the Catholic population within discrete territorial boundaries has contributed to the view that Catholics were voluntarily “self-segregating” to be perpetuated.¹²⁵ It is important to note that there have, on rare occasions, been some attempts to raise concerns about continuing levels of inequality. This author was the main researcher on a report published in 2006 that showed the extent to which Catholics were disproportionately represented on housing waiting lists, particularly in North and West Belfast. However, the report was heavily criticised by the NIHE on the grounds that publication of such data could serve to “politicise” the housing debate as such data was “politically and highly sensitive and on occasion needs to be managed in a measured and sensitive way”.¹²⁶ One of the difficulties for researchers working in this area, however, has been the lack of publicly available robust data which can be used to examine the extent to which discriminatory practices may, or may not, be continuing.¹²⁷

8. Regulatory Theory and Equality Outcomes

Somewhat paradoxically, in spite of the fact that housing inequality disappeared from public debate, there were some important developments to the regulatory landscape with respect to the promotion of equality within the areas of housing and urban planning more generally, fol-

125 Muir, J. and McKee, K., “An introduction to the special issue – Housing in Hard Times: Marginality, Inequality and Class”, *Housing Theory and Society*, Vol. 1, 2013; Doherty, P., and Poole, M., “Ethnic Residential Segregation in Belfast, Northern Ireland, 1971-1991”, *The Geographical Review*, Vol. 87, No. 4, 1997, pp. 520–536; French, D., “Residential Segregation and Health in Northern Ireland”, *Health and Place*, Vol. 15, 2009, pp. 888–896; Gray, P., McAnulty, U. and Keenan, M., “Moving Towards Integrated Communities in Northern Ireland: New Approaches to Mixed Housing”, *European Journal of Housing Policy*, Vol. 9, No. 3, 2009, pp. 337–353; Hout, M., “Opportunity and the Minority Middle Class: A Comparison of Blacks in the United States and Catholics in Northern Ireland”, *American Sociological Review*, Vol. 51, No. 2, 1986, pp. 214–223; McPeake, J., “Religion and Residential Search Behaviour in the Belfast Urban Area”, *Housing Studies*, Vol. 13, No. 4, 1998, pp. 527–548; Muir, J., “Devolved Housing Policy and Practice in Northern Ireland 1998–2002”, *Housing Studies*, Vol. 18, 2003, pp. 159–176; Muir, J., “Public Participation in Area-based Urban Regeneration Programmes”, *Housing Studies*, Vol. 19, No. 6, 2004, pp. 947–966; and see above, note 115, pp. 833–839.

126 Letter from Stewart Cuddy, Director of Corporate Services/Deputy Chief Executive, Northern Ireland Housing Executive, to Maggie Beirne, Director, the CAJ, 27 November, 2006.

127 Data for the CAJ report was obtained via the use of Parliamentary Questions. Such an approach while useful, is also cumbersome, takes time, and falls far short of the regularly published monitoring data available with respect to employment.

lowing the all-party political agreement reached in 1998. Following the publication of the SA-CHR report in 1997, the British Government passed the Fair Employment and Treatment Order of 1998, which among other measures extended protection against discrimination beyond employment to the provision of goods, facilities and services, which included housing. However, the new law was limited to providing individual complainants the right to pursue complaints of discrimination through the county court and some 17 years later there has yet to be a single case involving discrimination in the area of public housing¹²⁸ with the overwhelming majority of cases coming through the courts and tribunals still relating to religious discrimination in the field of employment. In some ways this is unsurprising given that the problems identified here relate to covert policies and practices which impact adversely on groups, while the 1998 Order is framed in terms of redressing claims of overt discrimination against individuals.¹²⁹

The Belfast Agreement reached following multi-party talks on the political future of Northern Ireland provided another opportunity for those campaigning for a more group justice based regulatory framework to be introduced across public policy areas, including housing and urban planning, and this was achieved through a commitment in the Agreement that legislation would be enacted requiring public authorities in Northern Ireland to impact assess their policies in order to determine whether or not equality of opportunity was being achieved.¹³⁰ This requirement was given effect to via the Section 75 of the Northern Ireland Act 1998, which created a duty on public authorities in Northern Ireland to have due regard to the need to promote equality of opportunity and regard for good relations on the grounds of religious belief, political opinion, and race.¹³¹ It applies to the *functions* of a relevant public authority, including functions such as planning and

128 There has been an occasional example of cases coming forward which relate to matters outside the workplace, for example, in County Court for the Division of Fermanagh and Tyrone, *McKelvey v McDermott*, 30 June, 2005. The County Court held that the sale of land had involved an act of unlawful religious discrimination.

129 Fair Employment and Treatment (Northern Ireland) Order 1998, Article 28.

130 UK Government, The Agreement, Cmnd 3883, Agreement reached in the multi-party negotiations. For an analysis of the wider aspects of The Agreement see for example Ruane, J., and Todd, J., (eds.), *After the Good Friday Agreement: Analysing Political Change in Northern Ireland*, 1999, UCD Press; Wilford, R., (ed.), *Aspects of the Belfast Agreement*, Oxford University Press, 2001; Bew, P., *The Making and Remaking of the Good Friday Agreement*, Liffey Press, 2007; McGarry, J. and O'Leary, B. *The Northern Ireland Conflict: Consociational Engagement*, Oxford University Press, 2004; McGarry, J., (ed.), *Northern Ireland and the Divided World: Post-Agreement Northern Ireland in Comparative Perspective*, Oxford University Press, 2001.

131 This section of the legislation also includes a duty on public authorities to promote equality of opportunity on grounds of gender, disability, sexual orientation, age, marital status, and dependency. See also McCrudden, C., "Mainstreaming Equality in the governance of Northern Ireland", *Fordham International Law Journal*, Vol. 22, 1999, p. 1696; Smith, A. and McLaughlin, E., "Delivering Equality: Equality Mainstreaming and constitutionalisation of socio-economic rights", *Northern Ireland Legal Quarterly*, Vol. 61, No. 2, 2010, pp. 93–121; McCrudden, C., "Northern Ireland, the Belfast Agreement and the British Constitution" in Jowell, J. and Oliver, D., (eds.) *The Changing Constitution*, 6th edition, Oxford University Press, 2007; Harvey, C., "The New Beginning: Reconstructing constitutional law and democracy in Northern Ireland" in Harvey, C., (ed.) *Human Rights, Equality and Democratic Renewal in Northern Ireland*, Hart Publishing, 2001, pp. 10–52.

housing.¹³² Again, the lack of open data has served to militate against a comprehensive assessment of the success of this new legislation in terms of addressing housing inequalities, particularly by outside organisations or individuals. Of particular interest in this context, however, is the decision-making framework that was adopted to achieve the defensive planning objectives from the 1970s. As the documents examined above show, the process for defensive planning required that in the first instance, the DOE themselves assessed plans for security considerations, which were then presented, via the SCH, to the police and the British Army, who in turn amended these plans in line with their own objectives. Certainly, from reading the original sources of the meetings of the SCH there is little doubt as to who had the final say with respect to any planning or design issues and who was in effect “steering” the work of the committee, i.e. the security forces. Clearly, however, rather than the security forces providing a final blueprint of how the city should look, existing and future plans were simply adapted and amended to coincide with a security agenda – thereby maximising the impact of the proposals, while at the same time maximising “deniability” on the part of the security agencies and their political leaders within the NIO who could legitimately claim that they were simply responding to the wishes of local communities as expressed in community consultation surveys, etc. This is clearly evidenced for example by the way in which the original document states that the Ministry for Home Affairs and the security forces should be offered the opportunity to consider at an early stage “any plans for substantial development or re-development (both for housing and for industry and commerce)”¹³³ and that “opportunities to create natural divisions between difficult areas by means of road re-alignment should not be overlooked”.¹³⁴ In other words, the objective was clearly to ensure that security considerations were in effect “mainstreamed” into the life-blood of the general planning system.

In this context it is important to consider some recent developments within regulatory theory¹³⁵ regarding the promotion of equality of opportunity and in particular, the extent to

132 The other relevant mechanism in terms of oversight from the domestic courts in this context is of course judicial review – the procedure through which the High Court supervises the public law actions and inactions of public authorities and other bodies that are exercising statutory powers, performing public duties, and/or taking decisions on matters of public interest. While developments in judicial review have resulted in new principles that clearly have increased the scope for judicial invigilation of decision-making processes and outcomes, judicial review remains wedded to an historical “review, not appeal” doctrine that permits courts to assess only the legality of decisions and not their merits. See Anthony, G., *Judicial Review in Northern Ireland*, Hart, 2008. See also for example, *R v Secretary of State for Northern Ireland, ex p Finlay* [1983] 9 NIJB 1, Hutton J; *Re Glor Na nGael’s Application* [1991] NI 117, 129, Carswell J.

133 See above, note 89, Para 41.

134 *Ibid.*, Para 44.

135 Hepple, B., “Enforcing Equality Law: Two Steps Forward and Two Steps Backwards for Reflexive Regulation”, *Industrial Law Journal*, Vol. 40, No. 4, December 2011, pp. 315–335; O’Kelly, C. and Bryan, D., “The Regulation of Public Space in Northern Ireland”, *Irish Political Studies*, No. 4, 2007, pp. 565–584; Scott, C., “Regulation in the Age of Governance: The rise of the post-regulatory state”, in Jordana, J. and Levi-Faur, D., (eds.), *The Politics of Regulation*, Edward Elgar, 2004; Yeung, K., *Securing Compliance: A Principled Approach*, Hart Publishing, 2004; Luhmann, N., *Law As A Social System*, Oxford University Press, 2004; Teubner, G., *Law as an Autopoietic System*, Basil Blackwell, 1993.

which “reflexive” regulation can be used as an instrument for achieving regulatory objectives. Essentially reflexive regulation involves the replacement of direct state control with effective internal control by recognising the inner logic of individual social systems; the challenge however is to identify the structural conditions for the creation of an organisational conscience in order to provoke the system to move from its current state, to the one which is desired, and to ensure that these conditions are put in place.¹³⁶ McCrudden has pointed to the success of the operation of the Fair Employment (Northern Ireland) Act 1989 and in his view the Article 55 review process of that Act, whereby employers sought to determine whether or not affirmative action measures were necessary in order to deliver “fair participation”, represented “classic” reflexive regulation.¹³⁷

Significantly, however, elements of reflexive regulation are also evident in the approach adopted by the security forces to defensive planning, where again, rather than delivering “command and control” type prescriptive outcomes for how the city of Belfast should look, the security forces in effect “steered” the planning system in the direction in which they wanted it to go – in this context towards greater segregation and separation of the two communities. Moreover, the “three conditions” which McCrudden considers necessary for successful reflexive regulation – namely, that those subject to the regulatory process have to examine what they are doing on the basis of evidence that is objective and comparable across the sectors in which they operate; that those subject to the regulation consider seriously alternative approaches that are available to them to take that will shift entrenched patterns of inequality which is able to be monitored by some external authoritative body; and some mechanism whereby those subject to regulation are required to engage with other stakeholders that will regularly challenge the set of assumptions that these bodies currently adopt, were also present. In the context of defensive planning in the 1970s and 1980s, external scrutiny and challenge was provided by the security forces, while the initial assessments, made on the basis of reviewing objective data on housing need etc. were carried out by the DOE. The regulatory objective of the defensive planning may have been quite different from that which took place with the fair employment legislation – i.e. segregation rather than integration, and concentrating inequality rather than promoting equality, but the mechanisms by which these objectives were achieved, were quite similar. In addition, one can definitively conclude that the planning system in Northern Ireland never was “autistic”, “technocratic” and impervious to outside influence. The key for the future is to ensure that the planning system is steered in a different direction towards objectives that better promote equality of opportunity.

136 Black, J., “Proceduralising Regulation”, *Oxford Journal of Legal Studies*, Vol. 20, 2000, p. 597; McCrudden, C., “Equality Legislation and Reflexive Regulation: A Response to the Discrimination Law Review’s Consultation Paper”, *Industrial Law Journal*, Vol. 36, No. 3, 2007; De Schutter, O. and Deakin, S., *Reflexive Governance and the Dilemmas of Social Regulation*, in De Schutter, O. and Deakin, S., *Social Rights and Market Forces: is the Open Coordination of Employment and Social Policies the Future of Social Europe?*, Bruylant, 2005.

137 See above, note 42; and see above, note 31, p. 170.

A similar reflexive framework is also evident in relation to urban planning under Section 75 of the Northern Ireland Act.¹³⁸ Section 75 provides for the promotion of equality of opportunity via the use of Equality Impact Assessments and in essence adopts a reflexive regulatory approach that augments the individual rights approach enshrined in the Fair Employment and Treatment (Northern Ireland) Order 1998, and the consociational framework from the Northern Ireland Act.¹³⁹ Certainly, Section 75 provides the three conditions that McCrudden has identified as being necessary for reflexive regulation to succeed. Moreover, there have been a number of other positive external developments that might assist with respect to re-configuring the planning system within Northern Ireland. Perhaps the most important development has been the establishment of a consociational power-sharing system of government for Northern Ireland that guarantees the minority Catholic population an equal share in the government of the region.¹⁴⁰ As such, political representatives of the Catholic community now have a role in decision-making with respect to urban planning and housing policy at the highest levels. In addition, there have also been a number of other smaller, but not insignificant developments including the fact that the Equality Commission for Northern Ireland (ECNI) recently issued a tender for the production of a report on housing inequalities to inform the next Statement of Key Inequalities that the ECNI will issue. Significantly, previous statements of key inequalities covered employment, health, education, and economic wellbeing - but not housing. It would seem therefore, that some 25 years after the SACHR chose not to publishing housing inequality statistics that things have finally begun to change with respect to bringing data on housing inequality into the public domain and that the lessons from the fair employment regulatory framework *vis a vis* the importance of data are finally being applied to patterns of inequality within the provision of housing. It is important however that one is realistic in terms of acknowledging the scale of the challenge ahead, not least some recent announcements regarding redevelopments within the city of Belfast which would seem to indicate that the wider pattern of defensive planning that was laid down in the early 1970s is still being replicated. The insertion of a community facility and sports fields for example into the 27-acre site of the former Girdwood Army Base in North Belfast between the Catholic New Lodge and Protestant Lower Shankill area is evidence that the infrastructure “buffer” solution to occupying contested space is still alive and well – regardless of how this practice might impact on the provision of housing. The flagship Titanic Quarter redevelopment in East Belfast is further evidence of how the north and west of the city continue to be economically and socially segregated from the rest of the city – particularly when it comes to international

138 See McCrudden, C., “Mainstreaming Equality in the governance of Northern Ireland”, above, note 131, p. 1696.

139 Section 76 of the Northern Ireland Act 1998 also states that it shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or cite another person to discriminate against a person or class of persons on grounds of religious belief or political opinion. For a discussion of the consociational role of the Northern Ireland Act in securing equality and human rights protection see McCrudden, C. and O’Leary, B., *Courts and Consociations: Human Rights versus Power-Sharing*, Oxford University Press, 2013.

140 *Ibid.*

investment.¹⁴¹ Steering the planning system in the city in a different direction will clearly be no easy task. There can be no doubt that if this reflexive framework is to succeed, robust data on patterns of housing inequality must be at the heart of debates around a new way forward. The lesson from the previous decades in Northern Ireland is that it is insufficient for public authorities to gather data for their own use, or indeed, for the use of other decision-makers. As this article has shown, in relation to housing inequality, everyone from housing managers in the NIHE, to members of the security forces were aware of levels of housing need – but not those directly affected by that need or those who might have wished to intervene and do something to redress that need. The secrecy and subterfuge surrounding the publication of data on housing inequality has proven only one thing, namely, that the system of workforce monitoring in place since the early 1990s is a *sine qua non* for addressing patterns of inequality in general, and for successful reflexive regulation in particular.

It is also contended that this lesson can be applied beyond Northern Ireland to other reflexive approaches to promoting equality and eradicating discrimination further afield, not least in Britain where McCrudden has previously highlighted the need for effective monitoring in the context of the UK equality duties legislation as one of the key preconditions for ensuring the success that legislation.¹⁴² Certainly, this article would appear to vindicate this view.

Beyond the issue of reflexive regulation it is important to note that one of the key themes to emerge from this article is the extent to which urban planning policies and practices can play an important role in terms of discriminating both directly and indirectly against minority communities, particularly when those policies are pursuing a security objective and are aimed at containing a “suspect community”. It is important to remember, however, that Belfast is not the only city in Britain, or indeed Europe, with a minority community disproportionately experiencing social disadvantage and concentrated within discrete territorial boundaries. Moreover, since 9/11, the main security threat in the UK and indeed the wider EU is not perceived as emanating from Irish Catholic insurgents, but rather Islamic ones. Whether the kinds of covert planning practices evident in Belfast in the 1970s and 1980s have been adopted further afield is a matter of speculation. It is worth recalling, however, that the first example in modern history of the application of the practice of defensive planning in a European city was when Napoleon III encouraged his Prefect of the Seine, Baron Haussmann, to sweep away narrow streets and build broad boulevards in Paris to make it difficult for the revolutionary mob to erect effective barricades.¹⁴³ Similarly, in the past decade, many cities, including London, have embraced what Heathcote describes as a contemporary version of Haussmann’s militarisation, exemplified by the City of London’s Ring of Steel which Heathcote argues introduces “a language of fear, a system of control, that turns the last

141 O’Dowd, L. and Komarova, M., “Contesting Territorial Fixity? A Case Study of Regeneration in Belfast”, *Urban Studies*, Vol. 48, No. 10, 2011, pp. 2013-2028; Morrissey, M. and F. Gaffikin, “Planning for Peace in Contested Space”, *International Journal of Urban and Regional Research*, Vol. 30, No. 4, 2006, pp. 873-93.

142 See McCrudden, C., above, note 136.

143 Bardon, J., *A History of Ulster*, Blackstaff Press, 2001.

bastion of ‘publicness’ into an airport security gate”.¹⁴⁴ Certainly, with some notable exceptions, the issue of urban planning has not received a great deal of attention in Britain, or indeed, across the EU, from discrimination law practitioners or theorists.¹⁴⁵ This is surprising, given that as Yiftachel has argued, urban planning, i.e. the public regulation and “production of space” is shown to serve as an instrument of social control, and like most other areas of public policy, it should thus be conceived as “double-edged”, being capable of both reform and control, emancipation and oppression.¹⁴⁶ It would seem that the time has come for those interested in the theory and practice of equality to apply their skills in order to ensure that the more benign edge of the planning sword prevails.

144 Heathcote, E., “Hidden Language of the Streets”, *Financial Times*, 7 March 2015, p. 15.

145 Burgess, G., “Planning and the Gender Equality Duty – why does gender matter?”, *People, Place and Policy*, Vol. 2, 2008, pp. 112–121.

146 Yiftachel, O. “Social control, urban planning and ethno-class relations: Mizrahi Jews in Israel’s ‘Development Towns’”, *International Journal of Urban and Regional Research*, Vol. 24, No. 2, pp. 418–437.