Policing Human Rights: Law, Politics and Practice in Northern Ireland

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Abstract

Human rights are a defining feature of how the Police Service of Northern Ireland (PSNI) has been 'imagined and made' in its post-conflict society. This thesis marks the first attempt to make sense of how human rights are articulated, interpreted and applied by those intimately involved in Northern Irish policing. Based on extensive access to the PSNI, I marshal qualitative data collected from interviews with over one hundred police officers from various departments. I tour four sites of local policing to expose and examine the vernaculars and practices of human rights that lurk within each. The story I tell over the course of eight chapters is one of a police service trying to sustain human rights as a central narrative to explain its daily work and build its organisational identity in a divided society, to varying degrees of success. I argue that human rights are, in fact, a malleable, contested and conditional concept to 'imagine and make' a police service and regulate the decision-making of its officers; perhaps much more so than police reformers in Northern Ireland had realised or the PSNI wish to acknowledge.

In the first half of the thesis, I identify and deconstruct how the PSNI's chief officers and local political parties seek to express and mobilise competing visions, values and agendas through human rights narratives. I then pay close attention to how human rights are interpreted and translated by junior officers performing two forms of routine policing in N.Ireland: the 'dirty work' of the Tactical Support Group and the 'community work' of Neighbourhood Policing Teams. I ask to what extent officers have internalised human rights as way of making sense of their daily work. In the second half of the thesis, I explore police officers as an important, but poorly understood, class of human rights practitioner. To better grasp how officers interpret and apply human rights standards, I closely analyse two sites of policing where distinct schemes of human rights-based regulation exist: public order policing and police custody. This thesis contributes to understandings of the concept of human rights, its interactions with law and politics and the condition of policing in contemporary Northern Ireland.

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List of Abbreviations

AEP	Attenuated Energy Projectiles
CDO	Civilian Detention Officer
CAEW	Court of Appeal of England and Wales
DR	Dissident Republicans
DUP	Democratic Unionist Party
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
HMIC	Her Majesty's Inspectorate of Constabulary
HRA	Human Rights Act
ICP	Independent Commission on Policing for Northern Ireland
IRA	Irish Republican Army
NICA	Northern Ireland Court of Appeal
NIPB	Northern Ireland Policing Board
PONI	Police Ombudsman Northern Ireland
PACE	Police and Criminal Evidence Act
PofA	Programme of Action
PSNI	Police Service of Northern Ireland
RUC	Royal Ulster Constabulary
SDLP	Social Democratic and Labour Party
TSG	Tactical Support Group
UKHL	Appellate Committee of the House of Lords
UKSC	Supreme Court of the United Kingdom
UUP	Ulster Unionist Party

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Introduction

Righting Policing

The 'Central Proposition'

It was a drizzly September morning. I broke from Belfast's rush-hour traffic and turned onto the Crumlin Road in the north of the city. The road is a wide one – and it needs to be: it buffers two communities whose divisions reflect the competing histories, politics and identities that still define Northern Ireland (N.Ireland) to this day. It can feel like there is no end to the commemorations marking one event or another in the country's conflicted past. This morning's event was significant for local policing. It attracted senior police, politicians, lawyers, academics, community activists and non-governmental organisations (NGOs). The Landrovers of the Police Service of Northern Ireland (PSNI) lined the side-street leading up to the event's venue: the Crumlin Road Gaol. The Gaol once housed infamous prisoners whose acts of terrorism, criminality or politics (depending on one's viewpoint), played a role in sustaining the country's thirty-year armed conflict (1968-1998). But today, gathered in its newly refurbished function room, were former Royal Ulster Constabulary (RUC) policemen turned senior PSNI officers, former Republican prisoners turned elected politicians; the Committee on the Administration of Justice (CAJ) – a long-standing criminal justice NGO formed at the height of the conflict, and the N.Ireland Human Rights Commission (NIHRC) – a product of the country's 1998 peace settlement.

It was in this setting, before these audiences, that the PSNI and the Northern Ireland Policing Board (NIPB) chose to celebrate a decade of human rights-inspired policing in N.Ireland. The event was carefully choreographed. A series of video clips were projected onto the Gaol's white walls and various faces of policing's recent past appeared, from former Chief Constable Sir Hugh Orde to former NIPB legal advisor Sir Keir Starmer. Each praised the efforts made to install human rights into local policing and encouraged their successors to continue the good work. On a make-shift stage, the PSNI's Chief Constable was joined by both the NIPB's chairperson and its human rights legal advisor. A BBC News anchor managed the flow of questions from the audience to the stage: the CAJ asked for guarantees that human rights monitoring would continue; a member of Sinn Féin wanted to know the Chief Constable's views on the proposed repeal of the Human Rights Act (HRA)1998; the Police Federation asked why more wasn't being said

about officers' human rights. Unionist politicians were notably absent from the event.

The Chief Constable, George Hamilton, proudly reaffirmed the PSNI's commitment to human rights and articulately responded to questions about police decision-making using the language of the HRA 1998. "As a police officer" he said, "human rights protect me, my family and my community and I think that it is something to be cherished." In an authoritative tone, he traced the European Convention on Human Rights (ECHR) to its British drafters in the 1950s and reminded the audience of the fundamental freedoms it sought to safeguard in post-war Europe. The NIPB's legal advisor, Alyson Kilpatrick, steered a middle-course, asserting her independence from both the NIPB and PSNI. Whereas the Chief Constable linked human rights to post-war Europe, Kilpatrick reminded the audience of the significance of human rights closer to home, specifically the abuse of rights in the conflict and, more positively, the concrete commitment to human rights made in the 1998 peace settlement. Kilpatrick applauded the PSNI's commitment to and compliance with human rights, based on her year's review. She went as far as to state that even if the HRA 1998 was repealed, the PSNI would still operate with a rights-based approach: "it's become so natural to them". If anything, Kilpatrick's frustration lay with the cynical political narratives tarnishing human rights.

This kind of event must have been hoped for, but surely could not have been envisaged, by the Independent Commission on Policing (ICP) when it published its blueprint for a "new beginning" for policing in N.Ireland in 1999. As Loader (2016: 432), echoing the words of Roberto Unger, has remarked, the police are a social institution "made and imagined". The police service the ICP imagined for post-conflict N.Ireland was one defined by human rights – this was the ICP's (1999: 18) "central proposition":

> We recommend a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach. We make a number of specific recommendations…but the achievement of such an approach goes beyond a series of specific actions. It is more a matter of the philosophy of policing, and should inspire everything that a police service does. It should be seen as the core of this report. (ICP, 1999: 20).

This vision was unashamedly ambitious. It would require police to master the technicalities of human rights law but also to internalise human rights as *the* purpose of their work: "[officers] should perceive their jobs in terms of the protection of human rights" (ICP, 199: 21). It was the apparent success in making this vision real – of re-orientating policing around human rights – that local audiences had gathered in Crumlin Road Gaol to celebrate and debate.

This thesis is an endeavour to make sense of what has just been described: the interplay between human rights law, politics and practice as a defining feature of

N.Irish policing. My aim is to arrive at an account of how human rights are articulated, interpreted and applied by those intimately involved in N.Irish policing. I take the reader on a tour of four sites of policing to expose and examine the vernaculars and practices of human rights that lurk within each. Based on unprecedented access to the PSNI, I marshal qualitative data I collected from interviews and focus groups with over one hundred police officers, from over twenty police stations and five departments, conducted between September 2014 and December 2016. This is supplemented by twelve interviews with members of the NIPB; short periods of participatory observation of Neighbourhood Policing Teams, the Tactical Support Group and training sessions; video archives of thirty-nine public sessions of the NIPB; local newspaper articles published over the last ten years; and official documents produced by the PSNI and NIPB (see Figure 1.1). I argue that human rights are a malleable, contested and conditional concept with which to 'imagine and make' a police organisation; perhaps much more so than the ICP fully envisioned.

The story I tell over the course of eight chapters is of a police service trying to sustain human rights as a central narrative to explain its work, status and identity in a divided society. How this official police narrative is received by local political parties and oversight bodies tells us much about the condition of human rights, politics and policing in N.Ireland today. Equally, how police officers interpret and apply the legal standards of human rights offers valuable insights into human rights as self-regulatory legal framework and an ethics of power in policing. These accounts of law, politics and practice are grounded in human stories; the outlooks, experiences and understandings of policemen and women empowered by, but also burdened with, the responsibility to police under the mantra of human rights. These are voices rarely heard in the scholarly debates, not least because of the organisation's reluctance to allow researchers into the sites of policing I explore here (Ellison, 1997; Mulcahy, 2000). This thesis contributes to our understanding of local policing in N.Ireland, but also the condition of the country's transitional society and the role human rights might yet play in moving it forward.

I am confident this account of human rights and policing is also relevant to important contemporary debates taking place elsewhere. Human rights have emerged as core feature of police reform projects, from post-conflict socities in Eastern Europe in the 1990s, to Canada, South Africa and Australia as part of efforts to strengthen democratic policing (Hornberger, 2010). Indeed, in domestic and international law, police are increasingly bound by human rights principles and increasingly detailed standards, found, for example, in the UN and European codes of conduct for police and law enforcement officers (Goold, 2016). As an organisation often cited as a world leader in human rights policing (Bayley, 2008; English, 2016) and keen to export its brand across the globe (Ellison and O'Reilly, 2008),

the PSNI might serve as a case study capable of contributing to issues this trend towards rights-based policing throws up, including: types of accountability that enhance and encourage rights-based policing; the influence of police cultures on officers' attitudes towards human rights; the dynamic interpretation and application of legal standards by officers; and the wider political and social conditions that affect the salience and status of human rights in policing.

Before introducing the thesis' conceptual and methodological foundations I adopt to make sense of some of these issues in the N.Irish context, I want to begin by locating the enquiry within N.Ireland's broader historical trajectory to help make sense of the contemporary policing debates and salience of human rights there.

In the Shadow of the Past: Policing, Human Rights and the Condition of N.Ireland

Ethno-political-religious vantage points have long served as the lens through which policing is understood, interpreted and debated in N.Ireland. This is a region of the UK that has long sat uneasily on the shoulder of Ireland. For centuries, the population has been divided over whether one identifies as a member of the Protestant majority or Catholic minority. Yet religion is really a proxy for the community one is born into, rather than the church one attends (Bryan, 2000: 12). Many Protestants have a sense of being British, allied to a preference for retaining the union between N.Ireland and Great Britain (Unionism). Many Catholics, on the other hand, have stronger cultural and historical ties to Ireland and desire to, at some point in the future, reunite N.Ireland with the Republic of Ireland (Nationalism). This division has rumbled since at least the sixteenth century, when planters from Scotland and England first settled in Ulster as part of an effort to 'Anglicise' this part of the island of Ireland (Bardon, 2012).

Policing was intimately bound up with the colonial project in Ireland (Brewer and Magee, 1991: 1-4) and the formation of the N.Irish State after the partition of Ireland in 1921. The RUC – almost exclusively Protestant – were part of the apparatus of the Unionist State, maintaining a social order that discriminated against Catholics in politics, housing, industry and culture (Hillyard, 1998; McKittrick and McVea, 2012). It was from 1968 that the conflict between Protestant and Catholic communities and the RUC intensified. By the early 1970s, the Provisional Irish Republican Army (IRA) had emerged as the defenders of Catholic communities under attack from Protestant mobs and the RUC. Protestant vigilante groups soon grew into paramilitary groups to protect their own communities from Catholic attacks (McKittrick and McVea, 2012). Fuelled by the internment of thousands of

Catholics in 1971 and the events of Bloody Sunday in 1972[1], the Provisional IRA grew in its numbers and violence. Paramilitary groups and security forces were drawn into intense conflict with one another (Hillyard, 1998; Hadden, 2010).

A stream of litigants exercised their right of petition to the European Court of Human Rights (ECtHR) during the conflict that ensued (1969-1998), seeking to remedy injustices and curb the excesses of the security forces (McEvoy, 2001, Dickson, 2010). Such hope often proved optimistic given the bluntness of the ECHR in protecting the rights of individuals, particularly suspects detained and questioned at the hands of the police and army (Dickson, 2010). Nonetheless, the RUC's human rights record remains the topic of ongoing contestation. The complaints levelled at the RUC include: the abuse of officers' special powers of search, arrest and detention under the Northern Ireland (Emergency Provisions) Act 1973; allegation of a 'shoot to kill' policy in police and army counter-terrorism operations; police brutality against suspects held in police holding centres as well as against members Republican protestors; and police collusion with Loyalist paramilitaries in the murder of Catholics, including inadequate investigation of deaths where state informers were involved (see CAJ, 1988; Human Rights Watch, 1997; Dickson, 2000, 2010; PONI, 2007, 2016). The danger, stress and bereavement police officers faced on and off duty (Brewer and Magee, 1991: Chpt.6) may contextualise, but cannot excuse, the human rights abuses still coming to light to this day.

Policing had become one of the most emotive, controversial parts of the bitter conflict that killed 3,600 people and injured 40,000 (McKittrick and McVea, 2012). As a key part of the Good Friday Agreement[2] (1998: 22), the political parties agreed that peace brought an "opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole". The Independent Commission on Policing was created and its panel of experts, chaired by Conservative Peer Lord Chris Patten, embarked on their formidable task of re-imaging N.Irish policing. The ICP's consultation attracted over 10,000 people at its public meetings and over 2,500 written submissions (ICP, 1999: 11). Acutely aware that police partisanship was a central fault line during the conflict, the ICP's recommendations proposed: a revived commitment to community policing; greater accountability through the NIPB and local District Policing Partnerships; a recruitment quota to increase the number of Catholic officers; and, of course, a 'human rights approach' to policing. After considerable political debate, the ICP's proposals were enacted in the Police (NI) Act 2000 and

[1] The British Army shot dead thirteen unarmed civil rights campaigners in Derry in January 1972. In 2010, the Saville Inquiry published its damning findings into the incident, provoking Prime Minister David Cameron to issue an apology for the actions of the armed forces.

[2] The Agreement brought an end to the country's armed conflict. It was signed by N.Ireland's political parties (with the exception of the Democratic Unionist Party) and the British and Irish governments after extensive negotiations.

reform began in earnest in November 2001 when the RUC was disbanded and replaced by the PSNI (Shearing, 2000; Ellison and Mulcahy, 2001; Murphy, 2013: Chp.4).

If the PSNI was 'imagined and made' for a peacetime society, the one it actually polices today is defined by a negative peace characterised by the absence of conflict, rather than the presence of reconciliation. Two decades have passed since the Good Friday Agreement but the chasm between Unionism and Nationalism remains. A tribal ethno-nationalism pervades local politics (moderate parties have been electorally decimated), levels of segregation are alarmingly high (just 7% of pupils attend Protestant-Catholic integrated schools, see Wilson, 2016: 121), and Catholics still out-score Protestants in nearly every measure of social deprivation (Nolan, 2014: 13). This is a society yet to reach a shared sense of its history and, crucially, its conflict. The following statement, released by the political parties after failure to agree on mechanisms for 'dealing with the past' in 2014, sums up the present state of affairs all too well:

> We cannot yet agree on the causes of the conflict, a mutual understanding of those events, or even at times the terminology to describe them. Indeed, the period of violence up to 1998 is variously termed a war, a conflict, or the troubles (Northern Ireland Executive, 2013: 21)

In the absence of an overarching transitional justice framework (Bell, 2002; cf. McEvoy and Bryson, 2016), the legal duty arising under article 2 ECHR[3] to investigate conflict-related deaths lies solely with the PSNI. To this end, the PSNI established a £60 million unit to compile reports for victims' families, addressing their concerns and re-examining the prospect of prosecution if evidence arose (Lundy, 2009; CJINI, 2013). Half of the PSNI's major investigation teams and legal department are working exclusively on historical cases (Baggott, 2012; PSNI, 2015a). The PSNI's handling of these cases, particularly the impartiality of its officers, has been subject to sustained criticism from victims' families, politicians (Lundy, 2009; HMIC, 2013, 2015). Chief officers have expressed deep frustration and growing concern at the toxicity these legacy issues are having on policing and have strongly encouraged politicians to relieve the PSNI of its investigatory burden (*Belfast Telegraph,* 2017c). With a possible package of transitional justice mechanisms awaiting approval from the N.Ireland Executive[4], PSNI Chief Constable George Hamilton's (2015a) position is clear: "I will not allow this organization [the PSNI]

[3] This requires the state to conduct a full and effective investigation into the circumstances of controversial deaths caused directly or indirectly by State actors (see Anthony and Mageean, 2007).
[4] This is a proposed agreement between the British and Irish governments and five political parties in the N.Ireland Executive to establish mechanisms to resolve the legacy of the conflict (see McEvoy and Bryson, 2016). Most significant for the PSNI would be the creation of the Historical Investigations Unit, which would take responsibility for investigating conflict-related deaths.

to become the scapegoat for political failure to reach an agreement on this critical issue of the past".

The contemporary interplay between policing, the past and human rights can be seen more broadly too. As Figure I.1 illustrates, public satisfaction with the PSNI is high but remains consistently lower amongst Catholics than Protestants. The reasons for this extend beyond the activities of police to issues of community diversity and cross-community interaction (Bradford et al, forthcoming). The past also lives on in the form of thousands of annual Loyalist parades, hundreds of which raise tensions as they pass by Republican neighbourhoods. In policing these events, the PSNI is thrust to the centre of local disputes. Human rights have been proffered as the best tool for resolving the competing demands of marchers, residents and local businesses (Quigley, 2002; Strategic Review of Parading, 2008). Finally, the PSNI is faced with the threat of Dissident Republican terrorists, but also Loyalist paramilitaries, which still operate in some housing estates: between 2006-2015 there were 787 punishment beatings, 11,000 shootings and bombings and 3,899 forced evictions (Wilson, 2016). Whether paramilitaries, despite not being state actors bound by human rights law, should nevertheless be critiqued and condemned using the praxis of human rights is a long-running debate (McEvoy, 2003; Felner, 2012).

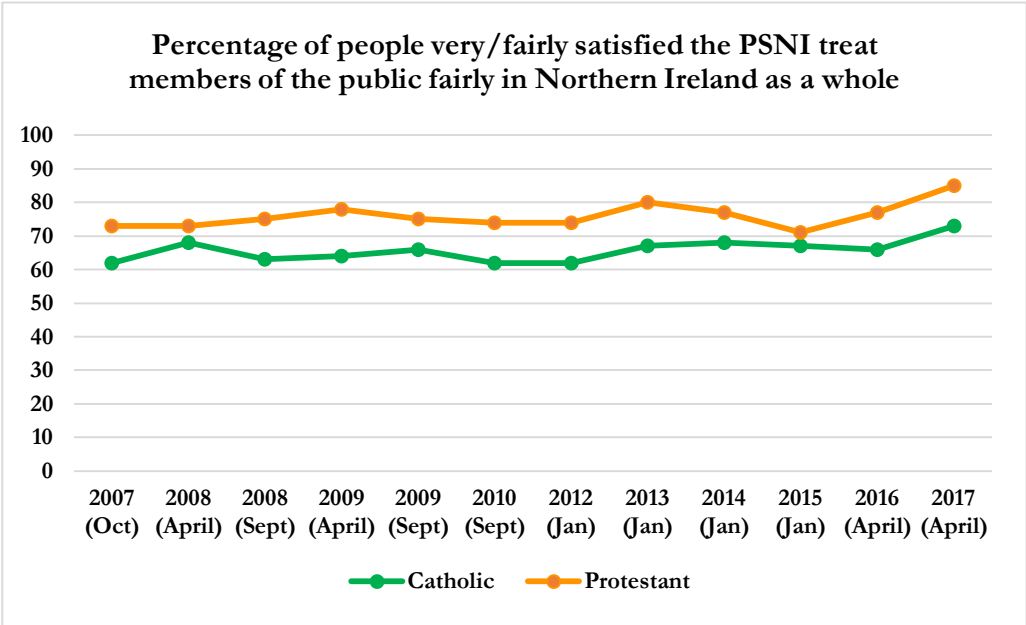

Figure I.1 - Compiled using data from NIPB's omnibus surveys

Towards an Empirical Account of Human Rights in Policing

What are human rights? The legally minded will likely reply without great difficulty: they are the body of international law born out of the 1948 Universal Declaration

on Human Rights, enacted in international treaties, like the ECHR, and codified in domestic constitutional protections, like the HRA 1998. It is the dominance of this legal conception of human rights – as a body of law and legal systems – that has reserved the study of human rights for lawyers and legal academics (Schmidt and Halliday, 2004; Freeman, 2011; O'Byrne, 2012). This is equally so in the context of human rights and policing, certainly in the UK. The leading works masterfully review the judgments of domestic and international courts (e.g., Starmer et al., 2012; Emerson et al., 2012), exemplifying a doctrinal style analysis that examines the internal logic and normative appeal of judicial determination of rights (e.g., Ashworth, 2014; Fenwick, 2009; Mead, 2009). My aim is neither to endorse nor challenge this body of scholarship on its own terms, but to argue it cannot possibly be enough if we are to arrive at a more empirically grounded and conceptually rich grasp of human rights– even human rights *law* – in policing.

To survey the court judgments involving the practices of the PSNI over the last decade would, in light of the local context just outlined, result in a pale and partial conception of human rights in N.Irish policing. But equally, a purely sociological or political style of analysis risks neglecting the regulatory potential of the law and the interaction between the courts and police as human rights practitioners. The argument that rests at the heart of the thesis, and which connects each its four part, is that if we are to fully grasp the performances, philosophies and practices that animate human rights in N.Irish policing, we must be prepared to reach across disciplines, without neglecting the policing scholarship that skilfully exposes the workings of legal regulation (e.g., Dixon et al., 1990), the politics of policing divided societies (e.g., Brewer and Magee, 1991) and the well-known features of police culture (e.g., Waddington, 1999; Reiner, 2010). If the dominant conception of human rights has traditionally been a legal one, though, what conceptual apparatus and disciplinary knowledge might criminologists bring to an enquiry of human rights?

Given criminology's interdisciplinary spirit, quite a lot it should seem. Indeed, criminologists are engaging with human rights more creatively and critically than ever, both in the subject matter they are examining and methodologies they are deploying (Murphy and Whitty, 2013). Studies span from the operation of human rights in the criminal justice system (e.g. Lazarus and Goold, 2007; Amatrudo and Blake, 2014) to more sociological accounts of the vernacular of rights in politics and society (e.g. McEvoy, 2003; Rock, 2004; Loader, 2007). A central observation of Murphy and Whitty (2013: 570) in their review of this scholarship, though, is that a "clear fault line" exists on "the role of law…and more specifically, the legalization of rights". It is this disciplinary marker that I have tried to confront head on, and position myself in relation to, in this thesis – not least as a law graduate keen to engage with the social and political, as well as legal, realms of human rights.

My approach has been to draw on a blend of works and approaches from criminology, law and anthropology to make sense of human rights law, politics and practice in N.Ireland. This enterprise can be distilled into two conceptual foundations of the thesis: first, human rights as a vernacular and second, police as a class of human rights practitioners. Let us briefly take each in turn.

Human rights as a Vernacular of Policing

The "vernacular" of human rights is the word used by Merry (2006) to capture how the vocabulary of international human rights law is learnt, translated and adopted by local actors and institutions. This reflects a broader movement within anthropology to engage more critically with human rights as an operating concept used and expressed by actors across the globe (Engle, 2001; Goodale, 2007). This line of enquiry asks how political strategies and social movements use human rights, the types of state and non-state actors which adopt human rights discourses and the ends for which they do so. Extending past, but not ignoring, international and domestic law, anthropologists are fruitfully examining how groups and institutions discuss, interpret, dismiss or expand rights claims (Riles, 2006; Wilson, 2007). Referred to in the literature as human rights 'talk', 'language' or 'claims' (McEvoy, 2003; Wilson, 2007; Curtis, 2015), Mark Goodale (2006: 490) describes this project as one of exploring "the coteries of concepts, practices and experiences through which human rights have meaning at different levels, levels which are prior to and go beyond the merely legal."

Hornberger's (2010; 2011) seminal ethnography of human rights, policing and violence in Johannesburg which I draw upon at various points in my thesis, is a powerful illustration of how we might locate and explain the practice of human rights as a vernacular of policing in a way that is sensitive to its cultural and historical context. In her review of the policing literature, Hornberger (2010) is rightly critical of the limited engagement with the concept of human rights itself (e.g. Uildriks (2005); Lindholt et al. (2003)). As Hornbeger (2010: 267) argues, this leads to a simple, rather unsophisticated success/failure dichotomy of human rights reform in policing. But more than this, it excludes a fuller exploration of human rights as a social phenomenon, capable of attracting an array of possible understandings, interpretations and applications by a diversity of actors, the accounts of whom are crucial if we are to grasp the social and political interplay that exists between human rights and policing. The questions we ought to be asking include: what are the new institutional features, discursive expressions and societal visions that human rights inspire? (Hornberger, 2010: 267) What kinds of properties fuel human rights normative thrust? How do human rights come to be not only a tool to critique the state but "a means to ameliorate and consolidate legitimacy" (Hornberger, 2010:

262, 267)? It is these questions that animate my enquiry of human rights in N.Irish policing in the first half of the thesis (Chapters 1 to 4).

The prominence of human rights is a remarkable feature of the N.Ireland's political discourse, reflecting the legacy of the past just outlined but also the outworking of the rights-inspired peace settlement. An entire chapter of the Good Friday Agreement (1998) was dedicated to human rights, in which signatories affirmed "their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community". This encouraged a series of legal initiatives and institutional arrangements that were implemented to cement human rights law into Northern Ireland's post-conflict society. These included: the incorporation of the ECHR into domestic law through the HRA 1998; the restriction on the legislative competence of the Northern Ireland Assembly to introduce bills incompatible with the ECHR; and the establishment of the Northern Ireland Human Rights Commission to review the adequacy and effectiveness of law and practice relating to the protection of human rights. Writing in a period of post-Agreement optimism in 2001, local human rights scholar, Colin Harvey (2001: 263) described how:

> there has been a marked increase in the deployment of rights discourse in Northern Ireland since its adoption. Interests which in the past would have been constructed in different terms are now being reinvented in the language of rights.

Fifteen years later, Harvey's (2015, 2017) writing bears a more cautious tone. Not only has Brexit shaken the foundations of the Good Friday Agreement, the last decade has exposed the susceptibility of human rights to ethno-national appropriation. This was strikingly illustrated in the NIHRC's determined efforts to introduce a Bill of Rights for N.Ireland. Three draft Bills were published between 2001 and 2005 and a civic forum was created in 2008, comprising 28 members from politics and civil society. After much debate within the forum, the process stalled. Of the forty substantive rights proposed by the NIHRC, only three enjoyed (qualified) cross-party (Nationalist-Unionist) agreement. Unionists argued for a restrictive bill of rights, Nationalists wanted an expansive one; Unionists preferred non-discrimination, Nationalists insisted on substantive equality; Nationalists championed socio-economic rights, Unionists rejected them because they undermined parliamentary sovereignty (Harvey and Schwartz, 2009). A strong brand of social conservativism in N.Ireland has also sparked heated political and legal debate over the compatibility of the country's prohibitions on same-sex marriage and abortion with domestic and international human rights standards (de Londras, 2017).

The PSNI is a vocal contributor to N.Ireland's human rights discourse. Having invested great energy in reforming itself on the basis of human rights and forced to confront legal responsibilities arising from ECHR standards – most notably in

policing parades as well as historical investigations – the PSNI has its own human rights narrative to contribute to contemporary N.Irish society. It is rare to hear a speech by the Chief Constable or encounter a public session of the NIPB where mention is not made of human rights. As Harvey (2015: 61) further noted in his recent review of human rights and criminal justice in N.Ireland:

> Fluency in the language of human rights (particularly the ECHR) is programmatically and strategically wise for anyone wishing to progress within the institutional contexts of policing and justice.

It is this language of human rights, the politics that surrounds it, the legal regulation it implies and the practices it promotes which I set out to examine in this thesis. It is an endeavour to identify, deconstruct and interpret the official and unofficial narratives of human rights in policing, to grasp the motivations of the policing actors and to lay bare the histories, imaginations, visions and values they express through human rights.

Police as Human Rights Practitioners

Police organisations across the UK are bound by the HRA 1998 which incorporates ECHR into domestic law. As public bodies under the HRA 1998, the police are subject to human rights law standards and enhanced legal accountability because ECHR rights can now be enforced by victims of suspected human rights violations in domestic courts. Human rights have, according to Neyroud and Beckley (2013), created a "new agenda in policing": police policies and procedures must be human rights compliant, but so too must everyday activities and decisions of police officers demonstrate an awareness of, and respect for, human rights law principles and standards. As summed up more generally by Roger Cotterrell (1997: 289), law's community of interpretation has become more diverse:

> A sociological perspective is necessary to examine contexts of interpretation of regulation, and the way in which legal interpretive communities (within legal professions and judiciaries, but also outside them) are established and maintained…. Law's community of interpretation is not one but many. Legal theory must explore both the possibilities for rational interpretation within such communities, and the sociological factors that determine their structure and hierarchy—indeed their very conditions of existence.

The practice of human rights law in policing should no longer be confined to a doctrinal analysis because, quite simply, the agents of interpretation and application of human rights are no longer confined to lawyers and judges, they are: neighbourhood constables deciding whether there is a positive duty to intervene in a situation of grave danger per the right to life (Article 2 ECHR); they are custody officers assessing whether the legal threshold has been met to justify taking away a person's liberty (Article 5 ECHR); they are public order commanders balancing protest groups' right to assemble and express their views (Articles 9 to 11 ECHR) against

the rights business owners and local residents who have the right to family and private (Article 8 ECHR); they are armed officers determining whether the legal threshold has been met to use potentially lethal force (Article 2 ECHR). These are all core aspects of police that require officers to understand, interpret and apply human rights law standards, as pronounced in court judgments, and principles, such as those which govern the balance of competing rights.

What do we know about how officers of differing rank, role and experience perform their interpretative roles as human rights practitioners? Quite simply, not much. Two-decades after the HRA 1998 was introduced – a development described by Dixon (2007: 32) as "the most important development in law for policing" – there remains just one, small empirical study of the impact of the HRA 1998. This was conducted by Bullock and Johnson (2012) with twenty officers in an English Constabulary, assessing their technical grasp of human rights standards contained in the Regulatory Investigative Powers Act. Besides this, there is only descriptive works sketching the relationship between human rights and policing (Neyroud and Beckley, 2013; Crawshaw et al., 2007; Beckley, 2017). In his short review of the literature, Goold commented on the dearth of empirical research:

> "[T]here are very few empirical studies that focus specifically on the question of policing and rights, or the barriers to effective human rights policing. As a result, we know little about how the police understand human rights, how the police's institutional and working cultures shape individual's responses to those rights…These are all areas that need to be the subject of further research." (Goold, 2016: 236)

The paucity of work might be explained by the shift towards normative accounts of rule compliance in the booming police legitimacy scholarship, which speaks the language of procedural justice, social alignment and group identity, not human rights or legal regulation (see, e.g., Bradford and Jackson, 2016; Trinkner et al., 2017). It might also reflect a general disinterest in codified human rights in English culture (Loader, 2007), perhaps linked to the common-law's own preference for civil liberties (Hunt, 1999). The lack of research is certainly striking compared to the excitement generated by the introduction of PACE 1984. Writing during this high-water mark for law and policing research, Dixon (1996: 289) described how "[t]he impact of PACE is one of the most controversial issues in British criminology". Great debate rumbled between rule sceptics (e.g. McConville et al., 1991), who emphasized the salience of police culture and informal working rules over the law; rule optimists (e.g. Kinsey and Baldwin, 1982), who posited that in the right organisational setting and legal format rules could temper police behaviour; and rule-critics (e.g. McBarnet, 1983), who thought that it was the very substance of law which enabled and legitimated illiberal police practices.

In assessing the role police play as human rights practitioners in N.Ireland a useful starting point in my enquiry, however, has been the NIPB's annual human

rights reports, produced by the NIPB's legal advisors, which offer a detailed appraisal of technical points of the PSNI's compliance with HRA 1998. In particular, the reports provide a valuable legal analysis of the latest legislation and case law and how the PSNI's formal policies and procedures have incorporated them. What these reports do not do, though, is offer a detailed empirical exploration or conceptual analysis of officers' own conceptions, interpretations and applications of human rights or the interplay between human rights law, politics and practice. So, whilst these reports are an immensely informative and practical guide for police and oversight bodies, they do not tell us, as an academic audience, much at all about the internal workings, personalities and cultures that animate police as human rights practitioners. This is what I seek to do in Chapters 5 to 8 by drawing on interviews, focus groups and short periods of observation with a wide range of officers, performing different types of police work, in different operational and regulatory contexts, engaging with different human rights.

Chapter Outline: Four of Sites Policing

For ease of understanding, Figure I.2 offers a visual illustration of the four sites of policing, the methods adopted in each and their order of appearance in the thesis. I have reflected briefly on how I brokered access to the PSNI, as well as how my identity may have affected this process and the analysis of my qualitative data, in a short methodological note contained in Annex A.

Part I opens with the official narrative of human rights in N.Irish policing. In Chapter 1, I ask how and why human rights have become such an integral part of the PSNI's official narrative in the last decade. I critically unpack the vocabulary of human rights, identifying how it has been purposefully adopted and deployed by the PSNI to appeal to high-level audiences. To access the specific properties and meanings attached to PSNI's rights narrative, I engage in a close reading and analysis of the forewords of the PSNI's annual Human Rights Programme of Action, chief officers' speeches and their responses to the questions of political members at the NIPB's monthly public sessions, as well as interviews with PSNI senior and chief officers. I identify and deconstruct three properties of the PSNI's official rights narrative, these are: human rights (i) as an ethics of power, (ii) as legality and (iii) as accountability. I argue these properties contribute to a vision of the PSNI as worthy of endorsement by influential audiences. The extent to which these claims are accepted, or even recognised, by the public remains debatable but I argue that the very *ability* of police to mount and sustain this legitimating narrative lies in its 'authorization' by the corporate voice of the NIPB and the local media.

In Chapter 2, I consider the extent to which local political parties represented on the NIPB are willing to endorse the PSNI's official rights narrative. In doing so, I piece together the loud and divisive ethnonational politics that animates narratives of human rights and policing in N.Ireland. I do so by using video archives of the NIPB's monthly public sessions and semi-structured interviews with political members from each of the five local parties. The NIPB's video footage of its public sessions (archived on its public Facebook page) proved to be a rich resource brimming with local human rights talk. These video archives offer a complete catalogue of the monthly public sessions of the NIPB from October 2011 to December 2016 (a total of 39 sessions, lasting one hour each). I argue that human rights are a linguistic vessel harbouring deep sentiments and concerns, at the heart of which are political members competing histories of the conflict, legacies of policing and understandings of N.Ireland's imperfect peace. On occasions, Unionist members of the NIPB serve to support the PSNI's official narrative and help to sustain it, whilst Nationalist members accounts openly contradict the police narrative and actively challenge its legitimating properties identified in Chapter 1.

The opening narratives presented in Part I reveal early on the malleability of human rights; that is, the capacity of human rights language to be appropriated by different actors and to become imbued with their particular visions, values and agendas. I develop this further in Part II, where the focus shifts to the internal perspectives of human rights within the PSNI. I reveal that the PSNI's official narrative is heavily promoted within the police organisation and how human rights have come to have a strong organisational presence in training, procedures, manuals and operational documents. My principle focus here is the extent to which junior officers performing routine policing have internalised the properties of the PSNI's official human rights narrative as expressed by chief officers. I rely on extensive semi-structured interviews and short periods of observation with officers from the Tactical Support Group (TSG) and Neighbourhood Policing Teams (NPTs), devoting a chapter to the TSG and NPTs respectively. Using Checkel's (2005) typology internalisation of norms, I argue that these officers have learnt how to 'act out' the properties of human rights in the official narrative, without wholly adopting or embracing it.

In Chapter 3, I draw on Hughes' (1985) concept "dirty work" to conceptualise the daily tasks that the TSG perform (house searches, public order policing, anti-terrorism patrols). I demonstrate how officers have formed their own interpretations and understandings of human rights, expressed through a serious of counter-narratives, which drain human rights of their power to restore meaning or value to the tasks they do. These counter-narratives suggest that human rights based policing is mere common sense, something they were already doing in the RUC and primarily the reserve of more senior officers anyway. In Chapter 4, I extend this

analysis to the NPTs whose job is to maintain good relations in communities where trust in policing remains a challenge. Having introduced the two towns where the fieldwork was conducted, I explore how officers encountered, and responded to, the lay lexicons of rights that confronted them within communities and in their experience of local policing, juxtaposing these with the official rights narrative of the PSNI's chief officers. This analysis reveals how remote officers felt human rights were from their daily work; it could not adequately account for, nor make sense, of their relationships with, or activities in, communities. I conclude by asking what this cognitive distance means for the protection of certain groups in society.

Building on Part II's analysis, I proceed to examine in greater detail how human rights operate as a mode of self-regulation and guide for decision-making in two areas of policing with distinct legal formats: public order policing (Part III) and police custody (Part IV). I purposefully chose these two sites of police work to compare how different conditions might influence the effect of human rights law on decision-making and officers' self-conception of their work. In each of these sites, I reveal the organisational processes and legal formats by which human rights law takes its organisational form, before exploring how officers engaged with these formats and their accounts of acting as human rights practitioners. I argue that organisational structure and roles, variations in the types and influence of police cultures and the presence of external accountability (closely linked to perception of 'in-the-job trouble' (Chatterton, 1979) best explain why human rights law is having greater impact in public order policing than police custody. This variation cannot, I argue, be explained by the substantive law, which, in both sites, grants police considerable operational discretion.

The first site, public order policing, is the focus of Part III. In Chapter 5 I draw on interviews and short periods of observations with a select group of the PSNI's experienced public order commanders to reveal how human rights have been heavily integrated into the policing of contentious parades and protests. I reveal how the firm institutionalisation of human rights is not a direct result of legislation or external accountability but rather of senior officers own internal practices and processes, albeit closely monitored by the NIPB's human rights legal advisors. Commanders have made a determined effort to write human rights standards into the police 'script' to manage contentious parades and protests. I explain how this police script is written and communicated within the PSNI and how commanders learn to understand and apply the key human rights standards that form a key plotline in this police script.

In Chapter 6 I demonstrate how the police script is performed in practice, based primarily on commanders' accounts, PSNI use of force data and two legal challenges concerning the PSNI's handling of public order events. Re-engaging with Waddington's (1994) seminal study, I demonstrate how the overriding goal of

public order commanders remains that of minimising the likelihood of 'in the job trouble' arising from contentious parades. I argue, *contra* Waddington, that commanders' did not perceive (human rights) law as an impediment to the planning and carrying out of police operations, but rather as a crucial tool for avoiding possible 'trouble'. Commanders were acutely aware of the ramifications their decision-making had for the parade and protest groups involved, as well as their own professional standing within the organisation. In some circumstances, human rights law standards offered concrete standard to apply, but in others it could structure but not definitely resolve how competing rights ought to be balanced. Within this discretionary space, commanders operated in the shadow of the law: they took instructions from their lawyer, incorporated human rights principles and case law into the police script and articulated their decisions using rights terminology. I use the decision-making process governing police use of force to illustrate the self-regulatory power of human rights and the importance of commanders' sense of accountability to the NIPB, Police Ombudsman and the courts.

The final site of study, police custody, is explored in Part IV. I reveal why the rights-inspired safeguards under PACE 1984, as interpreted by the courts using Article 5 ECHR (right to liberty), had significantly less impact on junior-ranking custody officers responsible for authorising suspects' detention. In Chapter 7, I focus on how PACE safeguards for suspects' right to liberty have fared in the face of organisational pressure to detect and 'clear up' crime. I examine the regulatory scheme and legal standards devised under PACE, including how it has been impacted by the 2005 legislation. Drawing on the recent case law of the High Court and Divisional Court of N.Ireland and Court of Appeal of England and Wales, I reveal how the safeguards have been only loosely protected by the courts. Using the three safeguards purported to protect suspects' right to liberty to structure the chapter's analysis, I explore how officers apply, dismiss, interpret and re-construct these rights-based standards. Custody officers described being routinely presented with arrests that fell short of the (judicially watered down) legal standards designed to protect individuals' rights. A target-driven culture that pressurised officers to make arrests was cited by custody officers as the greatest threat to individual's right to liberty in police custody.

In chapter 8, I expose the organisational pressures and cultural allegiances that animated legal decision-making in police custody by revealing custody officers' accounts of how they managed the 'booking-in' process when suspects were brought in to custody to be detained on the request of arresting officers. Custody officers described how they assisted arresting officers to reach the legal threshold required for the arrest and detention of suspects by using certain ploys. Softened by their cultural affinity to their fellow junior officers, attuned to the potential of in-the-job

trouble and freed by the relative absence of meaningful accountability from solicitors, lay visitors or judges, custody officers found themselves succumbing to the pressure to detain suspects in the overwhelming majority of cases. In law and in practice, the individual's right to liberty at this entry point of the criminal justice system, appeared more fictional than real. Custody officers knew this and regretted it but felt powerless to respond to the structural and cultural pressures they faced.

In chapter 10, I conclude by drawing together the four parts of the thesis to reflect on the vernaculars of human rights in N.Irish policing and the role of police as human rights practitioners. I return to the anniversary event at the Crumlin Road Gaol on that drizzly September morning to consider what we now know about the political, social and legal lives of human rights in policing.

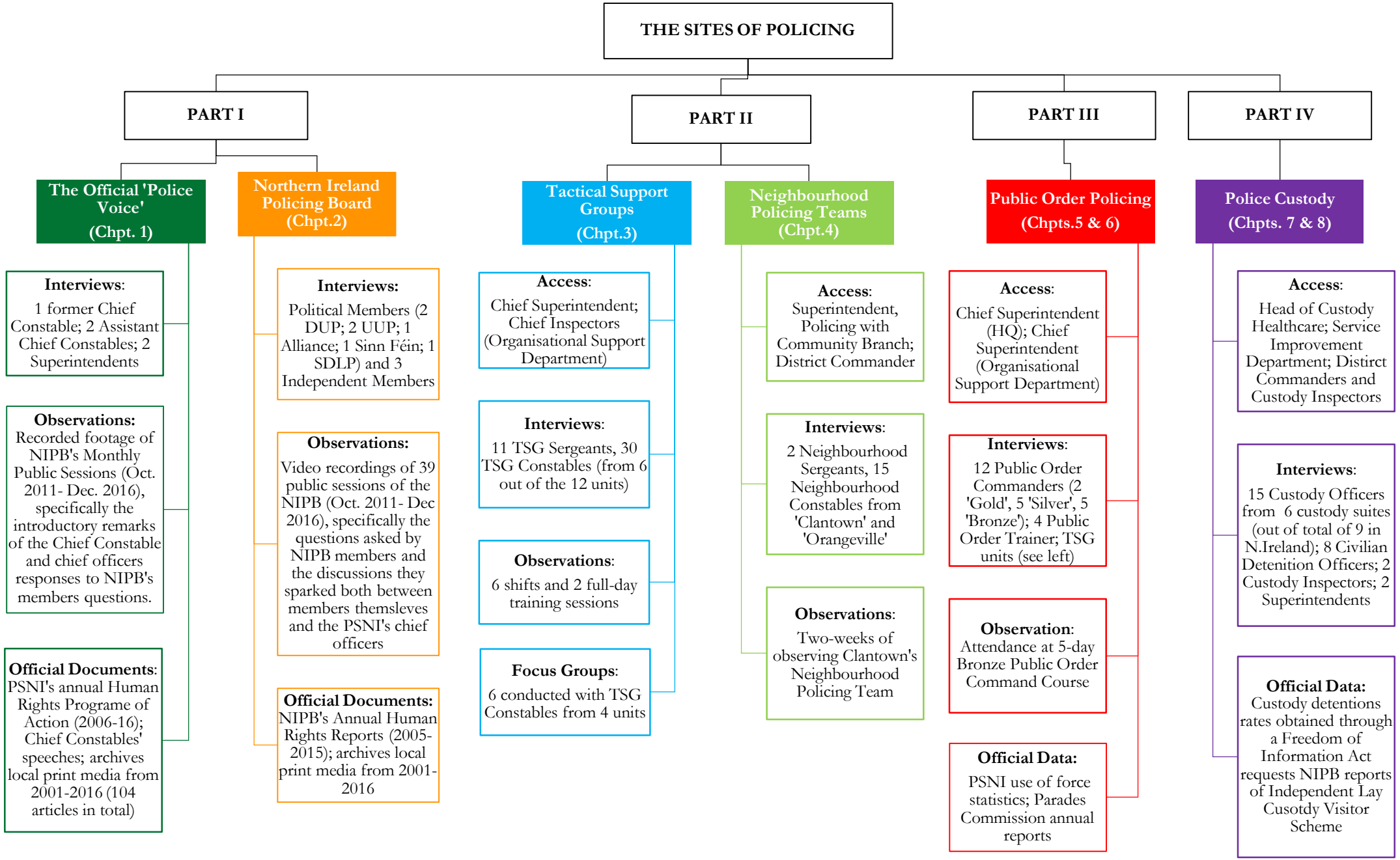

Figure I.2 Map of the Sites of Policing

PART I

Opening Narratives: The Politics of Rights

Chapter 1

The Official Police Voice

The task of this opening chapter is to trace how and why human rights have become such an integral part of the PSNI's official narrative over the course of the last decade. The reason, I argue, lies in the apparent power of human rights to cool down, if not neutralise, political tensions, debates and controversies that still animate 'high-level policing' (Brodeur, 1983) in the country. As I will demonstrate, the allure of human rights lies in its capacity to promote the PSNI's ethical credentials, neutrality and accountability to high-level audiences – politicians, oversight bodies and the media – that remain acutely attuned to signals of police partisanship or impropriety. For the PSNI's chief officers, the human rights reforms that they worked to embed within the organisation (Murphy, 2013) have rehabilitated the PSNI's moral authority to comment on matters of politics, transition and peace. That is, not only have human rights become a central stand of the official voice of chief officers, the reforms on which this narrative is based has helped chief officers reclaim the 'police voice': "the power to 'name', diagnose and classify social problems" (Loader and Mulcahy, 2003: 226).

Using a contextualised, interpretive style of analysis, I account for the reputational motives for, and consequences of, the PSNI's carefully cultivated rights narrative. To frame this analysis, I draw upon and gently re-work Bottom and Tankebe's (2012, 2013) 'dialogic' model of legitimacy to better account for the conditional nature of power and legitimation. I argue elite actors are not merely passive audiences in receipt of the PSNI's official rights narrative but are, in fact, crucial to its ability to construct and deploy a convincing rights storyline. This chapter's style of analysis might helpfully be understood as taking up Loader's (2007: 29) invitation to examine what he refers to as "the cultural life of human rights". Writing in the context of lay anxieties that animate crime, insecurity and human rights in English culture, Loader (2007: 29) proposes "a style of enquiry comprised of close observation and in-depth interpretation best conducted *in situ*… the fine-grained interpretive analysis of the political and lay vernacular of rights and security". Doing so might enable us to better identify, and account for, the dynamic struggles in which rights-based claims are deployed as part of efforts to frame, or even resolve, contemporary political and public debates. This interpretive approach goes beyond the legal to expose the social and political origins and consequences of human rights as a discourse (Freeman, 2011: 91).

I begin by introducing the concept of police legitimation and illustrate how Bottoms and Tankebe's dialogic model might be re-crafted to better capture power dynamics in N.Ireland. I use this gently-reworked conceptualisation of legitimation to frame the chapter's analysis of the construction, expression and deployment of human rights as a legitimating narrative of policing to high-level audiences. By closely examining chief officers' forewords and speeches, as well as their public responses to questions at the NIPB's public session, I identify three central properties that define this official vernacular: human rights (i) as an ethics of power, (ii) as legality and (iii) as accountability. Each of these, I argue, contribute to a purported vision of the PSNI as worthy of endorsement by elite audiences. The extent to which these claims are accepted, or even recognised, by the general public remains debatable but I argue that the very *ability* of the police to mount and sustain this human rights narrative lies in its 'authorisation' by powerful audiences that contribute local debates over policing in N.Ireland.

Legitimation, the Official Voice and Influential Audiences

Botttoms and Tankebe (2012, 2013) have recently called for greater attention to be given to the role and perspective of the police as 'power-holders', the possessors of a particular type of authority. In an effort to promote a richer account of empirical legitimacy, Bottoms and Tankebe draw on the works of Weber (1978) and Raz (2009), which posit that authorities rarely, if ever, rely on coercion alone to achieve support and compliance from the public. Rather, authorities seek to cultivate a belief in the minds of those they govern that the power they wield is morally justifiable. Accordingly, Bottoms and Tankebe propose a 'dialogic and relational' conceptualisation of legitimacy which emphasises its 'interactive character': power-holders make claims to legitimate authority, which are responded to by one or more audiences, and these responses may motivate power-holders to re-adjust their claims. This relatively simple, yet fundamental, claim will be familiar to sociologists and political scientists, based as it is in the established works of Weber (1978) and Beetham (1991). But in the field of enquiry cultivated by criminal justice researchers, power-holders and their 'claims' have generally received less attention[5].

The relative infancy of the 'dialogic' approach to legitimacy makes it a fertile concept with which to creatively engage with in light of the existing research. I

[5] For a rare exception see McEvoy and Schwartz's (2015) assessment of the shaping of the judicial role during the N.Irish conflict. Though the dialogic approach of Bottoms and Tankebe is not discussed, their analysis of the public, political and legal 'audiences' the judiciary 'performed' to is similar in tone.

suggest that the dialogic approach ought to be developed in two ways to properly account for, and explain, police legitimation in the context of politics and accountability. The first relates specifically to the act of legitimation: the material practices that power-holders engage in to make, enhance or cultivate moral authority of their power in the eyes of subordinates, as well as themselves (Barker, 2001). Bottoms and Tankebe (2013: 69-72) single out two modes of legitimation as particularly significant in the context of policing: *cultural legitimation* (the cultural markers that symbolize the special status of police, such as distinct police uniforms, marked vehicles, ceremonial graduations and funerals) and *performative legitimation* (the effective and performance of primary police function, most notably maintenance of a just social order). Although both are worthy of further exploration, Bottoms and Tankebe, have, I think, overlooked a third mode of legitimation: *discursive legitimation*.

Cultural and performative legitimation are rituals or acts that can be studied through close observation of the everyday work of officers and their reflexive accounts. Discursive legitimation takes its most pronounced form, I think, in what Loader and Mulcahy have termed the "corporate police voice" (Loader and Mulcahy, 2001: 43; cf. Shiner, 2010); that is, a strategically constructed and carefully deployed narrative that can be pieced together from official documents and chief officers' remarks in public, as well as research interviews. This discursive expression of legitimacy is well captured by works exploring how police and criminal justice agencies deploy 'storylines' (McLaughlin and Murji, 1998), 'narratives' (Cote-Lussier, 2013), 'histories' (Mulcahy, 2000) and 'visions' (Mulcahy, 1999) to defend their reputations and identities. The veracity of these discourses is secondary to the ideological work they do in constructing a vision capable of eliciting support from powerful audiences (McLaughlin and Murji, 1998: 397).

This style of examination offers insight into the very topic of debate but, perhaps more interestingly, it tells us even more about policing as a social institution and the political culture of which it is a part (Loader and Mulcahy, 2003). For an illuminating example of discursive legitimation at work, we need look no further than the 'organisational memories' the RUC deployed during the conflict in response to accusations of bias, brutality and bigotry (Mulcahy, 1999, 2000; Mulcahy and Ellison, 2000). These were strategically "mobilised to maximise the force's positive self-conception, minimise its problems, and side line its critics" (Mulcahy and Ellison, 2001: 286).

Locating the official police voice alongside political cultures, social change and institutional tensions encourages a second extension of Bottoms and Tankebe's dialogic model: the role of elite actors as influential audiences that can, in fact, be constitutive of legitimating discourses. Bottoms and Tankebe (2013: 65) acknowledge that police "will need to legitimate themselves upwards (to state or

national governing bodies)" but they offer very little about the role of other power-holders as core audiences for legitimation, capable of affecting the production, content and cultivation of legitimacy claims. And yet we know police organisations are routinely drawn into contact with, rely upon, and direct their voice towards other elite actors, including politicians (Loader and Mulcahy, 2003; Murray and Harkin, 2017), oversight bodies (Campau, 2015), courts (Bronnitt and Stenning, 2011) and the media (Ericson et al., 1989; Mawby 2010a; Lee and McGovern, 2013). More generally, Barker (2001: 51) argues that rulers themselves are the principal audience for legitimation and, when recognition is sought from others, it is most often from "the rulers own immediate associates, institution, or community".

How might we incorporate institutional power and elite actors into Bottoms and Tankebe model? One way is to draw upon the insights of Berger and Zelditch (1998: 268) in their theory of political power. This theory embeds legitimacy (what they describe as 'endorsement') within political controls that facilitate, mediate and limit interactions between institutions and those over whom they have power: the "exercise of authority is actually a matter of the coordinated action of a system of actors, not a dyadic relation between a superior and subordinate". To account for hierarchies of power in society, they distinguish between two levels of support for authorities: first, support by peers or superiors of an authority (authorisation) and second, support by peers of a subordinate over whom that authority is exercised (endorsement). For a directive by an authority to be executed, and before it is considered for possible endorsement by a subordinate's peers, it must be backed by the actions (authorisation) of others. Accordingly, "[l]egitimacy will normatively regulate power if, and only if, it is true that others will not back invalid directives. Thus, normative regulation of powers lies in the effect of validity on authorization and endorsement by a complex system of others" (Berger and Zelditch, 1998: 269).

Crucially, this theory posits that elite audiences are part of a more complex division of authority, where power-holders are accountable and responsive to one another, as well as to subordinate audiences. Applying this to police legitimation, elites such as political actors, oversight bodies or criminal justice agencies are not merely audiences, but integral to the very power dynamics that enable police organisations to assert and substantiate legitimacy claims. This is an idea we will return to consider more closely in the final section. Before we get there, I want to first explore the material form of the PSNI's official human rights narrative, which encourages us to look more closely at the format of human rights reporting the ICP reforms inspired, the key individuals responsible for this scheme and their motivations for doing so. The chapter will then proceed to examine the legitimating properties that have come to be associated with, or actively attached to, human rights by chief officers. These properties reveal the official understandings, visions

and ideals of human rights, which will be returned to in the analysis of routine policing in Part II.

Listening to the Official Voice: The Construction of Human Rights

The PSNI's human rights vernacular was first heard during a series of specialist conferences in 2001 as chief officers – sharing platforms with lawyers and academics – mooted how best to achieve the ICP's human rights vision for policing (Cramphorn, 2001; Kinkaid, 2001). Inspired by the Council of Europe's own programme for human rights policing, as well as the ICP's recommendations, reform processes soon got underway. More specifically, the PSNI hired an in-house human rights lawyer; human rights training packages were rolled out across the PSNI with new determination; an oath of allegiance to uphold human rights was introduced; work began on a police Code of Ethics inspired by the ECHR; and the PSNI appointed a chief officer to the role of 'human rights champion', a symbolic move to demonstrate how seriously the leadership were approaching human rights. These specific reforms were, of course, just one part of the massive organisational change that took place from 2001 to 2007. The PSNI's senior management sought to satisfy the hundreds of ICP recommendations, with their progress carefully monitored by a specially appointed Oversight Commissioner (see Murphy, 2013: ch.4)

It was from 2003 onwards, however, that a rights narrative really rose to prominence. This was due in large part to the introduction of the NIPB's human rights monitoring framework, devised by Sir Keir Starmer (an eminent human rights barrister), in co-ordination with the PSNI (Starmer, 2007; Rea and Masefield, 2014). The NIPB, itself a product of the ICP-inspired reforms, was bestowed with a statutory duty (the first of its kind in the UK) to ensure the police complied with the HRA 1998. The PSNI agreed the NIPB's legal advisors would have extensive access to police training, policies, and operations. The principles guiding this approach were that the legal advisors' oversight should: consider the whole of policing, both positive and negative; encourage a positive dialogue with the PSNI, addressing issues as they arose; and not be retrospective, focusing on contemporary police practices (Starmer and Gordon, 2005). The oversight regimes dialogic aspirations were clear from its reporting framework: the legal advisors produce findings and recommendations based on their year-round observations, which are then published in the NIPB's Annual Human Rights Report and this Report is, in turn, responded to by the PSNI in their own annual Human Rights Programme of Action (PofA).

Keen to demonstrate its progress in achieving the ICP's human rights reforms, the PSNI allowed NIPB's legal advisors extensive access to what had long been a closed, secretive police organisation (Mulcahy, 2000). In an interview with former PSNI Chief Constable Sir Hugh Orde (2002-2007), it was striking how important the NIPB and legal advisors – as 'high-policing' audiences – were throughout this period of reform:

> "I would have the Ombudsman, the Policing Board, the human rights advisors – they were allowed to go wherever they wanted, in at these briefings, seats at the front row, they had input in these briefings. It was a very different way of policing. Culturally that was seen as pretty seismic because you had to convince people outside who doubted that we were absolutely delivering change. And that was critical, they had to be convinced something was different… It required relentless energy and relentless pressure to deliver the change in fairly quick time, against a series of oversight bodies of which Keir Starmer and the human rights stuff was critical. (Sir Hugh Orde, interview, 15.12.14)

The symbolism of these reports – as formal documents approved by chief officers – is captured in Chief Constable's opening remarks in an early programme of action:

> The production of this Report is another indication of the Police Service of Northern Ireland's commitment to develop further the ideal of a human rights-based approach to policing […] Its productions is intended to demonstrate to the Policing Board, and to the wider community, the Police Service of Northern Ireland's commitment to engage with others to improve on a continuous basis (PSNI, 2007: 5).

The institutional dialogue between the NIPB and PSNI continues to this day. A decade of reporting provides us with a rich archive of the 'police voice' but its sheer endurance also says something interesting about the perceived utility of human rights long after the reform process ran its course. It would appear from recent PofAs that chief officers still feel a strong need to prove their organisation's credentials to elite audiences. The PofAs, we are told, remain a "public declaration and demonstration of our commitment to human rights" (PSNI, 2014a: 3) and is "not just about the publication of our policies and procedures; it is about telling our story" (PSNI, 2015a: 4). Notably, this narrative is imbued with increasing organisational self-confidence; it is a story of progress, of success. Writing in their reports, chief officers proclaim how human rights are "well established in our current working practices and policies, we are widely acknowledged as international leaders in this area" (PSNI, 2011: 2), and that the implementation of over 200 NIPB recommendations is "testament to PSNI's commitment to ensuring that a positive human rights culture and awareness" (PSNI, 2014a: 3).

In recent years, the official police voice has taken oratory form too. It is heard in chief officers' responses at the NIPB's monthly public sessions, often to allay

politicians' concerns over covert intelligence, public order policing or investigations into conflict-related deaths. Chief officers have also used other public forums to promote their rights narrative, most notably the launches of the NIPB's Annual Human Rights Report, which are typically high-profile events involving a panel discussion with the Chief Constable, NIPB members and legal advisors. Reflecting the PSNI's growing ownership of rights discourse, Chief Constable Hamilton has even delivered speeches at human rights conferences in Belfast, including the keynote speech at the N.Irish Human Rights Consortium (Hamilton, 2014a; 2016a; 2016b) The audience at these events reveal to whom this rights narrative is addressed: local NGOs, politicians, academics, oversight bodies, and other chief officers. In the following section, I look more closely at the properties of human rights – the ideals, commitments, associated principles – that help make it an attractive language capable of appealing to high-level audiences and recovering a societal position from which chief officers can "act and judge" (Hornberger, 2011: 3).

Interpreting the Official Voice: Human Rights as Legitimation

Narratives shift across time, location and audience, and subtle changes may reveal an understating of, and sensitivity to, political events or institutions (Payne, 2008). In this section, I identify and examine the PSNI's commitment to three core properties that chief officers distilled from human rights. These are human rights: (i) as an ethics of power, which appeals to police culture and morality (ii) as legality, which emphasises compliance with an objective, neutral set of rules and (iii) as accountability. The coherent narrative of chief officers reiterates their commitment to these properties in an effort to defend the PSNI and enhance its legitimacy in the eyes of the elite audiences. Let us take each of these properties in turn, bearing in mind the context of human rights and policing outlined in the Introduction.

Human Rights as an 'Ethics of Power'

The PSNI's chief officers portray human rights as a set of moral principles to which the organisation has wilfully, and proudly, bound itself to. Chief officers keenly convey rights as *the* ethical framework guiding officers and tempering their power. Writing forewords of the PofAs, chief officers insist the PSNI's commitment to human rights extends beyond legal compliance to reflect the organisation's very morality – indeed, it's very identity – as an organisation: "human rights is part of our culture; ingrained in how things are done" (PSNI, 2013a: 2) and "it is not only in the DNA of policing…it is also part of our psyche; it is how we think,

weigh up options and ultimately make decisions…" (PSNI, 2015a: 3). In accomplishing their legal duty to protect the public, which requires officers to use powers of arrest and search, chief officers describe human rights as "a practical framework through which we can use these powers with the consent and confidence of our community" (Chief Constable Hamilton, 2014a). Drawing on Hornberger's (2010: 263) analysis of the 'ethical in action', it is clear ethics here are not being deployed in the philosophical sense of "open-ended, undetermined deliberation over what is good and just" but instead as "a practical means for following a more or less predetermined moral course of action".

As Wallach (2005) has argued, there is a 'constitutive ambiguity' at the heart of human rights as an ethical framework because it seeks to constrain powerful institutions, yet, to be effective, the same institutions must be prepared to invest in, and commit to, that framework. The PSNI have sought to evidence this self-commitment, frequently reminding audiences that their Code of Ethics: "serves as [its] discipline code…It integrates the European Convention on Human Rights in police practice, acting as standard that must be reached and against which officers can be judged." (PSNI, 2009: 1). Based on my extensive fieldwork with frontline officers, it was apparent they were only faintly aware of the ECHR references in the Code, and tended to view it cynically, as a "stick to beat them with" if something went wrong. Yet, for the purposes of appealing to elite outside audiences, the Code remains a tangible, heavily endorsed document with which the PSNI can wave at audiences. In a similar vein, the PSNI has reminded readers of the chief officer who acts as the 'Champion for Human Rights' – something, we are told, is undertaken "with great enthusiasm" (PSNI, 2007: 6).

Human rights, as the ethical identifier of the PSNI, are further expressed by the distinction chief officers make between the morality of the police compared to terrorist groups in N.Ireland. They describe how their officers deliver a "professional policing service" in the face of "a number of dangerous violent dissident Republicans are actively planning attacks on police… These groups care nothing for Human Rights or human lives" (PSNI, 2015a: 5). The "often untold" story, according to Chief Constable Hamilton (2014a), is the bravery of his officers who "display a dignity and respect for human life that is entirely absent in the actions of those who are willing to take life…". The implicit morality captured in accounts of officers' bravery and risk in the face of graver danger has a long pedigree in the RUC's official narrative (Mulcahy, 2000). In the contemporary police voice, human rights have been introduced and interwoven with these emotive sentiments to enhance the PSNI's ethical credentials and, ultimately, re-affirm police as the sole *legitimate* security provider for communities.

In promoting this vision, allegations of human rights abuses by RUC stand as a potential ethical spoiler that must be navigated around (O'Rawe, 2005). For a

significant number of communities, particularly in Republican areas, the legacy of policing is defined by oppression, discrimination, mistreatment of suspects and even collusion. Such experiences, memories or even stories are not easily cast aside; they jar with the storyline told by chief officers, many of whom were former RUC officers. The furthest the police voice goes is to hint at a "historic relationship" with communities and their "real or perceived" concerns. Sceptical audiences should be re-assured by the PSNI's commitment to human rights today, as evidenced in the following excerpts:

> I accept that given the *historic relationship* between police and some communities we still have more work to do to secure that confidence which is so necessary for policing with consent. *Policing with human rights as the bedrock of our approach is an effective, and right, means of breaking down barriers and building trust.* (PofA, 2015-6: 3; emphasis added)

> Our policing history has taught us a lot […]. *Real or perceived*, the inappropriate or blunt use of police powers such as stop and search; vehicle check points; and house searches can cause unease, anger and distrust in the community. *Human rights are all the more important in such challenging circumstances.* (Chief Constable Hamilton, 2014a; emphasis added)

Despite the ICP's exclusive focus on a 'new beginning' for policing and its insistence that human rights were at the core of its report, it could not explain why this was so. Indeed, there is a striking ahistoricism at the heart of the ICP's 1999 report:

> We do not, in this report, make judgments about the extent to which the RUC may or may not have been culpable in the past of inattention to human rights or abuse of human rights…we were not charged in our terms of reference to make judgments about the past. (ICP, 1999: 18)

Similarly, the NIPB settled exclusively on the PSNI's, not the RUC's, compliance with human rights standards – a decision more understandable given the limits of their statutory duty and their need to ensure a working relationship with the PSNI (Starmer, 2007). The result, however, is that the most extensive account of the RUC's human rights abuses remains confined to academic commentary rather than any shared understanding, let alone accepted account, of policing during the conflict. As argued by O'Rawe (2007: 218), the rehabilitative potential of the law in transitional societies lies in the willingness of state actors to acknowledge their wrongdoing and the moral deficiencies of the laws they enforced in the past. The ICP's, as well as the NIPB's, pragmatic, forward-looking assessment of rights has meant such acknowledgement has not been required. Consequently, the PSNI has had the discursive space to cultivate and promote a human rights narrative largely untarnished by the reputation of its predecessor (Mulcahy, 2000). As we shall in Chapter 2, however, this narrative does not go uncontested by Nationalist and Republican politicians, who have proven quick to qualify, if not explicitly challenge, the human rights credentials chief officers are so keen to publicly express.

The police voice both creates and expresses identity, and it should remember, of course, that the ICP inspired reforms were felt by RUC officers the ultimate act betrayal and capitulation to Nationalist pressure (Lawther, 2010). The oath of office, stating that officers would respect human rights was particularly resented because it implied officers failed to do so before (Hillyard and Tomlinson, 2000). In the narrative of human rights as an ethics of power, it makes sense, therefore, that the ICP is rarely acknowledged as the source of human rights. Instead, greater significance tends to be attached to the HRA 1998, which shared a similar birthday to the ICP report:

> People always look to Patten and, yes, it had a huge impact but I would argue *the Human Rights Act had a bigger impact on policing* in that for the first time you had clear parameters. Sometimes that's lost in the whole Patten era. (Former Assistant Chief Constable, Peter Sheridan quoted in *Irish News,* 2008a; emphasis added)

> The protection of human rights has always been at the core of policing. The introduction of the Human Rights Act 1998 in October 2000 served to formalise this in a way that had not before existed. (PofA, 2008: 2)

By laying emphasis on the HRA 1998 – a legislative development applicable across the UK – the PSNI plays down the uniqueness of the ICP reforms and their implicit critique of the RUC's style of policing. In preserving an acceptable self-understanding and identity, human rights are re-cast as something that were always part of policing, even if they were talked about less in the past. This is a theme we will return to examine closely in Chapter 3.

Legitimation has an important relationship with power-holders' self-identity. The act of legitimation serves to rationalise and ethically interpret understandings of authority (Barker, 2001). This endogenous form of legitimation helped to explain some of my encounters with senior officers, when their narratives of success seemed as much for them as for me. I was told how integral human rights principles were to the PSNI's training and operations: "you're getting genuine commitment and not just compliance" insisted Superintendent Dan. It was equally common to hear favourable comparisons made between the PSNI and other forces: "certainly, in UK terms, we've embedded a human rights culture beyond many, if not all, police services" claimed Chief Superintendent Alan. In some interviews, officers pulled documents from their desk drawers, proudly thumbing at references to the ECHR and case law. A similar rhetorical flourish was shown by Eddie, a likeable, sharp-witted Superintendent who had experienced the turbulent transition from RUC to PSNI:

> I would be small 'c' Conservative politically, but the effect this has had on me [human rights reform] is that the prospect of the current Conservative government taking its signature off the European Convention terrifies me, I think it would be such a bad decision. My daughter's a law student, she's studying it academically, and she finds it remarkable that a police officer would be so wedded to it, but what in actual fact it

> gives us is twelve simple rules to apply to any decision you make, and of those twelve, you know, there the big twelve, of those twelve, three or four will be directly impacted by it, and if you know in your own heart that you are compliant with that – this is going to sound grandiose – but you can stand there and think, I'll see you in Strasbourg. Literally, I will see you in Strasbourg, because I'm confident right through.

In accounts like these, compliance with the ECHR was intertwined with an eagerness to exhibit professionalism; that is, working with 'an evidence base', carefully planning and documenting operations, applying decision-making models and demonstrating specialist knowledge.

Human Rights as Legality

Legality goes to the heart of the rule of law in democratic societies; no person or authority, no matter how powerful, ought to be above the law. State power, and the actors wielding it, should be subject to formally recognised norms backed by sanction. Legality is known to be a particularly important antecedent of audience legitimacy (Beetham, 1991; Bottoms and Tankebe, 2012). Writing in the context of policing, Ericson (1996: 203) has argued that legitimacy often depends on the police's ability "to make convincing claims that they are acting in an orderly manner, in accordance with established morality, procedure and hierarchy". As such, questions focus around procedural propriety and the legality of decisions. But simpler still, Ericson (2007) suggests there is a common-sense component to legality: the good police officer, just like the good citizen, is the person who acts in accordance with agreed-upon rules. It is which explains "why, when people are called upon to account for what they did, they often present their actions as having simply followed the rules" (Ericson, 2007: 369).

Faced with accusations of partisan policing, especially by politicians at NIPB meetings, chief officers have routinely sought refuge in the law, regularly deploying human rights as a set of objective legal standards that officers loyally adhere to. In the words of former PSNI Chief Constable Matt Baggott (2012): "I am making quite clear that my job is to apply the law and to be impartial… I cannot get involved in discussions that are beyond the law…". By frequently emphasising the existence of legal rules in their official narrative, chief officers seek to convince high-level audiences that they are cognisant of, and compliant with, the rules. These claims are strengthened by the authority drawn from legal 'form' (Hastrup, 2003) and 'sources' (Ericson 1996), such as international conventions and court rulings. The following extract illustrates legal 'forms' and 'sources' in the context of public meetings of the NIPB. Earlier that day, the Social Democratic and Labour Party had accused the PSNI of refusing to disclose the identity of suspected killers of Catholic man murdered during the conflict because the suspects had been

RUC informers (*BBC News*, 2015a). In his opening speech, the Chief Constable sought to fend off accusations, deploying the narrative of legality in its fullest form:

> I want to respond to the front page of one of our local papers today, which states that a policing board member believes the PSNI are shielding murderers. Let me be clear, in a liberal democracy such as ours, no-one is above the law. Board members, I assume, are aware of the legislation that we as a police service operate, including the Police Act, the Human Rights Act, the European Convention on Human Rights and the Regulation of Investigatory Powers Act. (Public Session, NIPB, Feb 2015).

Likewise, the combination of legal compliance and authoritative 'sources' has been deployed to proffer a definitive answer to concerns over discriminatory use stop and search powers:

> I accept that there are many who would argue that stop and search…are an unnecessary infringement of human rights. Believe me, I wish we did not need these powers but the facts remain that we are required to use them in order to keep people safe. The UK Supreme Court has ruled that, used properly, the powers are lawful. (Chief Constable Hamilton, 2016b)

Equally powerful are chief officers' claims to what Cotterrell (1997) has referred to as 'legal closure'. At the heart of legal closure is the "conception of law as a distinct discourse, possessing its own integrity, its own criteria of significance and validation" (Cotterrell, 1997: 91). The rhetorical power of legal closure derives from the claim that "law is self-standing and irreducible or that it has an independent integrity which is normally unproblematic, natural, or self-generated" (Cotterrell, 1997: 91). Human rights law – as a standard that purports to regulate the discretionary space within which police can be accused of ethno-political partisanship – has been heavily deployed to close off critiques of one of the most politicised areas of policing: the investigation of conflict-related deaths. Nationalist political parties have been forthright in expressing concern over the commitment of the PSNI's specialist unit (the Legacy Investigation Branch) to fair and impartial investigations of killings by security forces. At public sessions of the NIPB in recent years, Sinn Féin have consistently alleged the police are failing their obligation, per Article 2 ECHR (the right to life) in ensuring an effective investigation into deaths. The PSNI have responded with their own narrative of Article 2 that is used to bracket off concerns as distinctly legal, which, consequently, are framed as requiring technical answers by lawyers and judges, not politicians:

> I have on a number of occasions sought legal advice as to my obligations and independence when it comes to investigating the past… The precise extent of the investigative obligations arising from Article 2 of the European Convention on Human Rights is a complicated and developing issue, the final determination of which can only be made by the courts. There are a number of ongoing judicial proceedings in this area, and I look forward to the legal clarity that these will bring. But, while we wait for judicial clarity, the current legal advice is that PSNI's Legacy Investigations Branch is Article 2 compliant. (Chief Constable Hamilton, 2016b)

This language of legalism crowds out other ways of understanding harm and recompense (Kennedy, 2002), diminishing, in this case, the real concerns and disappointment of some victims' families, as well as the organisational and bureaucratic failures identified by Her Majesty's Inspectorate of Constabulary (HMIC). Investigations carried out by HMIC found former RUC officers reviewing and overseeing cases where the state was suspected of having been involved in the deaths and different investigatory practices in cases where the state was involved (army or police) compared to non-state involvement cases, with the former receiving more favourable treatment and safeguards (HMIC, 2013). Reflecting a form of what Cohen (1996) calls 'interpretive denial', the PSNI's legalistic rights narrative re-interprets the debate over conflict-related investigations as one concerning the legal criteria of Article 2 ECHR investigations, rather than the broader issue of state responsibility for harms caused during the conflict. Similarly, in response to criticisms over delay in the disclosure of material to coronial inquests, the PSNI have reminded politicians of the police duties under Articles 2 and 8 ECHR to consider the impact of disclosure on individuals whose identities might be revealed by the material. Once again, the police narrative elevates such concerns to questions of law – the police are merely agents of the coroner with strict legal duties as captured in the words of PSNI Deputy Chief Constable Drew Harris (2016):

> There is always a decision to be taken about whether to advance a case. In large part, it comes down to our article 2 and article 8 responsibilities. The article 2 responsibilities that we have concerning individuals weigh heavily on us and place an obligation, at times, to engage, in effect, in a legal argument […]. I know that we get a lot of bad media and it has sapped public confidence in certain areas of the coronial process, but we are there as agents of the coroner, working for the coroner in delivering an ECHR-compliant inquest.

To be clear, there is no doubt these are real responsibilities in law that the PSNI must, and do, take seriously. What is significant is how strongly this legal discourse features in the remarks and statements before (non-legal) audiences critical of the police approach. Once again, these remarks by chief officers silence broader debates about information retrieval, access to justice and the need for a more institutionally joined-up process for dealing with legacy issues.

Human rights as Accountability

The opinions and critiques of political leaders are voiced alongside official reports and recommendations from an array of police oversight bodies in N.Ireland. Indeed, it is often remarked by PSNI Chief Constables that their police organisation is 'the most scrutinised in the world'. The formal bodies include: the NIPB; the Police Ombudsman; Police and Community Safety Partnerships; the Criminal Justice Inspectorate for N.Ireland; Her Majesty's Inspectorate of Constabulary; the

NIHRC; and the N.Ireland Assembly's Committee for Justice. Particularly influential is the NIPB, which is unique in the UK and Ireland because it brings together representatives of political parties and civil society to sit as a body with the collective task of holding the PSNI to account (Rea and Masefield, 2014). The assertion of accountability was a central component of the RUC's legitimating narrative, especially when faced with major scandals or scrutiny (Mulcahy, 2000).

The notion of accountability has now been interwoven into the PSNI's official narrative of rights, but the difference is that accountability arrangements are more rigorous, which stands in sharp contrast to the lack thereof during the conflict (Mulcahy, 2000). Since its inception, the PSNI has reiterated its openness to reform and accountability to sceptical audiences, particularly political and community leaders and the Oversight Commission that monitored the implementation of the ICP reforms. The PSNI has consistently emphasized the oversight of the NIPB's human rights legal advisor who carries out meetings, observations and audits of police practice year-round. In the forewords of the PSNI's PofAs, chief officers proudly remind readers of the "unrestricted access" (PSNI, 2008a: 3) and "spirit of openness" (PSNI, 2010: 3) the PSNI has shown the legal advisors, demonstrating that "[a]s a service we have repeatedly shown ourselves open to change" (PSNI, 2007: 3). Reflecting on their positive relationship with the NIPB's legal advisors, and thanking them for their "informed critique" (PSNI, 2008a: 3) and "constructive criticism" (PSNI, 2007: 3), senior officers conclude that the PSNI is "perhaps one of the most accountable organizations in these islands" (Chief Constable Hamilton, 2016a).

Given this heightened level of police oversight, it is unsurprising that the PSNI have been quick to be held to account in light of operational or organisational failings. High profile issues in recent years have included: the police approach to serious public disorder, especially the Flag Protests (discussed in detail in Chapter 5); the failure to disclose sensitive material to the Police Ombudsman resulting a threat of legal challenge (Kearney, 2014); the re-hiring of former RUC officers on temporary contracts (seen by Nationalists as undermining the ICP's reforms) (McDonald, 2012); and, as mentioned, the controversy surrounding the administration and impartiality of the PSNI's unit investigating conflict-related deaths (Lundy, 2009, 2011; HMIC, 2013, 2015). In the face of these public critiques, however, the PSNI has sought to neutralise them, welcoming critical reports and feedback because it helps the organisation to "raise the standard" (PSNI, 2008a: 2). After all, "the implementation of human rights is a constant process; it is a job that is never truly complete; and therefore something to which we cannot reduce our efforts" (Chief Constable Hamilton, 2016b).

Reminding audiences of the presence of strong accountability mechanisms is a common technique deployed by chief officers to ward off criticism at public

meetings of the NIPB. Several excerpts are illustrative of the general approach. In response to the HMIC's critical report into the Legacy Investigation Branch's Article 2 ECHR compliance, the Chief Constable sought to reassure the NIPB of the police efforts to improve in light of its recommendations:

> [A]t the request of the Policing Board, the framework was properly examined by HMIC, who gave a very damning report on the work of HET and they also said, here's 20 things you can do to put it right. We have done our 19, it's done, if there's flaws in the framework, we've fixed them from an HMIC perspective and that's why I'm trying to convince you, we're doing our level best, with good faith to deliver for these victims who are still hurting today. (Chief Constable Hamilton, 2014b)

Another common retort when historical criticisms are levelled at the PSNI is to emphasise the improvement in accountability measures over the last decade. This is clearly illustrated by the following response of former Assistant Chief Constable Will Kerr's to a question asked by a Sinn Féin at a public meeting of the NIPB. The question related to news story which reported that weapons seized by RUC forensic teams during the conflict had been returned to communities and had been used in murders carried out by Loyalist paramilitaries:

> There's a range of covert elements that are used the world over, and we're no different […] the only reassurance I can give you is that anything we do in that covert space is subject to the most onerous, the most rigorous human rights based accountability framework […] perhaps the difference between the process and the accountability and oversight now compared to the process that was applied in the past is that there are very significant audit trails about what decisions are made, the proportionality and necessity of those decisions and those records are openly available to either the Oversight Surveillance Commissioner or the Police Ombudsman (Public Session, NIPB, June 2015)

Central to this rhetoric of accountability is what Cohen (1996) refers to as the power of 'partial acknowledgement'. Without attacking the source or evading the context, authorities can give the appearance of taking allegations seriously without the reputational damage that comes with full acknowledgment. Through a mixture of temporal containment (accountability has improved in recent years) and self-correction (we are doing our best to implement the recommendations), accountability, as a property of human rights, forms part of the repertoire of PSNI responses to organisational criticism.

The appeal to accountability is particularly powerful because the PSNI recognise the power that oversight bodies have in shaping the narrative around policing, reinforcing (or undermining) the PSNI's human rights discourse. On hearing that most young people did not understand the role of the Police Ombudsman and NIPB, Chief Constable Hamilton publicly called on them at the event at Crumlin Road Gaol "sell their wares" and increase their profile because the public needed to know police were being held to account in this manner. On other occasions, the Chief Constable Hamilton (2016b) has called on the NIPB oversight to "breath

confidence" into its Legacy Investigations Branch, linking with a general theme expressed by senior officers before the NIPB:

> For PSNI, human rights provide a practical framework through which we can use our policing powers while the rigorous accountability structures of the Policing Board and the Police Ombudsman ensure that we exercise these powers with the confidence and consent of the community.

By binding high-level policing actors into their rights narrative, chief officers invite other institutional voices to speak up, knowing they can help strengthen the official PSNI narrative. It is to these influential audiences that we turn to now.

Influential Audiences: 'Authorising' Human Rights Narratives

With the properties of the PSNI's official human rights now identified and examined I want to complete this chapter's analysis of human rights as mode of discursive legitimation by returning to Berger and Zelditch's (1998: 268) crucial insight that legitimacy is better conceptualised as "coordinated system of action, not a dyadic relation between a superior and subordinate". In the context of N.Ireland, this is system is comprised of a web of local accountability bodies, politicians and the media. We will return to explore how the PSNI's rights narrative has been received by political audiences in the next chapter; the focus here is on how the NIPB and local media, as particularly influential actors, have affected the very ability of the police to construct and maintain human rights as a legitimating narrative. In Berger and Zelditch's terms, I want to demonstrate how these the NIPB and the local media have 'authorised' the PSNI to proffer human rights claims.

The NIPB has proved central in the very development of the rights-based oversight process the PSNI proudly adhere to, but senior officials from the NIPB have also played a role in reinforcing the PSNI's narrative of ethics and accountability. Most strikingly, Chairpersons of the NIPB have written forceful defences in national newspapers of the PSNI's commitment to human rights in the face of political critiques. In 2001, NIPB Deputy Chairperson, Denis Bradley, penned a direct challenge in the *Irish Times* to Sinn Féin's refusal to support the PSNI because of the refusal of former RUC in the PSNI to swear the human rights oath (Bradley, 2001). Bradley, a Nationalist, acknowledged the importance of the oath but insisted great work was underway to ensure a cultural commitment to human rights in policing. In 2013, NIPB Chairperson Anne Connolly wrote in the *Belfast Telegraph* in response to Unionists criticism that human rights were preventing the PSNI from dealing with public disorder more assertively. Mirroring the PSNI' own narrative, Anne Connolly (2013) insisted the "PSNI's approach to public order policing has been nationally and internationally commended…. Senior PSNI officers have said

that the Human Rights Act provides officers with a clear framework for making difficult and challenging decisions."

The motivation for these public remarks invites us to consider the NIPB's own obligations to the PSNI. That is, the NIPB has a statutory duty to oversee the police in such a way that promotes police effectiveness and efficiency, co-operation with the public and impartial policing (s.3 Police (NI) Act 2000). Indeed, when the PSNI has made progress in areas like human rights reform, the NIPB has acknowledged its corporate role to publicly commend and support such progress (Rea and Masefield, 2014). More significant, however, is the NIPB's investment of considerable resources and reputational esteem in devising and maintaining the flagship human rights monitoring scheme it introduced with the help of its first legal advisor, Sir Keir Starmer; indeed, the NIPB's own legitimating narrative is bound up with human rights too (Rea and Masefield, 2014: 275-300). International visitors to the Board have been invited to its public session, shown the Annual Human Rights Reports and introduced to their legal advisor (Bushe, 2006). The NIPB has bound its own institutional reputation to its ability to be an effective player in police oversight, especially in human rights compliance, which has made it receptive and willing to authorise the PSNI's positive human rights narrative, especially the theme of accountability.

Most influential in authorising the PSNI's human rights claim-making though, have been the 'authorisation' of the NIPB's human rights legal advisors[6]. As symbols of human rights legality and exacting oversight, the advisors serve as a vital source of external praise. They have identified areas of concern in their Annual Reports, but have coupled this with consistent praise of the PSNI's commitment to human rights, their determined application of legal standards and openness to oversight. At high profile events, the advisors have further reinforced the properties of ethics and legality, describing to politicians, community leaders and local NGOs how officers' references to rights are not just "empty words trotted out for purposes of police oversight bodies" but had "become so natural to them" (Kilpatrick, 2016). Similarly, former legal advisor, Jane Gordon, has publicly congratulated the PSNI for doing "more than any other police force in the United Kingdom to achieve human rights compliance" and assisting "in breaking down the traditional closed culture of policing" (Gordon quoted in Rea and Masefield, 2014: 291).

As will be illustrated in Chapter 2, the NIPB has, of course, its own internal politics. Yet, in different, and unexpected ways, disputes between political parties have, at times, served to reinforce the PSNI narrative. The SDLP, it should be

[6] Of which there have been three: Sir Keir Starmer (2003- 2007); Jane Gordon (2003-2008); Alyson Kilpatrick (2008 - ?).

recalled, broadly supported the police reforms, endorsed the PSNI and took their seats on the NIPB, but its nationalist political rival, Sinn Féin, refused to recognise the PSNI until 2007. During this period, the SDLP sought to convince its Nationalist base that its support for policing was justified. To the PSNI's benefit, it did so by highlighting how successful police reform had been. The SDLP's representative on the NIPB, for instance, cited expert opinions on the "excellent progress" the PSNI had made (Attwood, 2004). At the other end of the spectrum, Unionist politicians on the NIPB have supported the PSNI in the face of Nationalist criticism. Notably, they have dismissed human rights critiques over the use of stop and search (*News Letter*, 2010), public order tactics (*Belfast Telegraph*, 2011a), and the retention of suspects DNA samples (*BBC News*, 2009). Rejecting Sinn Féin's criticism of PSNI training, use of force and discipline, the Democratic Unionist Party (DUP) retorted: "[i]nstead of pushing these issues, they [Sinn Féin] should recognise that there's a wider consensus in support of what police are doing at a human rights level" (Jeffrey Donaldson quoted in *News Letter*, 2007).

The other high-level policing audience that has proven central to the PSNI's ability to mobilise a convincing human rights narrative has been the local print media. The simplistic and sensationalist reporting on human rights cases by the media is well-known (Wildbore, 2010). Generally, though, local newspapers have been willing to produce relatively balanced, if not positive, reporting on human rights and policing.[7] There has been considerable coverage of the public events on human rights and policing, making readers aware, for example, of international conferences hosted by the PSNI and NIPB (*Irish News*, 2005; *Belfast Telegraph*, 2006). Furthermore, there has been coverage, particularly in the earlier years of reform, of the launch of the NIPB's annual reports, citing the positive remarks of the NIPB's legal advisors just mentioned (e.g. Murray, 2003). Substantively, there has been sustained reporting on issues including the introduction of Taser (*Irish News*, 2008b), the policing of public disorder (e.g. *Belfast Telegraph*, 2013) and stop and search (e.g. *Belfast Telegraph*, 2010). The long-recognised symbiotic nature of the police and media relationship (Chibnall, 1975; Mawby, 2010b) helps to explain why the PSNI is often given an opportunity to defend their actions or decisions in these articles, alongside the remarks of politicians and community leaders.

Equally significant is the willingness of newspapers to publish the opinions of, and interviews with, chief officers. This has given the PSNI an important outlet for its claims of ethical, legal and accountable policing to reach wider audiences.

[7] In some cases, the media has demonstrated how conditional its authorization ise Most critically an opinion piece appeared in the *Irish News* (2014) strongly rejecting the PSNI's claim that it could not intervene in illegal protests or disclose material to Coroners inquests due to Article 2. The article dismissed this as "officialdom justifying decisions that seem rather convenient to itself by marrying the Human Rights Act with conjectural fatalities".

Former Assistant Chief Constable Sheridan, once the most senior Catholic officer in the PSNI), wrote in local newspapers to reassure communities about police use of informers, expressed using human rights as accountability and legality discourse (Sheridan, 2006, 2007). And in recent years, it has become a rite of passage for new Chief Constables to give extended interviews with local journalists. The former Chief Constable, Matt Baggott, was quick to roll out the official narrative, describing how he was "massively impressed that human rights in all decision making, in all training is absolutely fundamental to what people do here. I am not just impressed. I am amazed" (quoted in *News Letter*, 2010). Likewise, the current Chief Constable, George Hamilton, used his interview to reassure readers of his own going ethical commitment: "[t]he human rights framework will be right at the centre of my leadership of this organisation" (quoted in Kilpatrick, 2014).

Conclusion

The human rights reform of the PSNI inspired by the ICP has been the subject of rigorous oversight and much acclaim, with the NIPB consistent in their praise since their monitoring began over a decade ago. But as this chapter has demonstrated, the oversight of, and compliance with, human rights law has not simply been confined to technical reports, closed meetings or court judgments. In fact, at a time in the UK when human rights are often the first thing to be politically side-lined in the face of terrorist attacks or fear of suspect communities (Lazarus, 2017), the PSNI's official narrative is defined by its loud, proud, public commitment to rights. Indeed, reflecting on the "barren cultural soil" in which human rights are said to be planted in England, Loader concludes that the promotion of human rights is likely to depend on social movements and liberal professionals resistant to "the seductive claims of strong rulers bearing the promise of security" (Loader, 2007: 41). The N.Irish situation, however, illustrates the malleability of human rights to be adopted by powerful state actors like the police, and for human rights to be imbued with the police's visions and ideals, and to be put work for their own political ends.

The properties of ethics, legality and accountability that lurk within human rights as a key concept, have been drawn out and emphasized by chief officers in their efforts to re-establish the police in N.Ireland's post-conflict society. The elevation of human rights beyond a mere regulatory scheme and into an official, organisational narrative is best explained by its allure as a legitimating language in what remains a fraught political environment. By constantly invoking its commitment to these human rights properties of ethics, legality and accountability before

elite audiences, chief officers are striving to prove to others, and perhaps itself, that the PSNI *is* the legitimate provider of securing in N.Ireland. Specifically, it is trying to convince those who will listen that, notwithstanding the RUC's legacy, the PSNI, as an institution born out of the peace process, does possess a voice worthy of classifying, diagnosing and interpreting contemporary problems (Loader and Mulcahy, 2003: 226). These problems include the legacy of the conflict which the PSNI is forced to confront and, at times, provide imperfect answers to, as outlined in the Introduction. Chief officers believe human rights – as a way of doing, but also *talking* about policing – are an ally in their attempts to regain the power to commentate and be listened to.

The defining properties of the PSNI's official human rights vernacular – ethics, legality, accountability – are returned to at various points in this thesis. As we continue to explore the various sites of police work and the regulatory formats, pressures and cultures particular to each, I will show how these properties are rejected, endorsed, applied or adapted, reflecting officers' professional roles, occupational demands and personal identities. But before doing so, I want to further open this line enquiry in the next chapter by showing just how malleable human rights can be, particularly in ethno-political contexts like N.Ireland. In so doing, we get a better sense of how other actors in N.Ireland, also tasked with making sense of policing in rights-based terms, have grappled with this language and its regulatory form. These competing narratives in local politics properly situate the thesis' analysis within the contemporary contestations over human rights in N.Ireland. Let us now look more closely at the politics played out at the NIPB. If, as a corporate body, the NIPB was a clear 'authoriser' of the PSNI's rights narrative, the situation becomes a little more complicated when we account for the divergent views of its political members.

Chapter 2.

The Policing Board: Ethno-Political Tenors

> The combination of consociational institutions and collective rights politics has not transformed Northern Ireland's ethnopolitics. Instead, post-conflict rights discourse extended its function as war by other means. The incorporation of human rights discourse into the peace process and the minimal peace being promoted produce other vulnerabilities. These contribute not just to present divisions but to the broader contradictions that both human rights law and discourse create regarding past and future violence. (Curtis, 2014: 25)

As predicted shortly after the Good Friday Agreement in 1998, the firm commitment to rights made by its political signatories, and the embedding of ECHR standards into new institutional structures and legal safeguards, has amplified the discourse of rights in N.Ireland (Dickson, 2000; Harvey, 2000; Kavanagh, 2004). The real test was always going to be whether local politicians could move beyond the divisive, propriety tenors of the ethnonational rights discourse that clanged during the conflict. Perhaps unsurprisingly, in a society still deeply divided by religion and the unresolved legacy of its violent sectarian conflict, this is a test that has yet to be passed. Since 1998, new contestations over human rights have emerged in N.Ireland – or perhaps more accurately, old debates have re-surfaced. These include the turbulent efforts to introduce a Bill of Rights (see Introduction), but also the proposed repeal of the HRA 1998 and the impact this would have on the country's fragile peace (*BBC News*, 2015b; *HC Deb*, 2014-15). These debates expose the extent to which perceptions of human rights remain distinctly aligned to the visions, fears and aspirations of Unionism and Nationalism. With the political parties that represent these two identities appropriating (or dismissing) the language of rights in pursuit of their own political struggles, the universality that defines the rights-based commitments in the Good Friday Agreement often appears illusory; human rights have become 'war by other means' (Curtis, 2014: 25).

The Northern Ireland Policing Board (NIPB) sits at the heart of this intersection between human rights law and politics. As a corporate body, the NIPB has a statutory duty to monitor police compliance with the HRA 1998. Yet, as a group of individuals, its members are drawn from the same political and civic spheres that remain divided over the role and relevance of human rights in the country's post-conflict society. In this chapter, I expose the tensions that animate political

discussion of human rights and policing in N.Ireland and discern the beliefs, sentiments and fears that might explain this. I draw on video footage of thirty-nine monthly public sessions of the NIPB (October 2011 to December 2016), as well as in-depth interviews with representatives of the political parties who sit, or sat, on the NIPB, to compare the attitudes and agendas of Unionist and Nationalist political members towards a human rights-based oversight of policing. I argue that regardless of the NIPB's statutory duty to monitor policing based on the standards of the HRA 1998, for the political members on the NIPB, human rights are a vessel harbouring deep sentiments and concerns at the heart of which are competing histories of the conflict, legacies of policing and understandings of N.Ireland's imperfect peace. These narratives swirl around, and at times directly contradict, the official police narrative and further demonstrate the elasticity of human rights to stretch to fit the visions of different actors.

The examination of the politics of human rights and policing in N.Ireland is developed across three sections. I begin by introducing the NIPB as a regulatory body with a distinctly discursive character. I then sketch I out a template of enquiry from which we might examine human rights in this political arena, distilling three analytical waypoints from Wilson's (2006) notion of the 'social life of human rights'. Applying this analytical framework, I then return to the NIPB to examine: (i) human rights and policing in its historical context; (ii) human rights as an articulation of interests, concerns and aspirations; and (iii) human rights as a resource to achieve strategic ends. I conclude by reflecting on what the divergent understandings of Unionist and Nationalist politicians mean for our understanding of human rights and the condition of policing in contemporary N.Ireland.

The Policing Board as an Arena of Debate

In making sense of human rights narratives, it is necessary to locate actors within their institutional settings (Ericson, 1996). The NIPB can be thought of as an arena where the demands of human rights law meet the contested understandings and relevance of human rights in political discourse; where the legal meets a social dimension of human rights. The NIPB is a statutory body inspired by the ICP's Report. It is comprised of nineteen members: ten political members reflecting the composition of the N.Ireland Assembly, and nine independent members appointed by the Justice Minister. The Police (NI) Act 2000 is prescriptive in the mode that human rights oversight by the NIPB must take. In securing the maintenance, efficiency and effectiveness of the police, the NIPB must monitor the performance of the police in complying with the HRA 1998 (s.3(3)(b)(ii) Police (NI)

Act). The annual assessment of the police performance on the basis of the HRA 1998 must be included in the NIPB's annual report on policing (s.57(1) Police (NI) Act 2000) and the NIPB must issue a Code of Ethics "making police officers aware of the rights and obligations arising out of the Convention rights" (s.52 Police (NI) Act).

The NIPB has been the site of heated political debate and division, as well a degree of compromise and agreement. As a body meeting in the public eye, mainly compromised of politicians from opposing parties and tasked with overseeing a police service still proving its legitimacy, this is perhaps unsurprising. Political parties have invested heavily in the NIPB, appointing senior members onto it (Rea and Masefield, 2015). The primacy of the NIPB as a political forum must also be understood within the context of devolution and support for policing. The NIPB continued to meet despite the suspension of the N.Ireland Assembly from 2002 to 2007, making it the highest profile body with political representatives working with one another (Rea and Masefield, 2014). The NIPB was strengthened when Sinn Féin took up their seats in 2007, after initially refusing to support the PSNI. The NIPB has continued to meet and debate the latest issues despite various political crises, such as the (re)exposure of the IRA's command framework (McDonald, 2015) and revelations about an amnesty scheme for individuals suspected of paramilitary crimes who had left N.Ireland (*HC Deb* 2014-15).

The NIPB holds its monthly public sessions in its Belfast office. A visitor to these meetings will arrive into a large, brightly lit room, to find NIPB members sitting behind tables arranged in a sweeping horseshoe. Political members sit in their unionist-nationalist blocs; the independent members are dotted in between, sometimes signalling their own political leanings. Opposite them are the PSNI's chief officers, themselves seated in a single row, synchronised by their matching uniforms but led by their Chief Constable, who is positioned front and centre. Interested audiences, including representatives from the Police Federation, as well as local journalists, sit in the public gallery, listening out for soundbites and stories to report. When the session gets under way, the cameras dotted around the room start rolling, the live YouTube video broadcast begins, and the Twitter feed starts ticking.

The Board's chairperson opens with brief remarks, flagging up recent issues or reports, sometimes welcoming international visitors that have come to observe and hear about the Board's work. The Chief Constable reads out his pre-written report, describing the happenings since the last meeting, usually followed by a reminder of the fiscal, political and organizational challenges facing the PSNI. The heart of the debate, where issues are thrown up and tossed around, takes place during the question and answer session led by NIPB members. Questions bounce from the

mundane to the serious: queries about cross-border milk smuggling and road traffic accidents, to allegations of police mishandling of conflict-related murders or their reluctance to investigate paramilitary groups. How members' questions are framed and delivered hint at the performative nature of meetings; members know that the media or political opponents might pick up on points they had made. I

The public sessions are a forum in which political parties express their particular stance on topical issues in front of their opponents, as well as the PSNI. Reflecting on his experience of appearing before the NIPB, former Chief Constable Sir Hugh Orde described how:

> [E]ngagements with the Board could be even more constructive and meaningful if members representing political appointees could adopt a less partisan approach when introducing or discussing matters of mutual interest or concern… This bias often manifests itself in politically motivated statements…. and the tendency to focus on political rather than real or organisational issues. (quoted in NIAC, 2005: Ev.34)

In the eyes of some chief officers, public sessions had a propensity to descend into "political to-ing and fro-ing", where "points are made to score off one side or the other, rather than actually to get to the nub of the question about policing.: (Former Deputy Chief Constable Paul Leighton, NIAC, 2005: Ev.39). In my interviews with NIPB members, they agreed that a certain degree of grandstanding still took place, describing public sessions as "a bit of a showpiece" that were "stage managed" by political parties.

The debate and discussion continues in the NIPB's specialist committees. The Performance Committee is responsible for overseeing the NIPB's work on human rights monitoring. Members described how the Committee was host to the "difficult discussions" and "very serious conversations" over human rights issues, ranging from the PSNI's counter-terrorism strategy to stop and search, and implementation of body worn cameras to the police redaction and disclosure of materials for coronial inquests. The NIPB's independent human rights legal advisor is central to equipping its members with the necessary information, legal advice and empirical evidence to fulfil its statutory duties. The advisor is present at most Committee meetings and provides members with briefing documents and rolling updates the NIPB's Annual Human Rights Report and the Thematic Reports. Each year, the Annual Human Rights Report is publicly launched at events hosted by the NIPB and the PSNI which usually involved a structured panel discussion between NIPB members, the legal advisor and the PSNI's Chief Constable.

The Political Lives of Human Rights

The role of human rights, and its impact in N.Irish society, has been the subject of thoughtful, in-depth research (McEvoy, 2003; Curtis, 2014; Munce, 2014; Smith et

al., 2016). Collectively, these studies allude to the inability of local rights narratives to break free from ethno-national divisions. Yet to be determined, however, is a heuristic or template for enquiry which might help examine the dispositions and motivations of actors who deploy (or dismiss) human rights claims. Such an analytical apparatus is necessary if we are to pursue what Curtis (2014: 216) refers to as a "measured critique" of human rights deliberation, one which rightly avoids scrutiny or dismissal of rights talk for its hints of politicisation but instead understands the politics that can "direct or suffuse rights discourse and its reception". The search might fruitfully begin within anthropology, specifically Wilson's (2006: 78) call to examine "the social forms that coalesce in and around formal rights practices and formulations, and that are usually hidden in the penumbra of the official political process" (Wilson, 2006: 78). In pursuing this style of empirical enquiry, Wilson (2006: 78) suggests we:

> … examine what people say they do with human rights and what they actually do with human rights in specific fields of political contestation… How do various social actors understand the various claims, immunities, privileges, and liberties articulated in the language of human rights? How do they apply or reject them? And what do they hope to achieve in doing so?

It is possible to identify three important insights lurking within Wilson's call for enquiry which might equip us to meaningfully engage with narratives of human rights and policing in this chapter. I introduce these briefly, before using them to structure the empirical analysis that follows.

The first insight is the impact that historical context can have in structuring the ambit of rights-debates and the tone that these take. Although it may be true that interpretation and reconstruction of rights is made possible by the doctrinal ambiguity of broadly worded human rights principles, it would be wrong to suppose that rights offer a neutral framework for engagement or that the arenas of rights-based contests are level playing fields (Bartholomew and Hunt, 1990). History has shown how dominant groups and institutions in society routinely "police the boundaries of prevailing rights constructions" to sustain status quo relationships and interests, thereby "killing off" rights claims "bubbling up" from less powerful or marginalized groups (McCann, 2014: 250). The very rights that are nowadays enjoyed by some, and actively campaigned for by others, will almost certainly be a crystallization of past political struggles – struggles that may have shaped the institutional architecture and established norms within which contemporary debates over rights take place (Bartholomew and Hunt, 1990). The discourse of rights, in other words, may be more culturally and institutionally accessible (or meaningful) for particular groups based on their historical legacies and societal status.

Second, it is within a historical context that human rights might provide an articulation of interests, fears and aspirations which may be lurking beneath, or even hidden amongst, human rights claims. This is a recurring theme in recent socio-legal works. Jackson (2007), for example, has documented how the campaign of indigenous activists in Colombia for a 'right to culture' acted as the framework for a host of issues, ranging from bilingual education to customary health care. Just as human rights can express of breath of ideologies and visions, it can equally be bound up with, and contingent upon, other discursive resources and normative traditions (McCann, 2014: 248). In the context of the security and rights discourse in political and public culture in England, Loader (2007: 38), for example, has outlined the interlocking properties which might explain why rights are "so routinely and carelessly disregarded within English public culture". With-closer hermeneutic attention, he suggests that we can appreciate how rights language is "intimately and inescapably entangled with people's hopes, fears and fantasies concerning the trajectory of their own lives, and that of the political community which they inhabit" (Loader, 2007: 28). These arguments encourage us to *deconstruct* the vernacular of rights to hear associated ideas entangled within it.

The third element pertains to how human rights can be used by groups to actively *construct* claims as a functional resource to achieve something in specific fields. This can been seen in the efforts of social movements to transform rights-based discourses into formal legally protected rights, recognised by the law (Bartholomew and Hunt, 1990). When framed in rights terminology, political and social causes become easier for the law and its legal actors to 'hear' such causes, opening the possibility for judicial recognition or legislative enactment (Wilson, 2007). This is well illustrated in North America, where campaigners have coupled rights discourse with high-profile constitutional litigation as a principal weapon in progressive struggles for democratic rights (Fudge and Glasbeek, 1992). Examples include challenges brought by trade unions before the appellate courts in an attempt to have their right to act as a collective unit recognised (Fudge, 1988) and, most recently, litigation initiated in US courts by members of the LGBT movement (Goldberg, 2015). Legal recognition is the sign of victory for rights activists because it removes vulnerable claims and aspirations from the "rough and tumble" of politics, turning them into technical, legal issues that can be relied upon and enforced in court (Wilson, 2007: 352; see also Gearty, 2006: 62).

Contested Narratives: Human Rights, Politics and Policing

In the following sections, I want to use the three elements identified above as analytical points of enquiry to structure and inform my analysis of the politics of human law and policing in N.Ireland. This framework is well-suited to capturing the various tensions, ideas, motivations and consequences that lurk within human rights. Here, I demonstrate how human rights have acted as a linguistic vessel harbouring much deeper sentiments and concerns, at the heart of which are competing understandings of the history of the conflict, the legacies of policing and the different visions of the country's imperfect peace.

Human Rights in an Historical Context

The historical context shapes the production, reception and practical consequences of rights discourse. The most entrenched disagreement over human rights in N.Ireland, which persists to this day, is the very appropriateness of understanding the thirty-year conflict as being *about* human rights. Unionists have always been critical of attempts to characterise the conflict in human rights terms because it directly challenges their account of, and relationship with, the N.Irish state as the protector of their identity and way of life. As the leader of the Democratic Unionist Party (DUP) explains, it would have been "an anathema for grassroots members of unionism to challenge the state with a claim for their human rights" (Foster quoted in Munce, 2014: 206). Moreover, as the conflict intensified, security forces were seen as the brave defenders against Republican terrorism: to use human rights to challenge the authorities was perceived to be an act of betrayal that strengthened the hand of paramilitaries and betrayed the sacrifice of the RUC (Munce, 2014; Lundy and McGovern, 2008). Human rights were dismissed as a 'Republican agenda', with strong criticism launched at politicians, activists and NGOs seeking to mobilise support or legal challenges using rights-based critiques of the state (McEvoy, 2000; Livingstone and Murray, 2005; Felner, 2012).

It was clear, according to NIPB Independent Member, Simon, that there was an "a priori resistance to human rights" by Unionist politicians on the NIPB: "as soon as the words human rights are mentioned a vibration enters the room, a Unionist member will put up their hand and ask why it needs to mentioned like that – they oppose the framing of it in human rights terms" (Interview, 17.11.16). It was apparent from interviews with Unionist NIPB members that human rights were still considered to be a linguistic tool that belonged to Nationalists. In their eyes, parts of this agenda had not changed at all: Nationalists were still using human rights claims to try and discredit the police. Most notably, Unionist members were

alarmed at how Sinn Féin and the Social Democratic and Labour Party made use of human rights language at NIPB meetings to challenge police investigations into conflict-related deaths. This is a particularly contested issue, heavily wrapped up in rights claims, which we will return to shortly. As long as this "political abuse" of rights took place, William (DUP) insisted, it "sets a mood amongst Unionists… you will not convince most, practically any, Unionists that the whole human rights thing is anything other than Republican agenda" (Interview, 28.10.16).

The absence of rights consciousness was notable in interviews with Unionist political members. Except for concerns about police officers' rights being ignored, Unionists did not classify policing as being about human rights at all. That is not to say that the issues they raised were not about human rights; indeed, several members mentioned, for example, domestic abuse and child sexual exploitation, but it was not through a human rights lens that these issues were understood or expressed. Barney (UUP), who was one of the few Unionists to have grown more familiar with human rights, admitted that it had taken him a while to understand what human rights oversight of policing really meant, remarking that "unless you are a lawyer, you don't understand the full ramifications… the debates are complicated" (Interview, 27.04.15). But his colleague Todd (UUP) remained deeply sceptical of Nationalists who made explicit reference to the ECHR, stating "I think it's a show, referring to the reference of any article… it tries to imply a legalistic scenario there. If you're just referring to human rights legislation, why do you need to go beyond that?" (Interview, 28.10.16).

In the speeches I heard at the launch of the Annual Human Rights Reports in 2015 and 2016 in Belfast, the NIPB legal advisor tried earnestly to respond to Unionist tropes, insisting that human rights were not an impediment to good policing, but rather provided a toolkit for police to do their job more effectively; that human rights oversight was not an expensive indulgence in times of austerity, but instead helped ensure cuts did not impact unjustly on some more than others; and that the ECHR did not protect offenders at the expense of victims, but actually safeguarded them. Wary of the Unionist politicians' resistance, NIPB officials had even produced a paper on the origins of modern human rights: "We tried to take it out of green tinged perspective, pointing to Winston Churchill etc., the idea being, yes, Nationalists may raise it [human rights], but it's got a more poignant origin than that" (Interview, 18.11.16). This was accompanied by other measures designed to tone down explicit reference to human rights that could alienate Unionist members. The 'Human Rights and Professional Standards Committee' was renamed the 'Performance Committee' and 'Thematic Reports' were introduced, which, despite being written by the legal advisor and analysed using human rights law, sounded less about it.

Unionist scepticism towards human rights was hard to shift though. It became apparent in interviews that the historical framing of rights as a 'Nationalist agenda' during the conflict had been further engrained by the major reform of policing. There was a firm amongst Unionist interviewees that the inclusion of human rights as part of the reform of the RUC was merely a concession to Nationalist communities to encourage them to endorse the new policing arrangements. Putting themselves in the shoes of the reformers, Unionist members asserted that the main goal had been to restore trust and confidence in policing amongst Catholic communities. As William (DUP) summed up during our interview: "What was Patten's big idea around the whole human rights regime? I think it was just a mechanism which he was using to get the likes of Sinn Féin on board to support the police force. It is a check and balance mechanism if you think about it." This view reflected the strongly held belief within the RUC and wider Unionist community that the primary goal of the British government at the time of the reforms was to keep Republicans on-board with the peace process, rather than to recognise the loyalty and sacrifice of the RUC (see also Lawther, 2010; Hearty, 2014).

The very notion of a human rights approach to policing and oversight was not seen, therefore, as being for the benefit or protection of Unionists, who had long held the RUC as the brave defenders of the Unionist state. The need for the police to embrace a new-found respect for human rights, along with other aspects of the reforms, led many Unionists at the time to strongly oppose the ICP's Report (Hillyard and Tomlinson, 2001). Speaking just one-week after the transformation from RUC to PSNI, senior DUP member, Sammy Wilson, described how policing had been "smashed" and criticised Nationalists "pushing for Patten's so-called human rights rules. Something which will further tie the hands of the police, restricting their ability to stop and search criminal suspects" (Wilson quoted in *News Letter*, 2001). In our interview, William (DUP) reflected on the far-reaching human rights reforms but remained unconvinced:

> I just think at the start it [human rights reform] was overdone big time …You get some absolutely ludicrous things happen with new recruits where they were, you know what I mean, somebody caught breaking in to a person's house, they were actually going and arresting the owner of the house because they had violated the rights of the criminal. Some absurd, perverse nonsense going on. So a lot of that stuff had to be backed off from, big time and a lot of re-training done with individuals.

There was a markedly different historical connection with human rights for Nationalist politicians, for whom the seeds of the conflict were sown in the state's systematic disregard for their civil, political, social, economic and cultural rights for much of the twentieth century (McKittrick and McVea, 2012). As noted by Gearty (2006: 157), rights are a resource open to the underdog, the invisible; a language to shout for attention and demand an end to suffering. In the early 1960s in N.Ireland,

the Civil Rights Association took to the streets, calling for an end to discrimination (Curtis, 2014). When the movement collapsed after violent opposition from Loyalists and the RUC (Mulcahy, 2008), explicit reference to human rights lived on in political speeches and campaign literature of the 1980s and 1990s. The SDLP, as the moderate Nationalist party, emphasised the significance of human rights for ending the conflict and called for the incorporation of the ECHR into N.Irish law as far back as 1972 (Smith et al., 2016). Sinn Féin, then the political wing of the IRA, repeatedly used rights language to advance their campaign for a united Ireland, citing the UN's International Covenants, alongside more general assertions of the 'right to peace' and 'Irish national rights' (Sinn Féin, 1991; Mageean and O'Brien 1998). Human rights law was also used by Republicans in their legal efforts to challenge prison conditions, counter-terrorism legislation and the actions of security forces (McEvoy, 2000; Hadden, 2011).

This is a political legacy clearly inherited by present-day Nationalist politicians. The SDLP, for example, describes itself as the party "formed out of the civil rights movement" (McPhilips, 2016), while Sinn Féin promotes itself as the champion of equality and guardian of rights (Sinn Féin, 2004; Adams, 2007). In the early period of reform, the SDLP pushed the PSNI to "put human rights at the heart of policing" (Attwood quoted in *News Letter*, 2004). In my interviews with NIPB members and observations of the videos of the public sessions, Nationalist politicians were confident using rights language to articulate their concerns, appeal to their constituents and challenge the PSNI. One interviewee, Siobhan (Sinn Féin) could list the families who had brought legal challenges during the conflict and the names of NGOs and academics they had met during the peace process. A tone of authority was equally present in other interviews with Nationalists, who commented how Unionist members would expose their "misunderstanding" by using human rights "wrongly". This critique strikes at what Aughey (1989: vii) has referred to as Unionism's "inherited political inarticulateness": that is, an apparent hangover from decades of Unionist hegemony, during which political leaders rarely had to define, or refine, their political message (Lundy and McGovern, 2008; Lawther, 2012).

Nationalist members have publicly deployed their own, more sophisticated discourse of rights that has helped them position themselves as rights custodians. A good example was when former chair of the Performance Committee, Conal McDevitt (SDLP), penned an article in the *Belfast Telegraph* responding to Unionist scepticism over human rights oversight. His Unionist opponents, he wrote, "misunderstood both the nature of rights and their application" and had succumbed to "sensationalist" misinformation and "disingenuous and ill-informed commentary" (McDevitt, 2011). McDevitt undertook the task of correcting the falsehoods he had identified by way of providing a brief history of the ECHR and its application to policing in N.Ireland. In another example, Gerard O'Hara (Sinn Féin), speaking

at the public launch of the Board's Annual Human Rights Report in 2012, stated: I actually think we need an educated process about what human rights are", criticizing the Police Federation's "far from proper understanding of human rights what human rights are" which appeared in its newsletter to officers. O'Hara was himself an applicant before the ECtHR, in an appeal in which he alleged (unsuccessfully) that his arrest and detention at the hands of the RUC in 1985 was illegal.

Sinn Féin political members were also vocal in using their involvement with victims' groups and rights-based advocacy during the conflict to re-assert themselves as custodians of rights discourse in public sessions of the Board (e.g., Public Session, NIPB, April, 2012). It was these public exchanges in front of the PSNI, as well as Unionist political members, that helped to instil a sense of Nationalist guardianship over rights: it was part of *their* struggle, it was *their* political parties that had pushed for human rights to be written into the peace agreements and it was *their* communities that had suffered at the hands of the state. This framing reinforces Bartholomew and Hunt's (1990) insight that rights-based argumentation is not a neutral device, capable of being lifted and deployed by anyone. At times, however, Board meetings have also revealed a visible tension between Nationalists and Republicans, with the SDLP proving reluctant to allow Sinn Féin to position themselves as custodians of rights given their political affiliation with the IRA during the conflict (e.g., Public Session, NIPB, May 2014).

Human Rights as an Articulation of Interests, Concerns and Aspirations

In interviews with NIPB members and in their remarks at the public sessions, it was apparent that human rights were often a proxy for talking about a broader set of political interests, concerns and aspirations. In this section, I examine two of the most salient rights-related narratives: first, the legacy of the RUC and second, the state of contemporary policing.

The Legacy of the RUC

In the absence of a formal transitional justice process or a co-ordinated societal approach to truth recovery, the bitter legacy of the conflict and blame for past violence "saturates contemporary political discourse in Northern Ireland" (Curtis, 2014: 135). At the public sessions of the Board, debates over the RUC's role in the conflict have erupted from seemingly unrelated issues or questions. Names of victims are lobbed back and forth, as Nationalist politicians condemn the RUC during

the conflict. Responding in kind, Unionists defend the honour of the RUC, contrasting its officers' bravery with the callous acts of paramilitary groups. The ever-presence of the conflict was equally apparent in interviews. Questions about human rights oversight and the function of the Board were answered in the context of the past. To talk about human rights reform was to talk about the legacy of the RUC, be it positive or negative.

For Nationalist politicians, understanding the role of the NIPB's statutory duty in monitoring compliance with the HRA 1998 necessitated an account of the systemic abuse of rights by police and security services during the conflict. Historically, of course, the function, composition, ethos and symbolism of the RUC signalled to Nationalists that the police were a Unionist institution (Mulcahy, 2008). When I asked Ashley (SDLP), for example, where the NIPB was a priority for her party, she replied emphatically that "there's a huge legacy issue", recalling the Nationalist experiences of abusive police practice during the conflict and the mistrust this generated (Interview, 01.11.16). There was a continued wariness of police actions and capacity to abuse power, especially for investigating past killings. The starting point for Sinn Féin – which, as noted earlier, only formally endorsed policing in 2007, six years after the PSNI was established – was expressed most clearly by Sinn Féin president, Gerry Adams (2007): "We who live in the North have never had proper policing. The old RUC and all of its associated militia served the union, upheld the Orange state and repressed everyone else".

Interviewees from the SDLP and Sinn Féin described how they understood the excesses of state violence and the abuse of power that could be meted out by the police; human rights reform was talked about within the context of their agenda to ensure that the police were no longer above the law. When I asked about the NIPB as a forum for holding the police to account using human rights standards, Siobhan (Sinn Féin) couched her answer through her assessment of policing during the conflict:

> [W]e're moving from a situation in my analysis where the RUC, were a paramilitary police force, they were part of the problem, they saw themselves as defenders of the state, rather than defenders of the people and the law, so who guards the guards? There was nobody guarding the guards. They could do what they wanted, and did…if the PSNI don't understand the importance – if they go in to defensive mode in relation to defending that, they're on the road to nowhere. (Interview, 12.07.15)

This interweaving of human rights discourse with the legacy of the past echoes the vocal defence of the HRA 1998 by Nationalist parties in the face of its possible repeal by the Conservative Government. Emphasising its interlock with the peace process, Gerry Adams has described proposals for repeal as a "scandalous attack" and "grievous breach" of the Belfast Agreement, with "enormous implications for

the administration of government, justice, policing and equality in Northern Ireland" (*BBC News*, 2015b). Equally opposed to repeal of the HRA 1998, the SDLP have cited the "appalling history of the denial and abuse of human rights in Northern Ireland, which played a huge part in the commencement of the Troubles" (*Belfast Telegraph*, 2015). Through this discursive alignment, human rights have become embedded in the broader discourse about the culpability of the state both in causing the conflict and in prolonging it (Curtis, 2014: 136).

When I asked Unionist politicians why human rights had been a central proposition of the Patten reforms and a part of the NIPB's statutory role, they thought the question required significant re-contextualisation to avoid an apparently misguided critique of the RUC. George (DUP), for instance, couched his answer with this opening line: "There's a couple of things I think we have to deal with before you bring it right up to date with that the performance committee is doing. The context is important" (Interview, 13.05.15). This scene-setting was dominated by two narratives consistently voiced by Unionist political members. The first concerned the policing environment the RUC were faced with during the conflict: they were being attacked by terrorists determined to kill and injure police officers and who, in acting in this way, had no regard for the rights of innocent people. In such exceptional circumstances, exceptional, non-rights friendly measures were justified, as expressed emotively by Todd (UUP) in our interview:

> I have to accept that there were things done wrong in the past, but I think history has to accept we were operating as the RUC under a terrorist threat, which no other country in Europe had to face. Police officers were being shot dead in their own homes, in their places of worship and being blown to bits at the side of the road, so therefore policing had to reflect the danger of the job they were undertaking. As well as that, the Emergency Provisions, the Emergency Provisions were not human rights friendly, but from the basic human right of the right to life, they [RUC] had to deal with the circumstances they were faced with.

When the "garden was rosy", consideration of human rights law could be tolerated, Todd thought, but when you have a terrorist campaign, you must "think about the greater good". This understanding is allied with a Unionist reading of the conflict that pins blame almost entirely on the acts of Republican terrorism and absolves the responsibility of security forces and police (Lawther, 2012).

The second but closely related narrative drawn on by Unionist members, related to the lack of support for policing from Nationalist communities and the under-representation of Catholic officers in the RUC. The suggestion that this was due to police abuses or Unionist allegiances was swiftly dismissed as "manufactured" and "artificial" by interviewees. Instead, Republicans were intimidating Catholic communities from joining or supporting the police. This notion of the 'behind closed doors' support for the RUC featured heavily during the conflict to

ward off criticism of its overwhelmingly Unionist composition (Hillyard and Tomlinson, 2001; Mulcahy and Ellison, 2001). Consistent with this narrative, in our interviews, Unionist members argued that support for the PSNI was achieved thanks to Republican ceasefires and endorsement of the PSNI by Sinn Féin, not human rights reforms or strengthened police oversight. Such arguments aligned with the strong Unionist belief that policing had been distorted by terrorist activity during the conflict and once this distraction had gone; that is, when good (the police) had defeated evil (Republican paramilitaries), 'normal policing' could resume (Lawther, 2010: 465; Hearty, 2014: 1049).

The power of human rights discourse to re-awaken these divergent legacies, and make profound disagreements audible, is captured in the extract below from the Board's public session in May 2014 in which the Chief Constable was answering questions about the police response to protests in Belfast and PSNI commanders' decision-making. The strong assertion of the human rights credentials of the PSNI by the Chief Constable became an emotive trigger, pivoting the discussion away from public order policing to the human rights record of the RUC and security services during the conflict. This, in turn, spiralled into competing claims of victimhood connected with paramilitary violence, with the SDLP (and DUP) condemning the violence of Republican paramilitaries inflicted on Nationalist communities.

> CHIEF CONSTABLE MATT BAGGOTT**:** Across this table there's about 200 years of operational experience and a firm adherence to human rights – which you're welcome to challenge. But actually our professional opinion collectively is that actually we had to make judgments based on protection of life and safety and secondly on the advice of Queen's Counsel […]
>
> […]
>
> CATRIONA RUANE [SINN FÉIN]: […]I thought your tone was very dismissive in your answers […] I think your comment about 200 years of operational discretion and experience was quite arrogant. And you also used human rights during those 200 years and you asked us to cite them, I would respectfully suggest you listen to members of our Policing Board instead of putting them down. I would also suggest you read the countless human rights reports, not within Ireland or Britain, but internationally, during those 200 years you talked about.
>
> […]
>
> JONATHON CRAIG [DUP]: Chief, sometimes we never fully escape the past in Northern Ireland. I started this week with the Cummins family and the murder carried out by the Republicans to that family. It is good to see that further inquiries may well bring justice for that family. I was reminded last night and this morning that violence by Republicans was not only visited on the Unionist community but also the Republican community […].
>
> […]
>
> DELORES KELLY [SDLP]: Can I just correct one point that Jonathan said. He said how he's reminded about how violence was visited on the Republican community. I

> have to say that the Republican movement visited violence on the Catholic, Nationalist community and I believe more Catholics were murdered by the Provisional IRA than all of the other groups including state forces and Loyalist paramilitaries together. So far from being the defenders of the Catholic Nationalist community, they actually killed many of their own community.
>
> (Public Session, NIPB, May 2014)

In making sense of such contestations, it is important to acknowledge how discursive practices can reflect, and reproduce, understandings and experiences (Payne, 2008; Curtis, 2014). The speakers involved in these raw exchanges at the Board lived through the conflict; they were part of the very legacies that were re-affirmed and re-negotiated in public sessions. Political members on both sides of the divide were heavily involved in organisations that were at war during the conflict. Sinn Féin's policing spokesman and long-serving NIPB member, Gerry Kelly, for example, is a former member of the Provisional IRA who escaped from the Maze Prison in 1983. His then party colleague on the Board, Catriona Ruane, was involved in campaigns during the conflict, including the "Colombia Three" which argued for the return of three Irishmen who would later be convicted in their absence of training FARC insurgents in Colombia. Sitting just a few seats away at Board meetings is Ross Hussey (UUP), a retired RUC officer, and Jonathon Craig (DUP), whose family served in the RUC and who has described being targeted by Republican paramilitaries during the conflict (Public Session, NIPB, November 2014). These same subjectivities further enveloped members' assessments of contemporary policing, the topic which we now turn.

Assessments of Contemporary Policing

Also lurking within political members' attitudes of human rights oversight were perceptions of how far they thought the PSNI had successfully reformed and the extent to which it could, therefore, be trusted. In my interviews with Nationalist politicians on the NIPB, questions of rights-based accountability invited qualified praise of the PSNI. Ashley (SDLP) thought that "by and large policing was much better" but police use of force, particularly Taser and plastic bullets (or AEP), remained an emotive issue. There was ongoing alertness over the use of these tactics, as illustrated by the SDLP's call for a report into public order policing by the human rights advisor given its concerns about the increase in the use of AEP by the PSNI (*Belfast Telegraph*, 2013). Ashley emphasised the oversight of the NIPB, its human rights advisor and the Police Ombudsman as necessary "to give that level of confidence" Nationalist communities still needed. Similarly, Sinn Féin have publicly insisted on the need for continued human rights accountability, stating it must remain "at the heart of policing and a key role is to monitor police

performance in this respect. […] It is crucial the policing service is fully human rights compliant" (O'Hara, 2015).

In public sessions of the NIPB, it was clear that Nationalist politicians remained cautious of trusting the PSNI's justifications and rationales for operational decisions and police practices. Citing news reports or documentaries by local investigatory journalists, Sinn Féin and the SDLP consistently raised concerns about the integrity of the PSNI and the actions of the RUC. These spanned a raft of issues, including: allegations that firearms seized by the RUC had been returned to communities (e.g., Public Session, NIPB , June 2015); the refusal of retired police officers to co-operate with murder investigations related to the conflict (e.g., November 2014); concerns that the PSNI was turning a blind eye to the illegal activities of Loyalist paramilitaries (e.g., Public Session, NIPB, July 2014); claims that the PSNI was failing to protect Nationalist communities from illegal parades (e.g. May 2014); and the procedures and safeguards in place to govern the PSNI's handling of informants (e.g., Public Session, NIPB June 2014). In our interview, Siobhan (Sinn Féin) described a sense that there was growing understanding within the PSNI that hiding the past is not good for policing today, but there were still "dark forces" keen to protect the RUC at all costs and the "human rights abusers of the past". The "old boys' network is still very powerful and very dangerous", Siobhan noted, with too many in the PSNI not appreciating they had to act within the law. It remained "a very interesting time in policing. Exhausting. But it's very interesting". Likewise, in my interview with Ashley (SDLP), she warned never to underestimate the role of the retired police officers in Special Branch who "lurked in the background".

For Unionist members, their assessment of policing today was markedly different. From the very outset of the police reform process, they had been emphatic that the NIPB must respect the PSNI's operational independence (Rea and Masefield, 2014). It was apparent from public statements and NIPB sessions that Unionist members strongly supported the PSNI and trusted its officers. In the face of human rights NGOs' concerns about a 50% increase police retention of DNA samples, including 3,000 from children, the DUP defended the PSNI, emphasising the ability of this data to help solve crime (*BBC News*, 2009). In interviews, Unionist politicians expressed no concern about potential police abuse of body worn cameras to portray officers in a more favourable light to rebut allegations of discriminatory use of stop and search powers; for instance, to Todd (UUP) "a professional police officer is a professional police officer". Similarly, according to William (DUP), "there's nothing that makes a police officer happier than when he's out there arresting criminals" and the NIPB could help them do that by taking the "bureaucracy and nonsense out of the road". In public sessions of the NIPB, Unionist members were quick to praise the work of the PSNI in the aftermath of

periods of public disorder and high-profile investigations into IRA murders during the conflict (e.g., Public Session, NIPB, July 2014). In fact, some Unionist members even came to the defence of senior PSNI officers when they felt they had been subject to unfair criticism by Nationalist politicians (e.g., Public Session, NIPB, June 2012) and the An Garda Síochána Commissioner (e.g., Public Session, NIPB, December 2013).

These affective endorsements of the PSNI, and the solid belief in the integrity of its officers, strengthened Unionist members' sense that the Board had little to concern itself with when it came to human rights and policing. The general sentiment of Unionist politicians was well summed up by Todd (UUP) in our interview:

> I think that it's accepted that human rights are just part of everyday policing so there is no need for this continual prodding at it – it's there, it's accepted, it's engrained into the police service. If one thing is engrained into the police service it's human rights, from the very basic day one, from there on. So I think that it's no longer an issue, that would be my view – it's no longer an issue.

I was repeatedly told that there was no conflict between the NIPB and the PSNI on human rights issues I was told; nine times out of ten the advisor's reports were positive. In fact, Unionist members were sympathetic to the sheer extent of official oversight to which PSNI was subject to. Each politician I spoke to recited, with a tone of exhaustion, the list of accountability bodies that now existed to scrutinise the PSNI. William (DUP) thought that with oversight from the Board and its human rights advisor, the Ombudsman, the NGOs and HMIC, the PSNI's officers must be afraid to sneeze – "somebody will be watching them!". Neither the UUP nor DUP went as far to state that checks and balances on police were unnecessary or ought to be removed, but they did suggest that a "more balanced" approach to human rights would be welcomed. George (DUP), for example, suspected that the high number of officers on sick leave that he had read about in local papers could probably be attributed to the stress they were under from such onerous accountability: "I think there has to be a measured approach to human rights in policing, because if the scrutiny on policing is suffocating it, well then it is actually counter-productive".

This assessment fed into an overarching Unionist narrative about crime, violence and policing in post-conflict N.Ireland. With the violence over, devolution restored, and policing and justice powers transferred to the N.Ireland Executive, they sensed the country was, at last, returning to a state of normality. It was a "nonsense approach", Todd (UUP) commented, to keep insisting we were "coming out of conflict" eighteen years on from the Good Friday Agreement. Ploughing great resources into investigating the activities of the RUC and armed forces for their actions during the darkest days of the conflict ran counter to the pressing needs of today: "we've just had to bite the bullet and say to the people, do you

know something, the crime of today is going to have to take precedent over the crime of history" (George, DUP). Barney (UUP) reassured me that policing was "not the great battleground it once was, policing is now just mundane […] the debate has gone away" (Barney, UUP). Issues deemed to be about human rights – the composition of the police, use of force tactics, stop and search, counter-terrorism tactics – had now been addressed.

Despite the obvious cleavages of the conflict that remain (i.e., paramilitary vigilantism; threat of Dissident Republicans; unresolved conflict-related murders; and allegations of state collusion), as I society, I was assured by Unionist NIPB members, we were now in a place where police could devote their time to "real crime". This included domestic abuse, sexual exploitation and cyber-crime; things which were to be contrasted with terrorist crimes that had "distorted" policing during the conflict. The NIPB, I was told, should be focusing on how the police were responding to this sort criminality that "affected people across the United Kingdom". According to Unionist members, the average member of the public was concerned about burglaries, drugs and police response times, not stop and search or body worn cameras. This changing context also raised questions about the proper role and remit of the NIPB itself. George (DUP), for example, described how current accountability structures now looked out of date and overly bureaucratic: "we have to accept that we're fifteen years out from the Belfast Agreement, well over ten years from the Patten reforms, so we have to be realistic that time has moved on and that we might have to think about how we can do things better".

Human Rights as a Resource to Achieve Strategic Ends

The third and final dimension of human rights relates to how it can achieve something in specific fields, serving as a functional resource for groups or organisations. In this section, I critically examine how Unionist and Nationalist political members have sought to mobilise (or de-mobilise) human rights in pursuit of their contested understandings of contemporary policing and rights-based oversight. Once again, two examples serve to demonstrate the competing political agendas being pursued through human rights: first, the investigation of conflict related deaths and second, the role of the Board's human rights legal advisor.

The Investigation of Conflict Related Deaths

The rawest legacy of the conflict is perhaps the most human: the deaths of the 3,600-people killed between 1969 and 1998 (McKittrick and McVea, 2012). Specific counts vary, but the overall picture is clear: most deaths were caused by Republican paramilitaries (2,167), followed by Loyalist paramilitaries (1,115) and then security forces (362) (McKittrick and McVea, 2012). Questions as to how investigations into these cases are prioritised, by whom, and for what purposes, raise fundamental issues that post-conflict societies must grapple with; that is, issues of victimhood, blameworthiness, trust and reconciliation. But in the absence of an overarching approach to dealing with the legacy of the conflict, the search for truth and justice has often come down to the determined efforts of families, NGOs, lawyers and politicians to seek answers through the criminal justice system (Bell, 2003; Lundy and McGovern, 2008).

For the families of those who died at the hands of state actors (predominantly those from Nationalist/Republican backgrounds), the standards established under Article 2 ECHR have been at the heart of their legal challenges to the official state response to their deaths[8] (Ní Aoláin, 2002; Bell and Keenan, 2005; Anthony and Mageean, 2007). Article 2 imposes a procedural obligation on the state to carry out full and effective investigations into the circumstances of controversial deaths that are caused directly or indirectly by state actors[9]. The success of these families' cases before the ECtHR has injected detailed normative standards into the debate over how the state ought to respond to deaths involving state forces and those killed after allegations of collusion (Bell and Keenan, 2005). In this section, I demonstrate how reference to Article 2 has been used by Sinn Féin outside of the court, to challenge the adequacy of police investigations of conflict-related deaths, and how, in turn, Unionist political members have responded with their own counter-discourse.

Reviewing the footage of the thirty-nine public sessions of the NIPB, Sinn Féin members referred to Article 2 in over a quarter of these to critique the PSNI's role into two major avenues of investigation for conflicted-related deaths involving state actors. The first is the PSNI's disclosure of material to coronial inquests reviewing conflict deaths and to the Police Ombudsman's investigation of alleged wrongdoing of RUC officers. A key concern is the apparent reluctance of the PSNI to disclose relevant information (Cobain, 2014). The second is the Historical Enquiries Team (HET), a specialist unit established by the PSNI to investigate conflict-related deaths. The HET was set up to produce case reports for victims'

[8] *Jordan v UK* (2003); *Kelly v UK*; *McKerr v UK* (2002); *Shanaghan v UK* (1997); *McShane v UK* (2002); and *Finucane v UK* (2003).
[9] See *McCann and Others v UK* (1996)*; Kaya v. Turkey* (1999).

families that could help answer their questions and concerns and re-examine investigative and evidential opportunities that might lead to a prosecution (Lundy, 2009: 12). The HET was primarily staffed by retired police officers, including a significant number of former RUC officers (Lundy, 2009: 29). Under-resourced and subject to strong criticisms of its case handling, as well as the independence and accountability of its investigators (Lundy, 2009, 2011; HMIC, 2013), the HET reviewed a total of 1,706 deaths before being disbanded in 2014 (PSNI, 2016b). It was replaced by the Legacy Investigation Branch (LIB), a smaller case review unit embedded more tightly within the PSNI, tasked with reviewing the remaining 937 cases.

At NIPB public sessions, Sinn Féin were vocal in expressing Republican communities' deep suspicion that the PSNI is being "obstructive" (Catriona Ruane, April 2012) and deliberately "stalling" (Gerry O'Hara, Public Session, NIPB, November 2013) the efforts of families to achieve justice for those killed at the hands of the state. The major suspicion is that police are shielding RUC officers and British soldiers from criminality. Sinn Féin have raised concerns about police disclosure and the actions of the HET/LIB in over one third of the public sessions reviewed, using these meetings to publicly hold the police to account. In doing so, Sinn Féin has relied heavily on the rhetoric of legality by alleging that the police are failing to adhere to their legal obligation, per Article 2 ECHR, to ensure an effective investigation into deaths by disclosing necessary material. This is illustrated well in an extract from a public session:

> CATRIONA RUANE [SINN FÉIN]: The families have walked a long road to Europe and back. *In fact, I was with them on that road to Europe and here in Ireland when the results came through that the European Court had ruled against the British government.* I hope, you agree with me that the families deserve justice and truth and they deserve that we operate within the legal framework… *I am asking you now to adhere to the law in relation to the European Court of Human Rights ruling and all information should be disclosed to the families.* We can go back to the past and have false debates over relevance that some would believe as delaying tactics or we can have the new beginning to policing that we all want. (Public Session, NIPB, April 2012; my emphasis).

The story of these cases has been described as one that is intimately linked to the conflict itself, providing a missing narrative about the role of the state and the accountability gap that remains (Ní Aoláin, 2002: 588). This same narrative is interwoven in Sinn Féin members' requests for updates about how specific cases are being handled or progressed by the PSNI and their calls on senior officers to assure victims' families that material would be made available. The power of this rights discourse was strengthened on several occasions when victims' families appeared in the public gallery of the Board's session, in one case sitting quietly with the names and photos of their family members that were killed (Public Session, NIPB, September 2013).

The authoritative tone with which Sinn Féin cited Article 2 connects back to the idea of Nationalist 'ownership' of rights. In some public sessions, pressure was applied by questioning the PSNI's own use of Article 2 as a justification for non-disclosure, with political members asking whether senior officers were aware of the legal agreement reached between the British government and Committee of Ministers (Pat Sheehan, Public Session, NIPB, October 2011; Catriona Ruane, Public Session, NIPB July 2014). Likewise, Sinn Féin members mentioned HMIC's critical reports into the HET to hammer home their point: "What have you done to rectify the damning report and the issues around leadership and management since then?" (Gerry Kelly, Public Session, NIPB September 2013). On other occasions, reference to Article 2 was used to propel the idea that the law was on the side of the Republican families who were seeking justice, and as such, the PSNI must have something to hide if they were not prepared to be faithful to the law by being transparent about the officers involved in reviewing the inquest or investigation material. See, for example, this extract from a public session of the NIPB:

> GERRY O'HARA [SINN FÉIN]: […] it looks like PSNI has been dragged kicking and screaming into coroners' courts and forced to disclose information under great pressure, that's how it looks. I would like to say I'm not satisfied with the answer. It's the question about whether the people involved in the inquests are Article 2 compliant. You've sent us back an answer saying there's no conflict. I don't think there's enough transparency in your processes, your difficulties and handling of things, which leaves people working on conspiracy theories. What I'd like to see is here is the histories of the people involved. (Public Session, NIPB, November 2013).

Sinn Féin's mobilization of rights discourse to achieve heightened accountability of police investigation of conflict deaths roused little interest amongst Unionist members, who refused to acknowledge, let alone engage with, the issue in public Board session. The Unionist community has generally been hostile to efforts to hold the security services and police to account for conflict-related matters (Lundy and McGovern, 2008; Simpson, 2013). Central to this opposition is the idea that paramilitaries killed by the security forces are having their deaths elevated to the moral equivalent of innocent civilians or security personnel killed by paramilitaries (Lawther, 2010; Simpson, 2013). The DUP and UUP have insisted that a distinction must be maintained between those who loyally served their country to uphold law and order and others who deliberately set out to murder innocent people (Elliot, 2017; *Belfast Telegraph*, 2017a). Unionists have strongly criticised public inquiries and coroners' inquests as amounting to an "unbalanced approach" to investigating the legacy of the conflict (Sir Jeffrey Donaldson MP quoted in *News Letter*, 2017) and part of a broader Republican agenda to re-write the past (*Belfast Telegraph*, 2017b). These mind-sets reflect a broader Unionist "myth of blamelessness", which facilitates a communal denial of responsibility for the emergence and continuance of the conflict (Lawther, 2012: 161).

On the sole occasion that Article 2 slipped out of a Unionist mouth at a public session of the NIPB, it was to explicitly reject Sinn Féin's suggestion the LIB was not compliant with Article 2. (cited below). Unionist members preferred to allow the PSNI's chief officers to defend themselves on the issue of Article 2 compliance, and use their own questions to re-calibrate the discussion using a non-rights based counter-narrative. In its bluntest form, the DUP dismissed Sinn Féin's critique of HET, specifically the involvement of former RUC officers, as nothing more than a "witch-hunt" against respectable professionals who brought much needed skill and expertise to legacy cases (Jonathon Craig, Public Session, NIPB, January 2012; Ian McCrea, Public Session, NIPB, December 2012). In one session, the DUP went as far as to request an apology from Sinn Féin for "maligning those officers who are doing a sterling job for this community" (Jonathon Craig, Public Session, NIPB, Oct. 2012). This purposeful defence of the RUC is not unique to the Board; in fact, it has been a common rhetorical device deployed by Unionists in other political forums when allegations of collusion have been raised or the RUC's integrity has been questioned (Lawther, 2012). As acknowledged by William (DUP) in our interview, regarding investigations into the past, "[f]or most Unionists, it's [investigations into the past] not that big a deal because, let's face it, we were not the ones generally who were going out and murdering people and causing mayhem…they were lawful, therefore they have nothing to worry about."

The type of interactions these competing narratives resulted in is well reflected in an excerpt from a public session, which brings together the various strands of Unionist and Nationalist human rights 'talk' just mentioned:

> PAT SHEEHAN [SINN FÉIN]: I'm glad to hear that HET will cease to exist from the 31st December. I don't think there will be many tears shed for that organization. During our consultation with victims' groups around the HMIC report into the HET, all of those groups were critical of HET and their demand was at the time, that whatever was to replace HET was to be article 2 compliant. It's disappointing therefore, that the new organization, the LIB, in our view, does not fulfil the obligations under article 2, particularly in respect to independence of the investigations.
>
> […]
>
> JONATHON CRAIG [DUP]: I want to make very very clear, the party [DUP] is very very content with the LIB that you are setting up. We see this as a way of moving forward in what is a very very difficult situation for yourself […] We need to nail this about article 2 compliance: there's nothing which says this isn't article 2 compliant. Nothing whatsoever. Some people are choosing to play politics with it and they want to send that message out that it isn't [article 2 compliant].
>
> CATRIONA RUANE [SINN FÉIN]: In relation to article 2 compliance, I have to say I respectfully disagree with Jonathon's comments in relation to that. One of the central tenets of article 2 compliance is public confidence and I can tell you very clearly, any of the families I have met – Loughinisland, McGurks, any of the families – they do not believe that what you are establishing is article 2 compliant. I think it's very important we understand what article 2 compliance means.

[…]

> ROSS HUSSEY [UUP]: I think the previous speaker should bear in mind that over 300 RUC officers lost their lives serving this country and a lot of those murders have not been resolved satisfactorily either. I think it's a disgrace once again these type of comments are being made, over 300 officers lost their lives and I find the previous comments offensive in the extreme.
>
> (Public Session, NIPB, December 2014)

In this highly-charged conversation, the space for constructive discussion of Article 2 standards quickly shrank. And yet the PSNI's compliance with Article 2 is an issue which the NIPB ought to hold the PSNI to account for, given the findings of independent research by Lundy (2009, 2011) and HMIC investigations (2013, 2015). Most significantly, HMIC found evidence of former RUC officers reviewing and overseeing cases where the state was suspected of having been involved in the deaths, including the positioning of former RUC officers in gatekeeper roles (HMIC, 2013: 90-93); a lack of public reporting mechanism or accountability structure; and different investigatory practices in cases where the state was involved (army or police) compared to non-state involvement cases, with the former receiving more favourable treatment and safeguards (HMIC, 2013: 89-98). These findings sit uncomfortably with the standards of an effective investigation *per* Article 2, as established by the ECtHR. The UK Parliament's Joint Committee on Human Rights (2015) has also expressed its own concerns about the LIB, which is more fully integrated and managed by the PSNI than the HET was, further removing any semblance of independence.

The Role of the Human Rights Legal Advisor

The NIPB's human rights legal advisor plays a central role in the project of human rights oversight. The advisor writes the briefing papers and provides legal advice for the Board, provides oral updates and feedback at monthly committee meetings, carries out the year-round review of police practices and drafts the annual human rights report and thematic reviews. As the personification of the NIPB's commitment to human rights, the advisor quickly becomes a key resource used by political members in their efforts to mobilise (or de-mobilise) the human rights-based legal oversight of policing.

For Nationalist politicians on the NIPB, the advisor was central to ensuring the Board's commitment to detailed, rigorous scrutiny of the police. The advisor has high-level vetting and enjoys access across the PSNI, from the recruitment of informers to the planning of public order operations. In our interview, Ashley (SDLP) explained that having a trusted advisor who could assess sensitive areas of

policing was important in "giving wider nationalism the confidence to make allowances, to accept what the policing are saying – whether it's the use of Taser, AEP or dealing with the past". In such a legalistic area of oversight, Ashley believed that even the best-intentioned member of the Board would be unable to achieve the level of expertise the advisor offered. For Siobhan (Sinn Féin), this expertise made the advisor a powerful ally in thwarting the efforts of Unionists to downplay the significance of human rights. The annual reports and thematic reviews written by the advisor had an authority and clarity of opinion that made it harder for Unionists to reject the issues at hand. Analogous to the efforts of rights campaigners to secure formal recognition of their political claims described by Wilson (2007), Siobhan cited the advisors' thematic review into LGBT communities' experience of policing as a way of insulating the topic from the hostility she perceived Unionist members to have towards LGBT issues.

Unionist members, on the other hand, were far more ambivalent about the role and remit of the advisor. They were torn because despite their discomfort with the human rights 'agenda', the advisor was an undeniably skilled and knowledgeable lawyer who made their work much easier. Unionists readily acknowledged the advisor's expertise: Barney (UUP), for instance, was impressed with their "huge professional standing" and how well-informed they were, while George (DUP) appreciated "the succinct and easy to read versions" of the reports which they produced. In fact, over time it seemed Unionists' initial suspicion, even outright opposition, towards the advisor had subsided slightly as they began to see that human rights could be a "two-edged sword". This was because the advisor's reviews into areas of policing that Nationalists were critical of, such as police stop and search and covert surveillance, often produced positive assessments of the PSNI's practices. Whereas Nationalists considered positive findings to be reassuring and proof of the advisor's importance, Unionists saw them as a strong counter-narrative to the "particular prejudices" that were "quite mischievously" being peddled by Nationalists (George, DUP).

Yet, Unionist politicians on the NIPB remained wedded to their scepticism about the very need for a human rights approach to oversight. If the real issues were about the delivery of 'everyday' policing and the 'normal' issues that affected people across the UK, why did the Board really need to keep investing in the expertise of a human rights lawyer on matters like covert surveillance or police custody? (Todd, UUP). The "conundrum", as William (DUP) expressed it in our interview, was that the NIPB could undoubtedly perform its statutory duty without the advisor but it could still not do it as well. The aim of Unionist members, therefore, was to get human rights oversight "under control", by which they meant reducing the work carried out by the legal advisor. One narrative, expressed by Todd

(UUP), played down the continued need for specialist legal expertise and hinted at the political use of the advisor by Nationalists:

> How often do you need to actually use a human rights advisor in this day and age? I think everybody's quite savvy with the law…really an occasional use is now required, it's not a heavy-handed approach, it's a soft touch approach…Nationalists would have been of the view that we always have to refer things to the HR advisor, even in my view things that were not that contentious but I think for an extra protection to show that the Nationalists had taken the issue this seriously.

A further critical narrative concerned the financial cost of employing the independent barrister. In times of austerity, Unionist members were quick to question whether the expense of the advisor could be justified, especially when the perceived overspend was a result of misuse of the advisor by Nationalists. The issue of the cost of the human rights advisor has been an issue played out across the local media (e.g. *Belfast Telegraph*, 2011b), but it has also come to a head within the Board when the budget for the advisor was deemed 'discretionary spending', meaning it was liable to be cut back. Alarmed by this, Sinn Féin and the SDLP put pressure on the Department of Justice and the Board's secretariat and successfully ensured that funding for the advisor remained in place, notwithstanding the scepticism of Unionists.

Conclusion

In his influential essays, historian and politician Michael Ignatieff (2001) warned of the seductive illusion that human rights are somehow above politics. At best, he suggests, human rights can act as a common framework to assist parties in conflict to deliberate together in their search for a mutually acceptable outcome. If the deliberative promise of human rights *is* to be realised, Ignatieff suggests that a broad evaluative consensus about human rights must exist, alongside a willingness to listen respectfully to political opponents' particular inflection of rights claims. As such, rights-based deliberation ought to be self-disciplined by the moral universality inherent in human rights argumentation; that is, political participants ought to temper their partiality with an equal commitment to the rights of the other side (Ignatieff, 2001: 10). Similarly, Fredman (2013) has made the case for 'bounded deliberation' of human rights by legislatures, whereby politicians justify their stance using value-based reasoning, all the while being open to persuasion. Ultimately, though, human rights cannot avoid the inevitable: sparring parties must reconcile competing moral or political visions and be prepared to make painful compromises along the way.

The NIPB is a deliberative arena where the statutory duty to monitor the PSNI on the basis of the HRA 1998 has collided with deep political divisions. In this contest, the conditioning features of human rights deliberation identified by Ignatieff – evaluative consensus; respectful engagement; appreciation of the universality of rights – are strikingly absent; or, in Fredman's (2013) terms, interest-based reasoning has trumped its values-based counterpart. For political members of the NIPB, human rights harbour deep sentiments and concerns, at the heart of which are competing histories of the conflict, legacies of policing and understandings of the country's imperfect peace. Rather than bringing "a fresh sense of urgency or moral obligation to the debate" (Gearty, 2016: 2), as human rights have done in other contexts, rights talk has stuck onto and further-entrenched, ethno-political divisions over the conflict, policing and rights. It is these associations, histories and contradictions which the PSNI has been so keen to neutralise in its own rights narrative, which is at pains to promote the neutral, pro-legitimating properties of human rights as ethics, legality and accountability. Although the distinct tones are crucially sustained by the NIPB's own corporate voice, they are undoubtedly tested, and at times bluntly contradicted, by Nationalist politicians on the NIPB.

This opening section of the thesis has exposed us to the malleability of rights talk and its capacity to be appropriated by elite audiences and imbued with a myriad of ideas, visions, priorities and principles, directed at other high-policing audiences. But what about the policemen and women of the PSNI, who are themselves drawn from this same society? They vote for these political parties, they read the local newspapers, they tune in to radio talk shows and, ultimately, when they put on their uniforms, they are crucial symbols of a form of social order. How do these officers receive, interpret and understand the properties of human rights expounded by chief officers and taught to them in training? How porous are occupational cultures, regulatory formats and organisational priorities to the loud, but deeply contested, rights narratives that swirl around the PSNI? What are the techniques, ploys, even manipulations, that lead officers to endorse, comply or dismiss the legitimating properties of human rights that are supposed to regulate and determine their occupational lives? These are the questions to which we turn in the sites of policing explored in the remaining parts of the thesis.

PART II

Routine Policing: The Relevance of Rights

Chapter 3.

Dirty Work: The Tactical Support Group

> What are the conditions in which rules originating from the law are internalized, becoming guiding principles of conduct?[...] The answer is to be found in the organizational structure, the promotion, complaints and discipline systems, definitions of role and evaluation of performance, the skills, capacities, and limitations of police officers, the satisfactions and frustrations of the job, the expectations of the wider society, and the way all these influences are reflected in the culture of police working groups. (Smith, 1998: 619).

In the next two chapters I invite the reader into the realm of routine policing. The purpose is to explore how the PSNI's official human rights narrative is received, interpreted and internalised by junior officers, given what we now know about malleability of human rights. My collective aim is thus to explore the kinds of influences listed by Smith and discern what impact they have on how human rights is understood, experienced and applied by different police groups. Here in Part II, I refer to 'routine' policing with the same duality as Brewer and Magee (1991: 55-6) did in their own study of N.Irish policing: the ordinary, mundane tasks policemen and women are doing now as I write and you read, but also the process by which this work is done and the quality of its accomplishment. Here, I concentrate on two separate groups of officers, each with their own daily roles, pressures, expectations, interactions and processes. This chapter devotes its analytical attention to the 'dirty work' of the Tactical Support Group (TSG) and asks whether human rights have proved capable of repairing the social and moral taint of the work they perform. The next chapter extends this exploration of the internalisation of human rights by junior officers further with a focus on the Neighbourhood Policing Teams responsible for maintaining good relations within communities where the 'endorsement' of policing remains elusive.

My fieldwork with the TSG began on a cold night in the dead of November 2014. With the lashing rain pelting off the car windscreen, I steered in the direction of the parking bay inside one of Belfast's still heavily fortified police stations. As I walked across the yard, I saw the bulky figure of the unit inspector filling the doorway of the station his officers had made home. Dressed in a dark jump suit, steel-toe cap boots and a baseball cap, he extended his arm for a firm handshake. Escaping the rain, we headed inside where I found his officers roaming the corridors,

the soles of their boots squeaking on the plastic floor as they made their way between the gym facilities, kitchen and briefing room. My time with the TSG would end some months later, in Spring 2015. By then I was trusted enough to let myself into the building, knowing where to find the usual characters and having learnt when best to secure an interview or focus group. I observed training sessions and several shifts, and interviewed many of their colleagues from other units. The TSG treated me well. They were interested in the research and curious about what I was going write; above all, they were keen that I grasped not only the frustrations and challenges their work brought, but also the pride and humour they took from it.

The reputation of the TSG tends to precede it. Known infamously within communities as the 'bully boys' and 'riot squad' or just as 'thugs', the stigma of the TSG stems primarily from its confrontational work and its paramilitary-style uniform. Its officers carry out 'tasks' on behalf of police departments that 'bid' for their time and expertise. These tasks range from searching messy premises for weapons, drugs or paramilitary paraphernalia to counter-terrorist patrols, policing contentious parades to physically removing non-compliant suspects from custody cells. A constable in the TSG put it bluntly: "I think we do the dirty work of the police". Tainted by their association with 'dirt', and further sullied by felt accusations of belligerence and ill-discipline, TSG officers remain resolute in performing their daily tasks, actively resisting the corrosive labels applied to them. It is for these reasons – their interaction with the public in confrontational situations, routine engagement with individuals' rights and sense of being occupationally misunderstood – that the TSG are such an interesting part of routine policing in N.Ireland to examine in our exploration of the police as human rights practitioners. Drawing on my research with the TSG, I explore the extent to which human rights might also function as a legitimating narrative for TSG officers doing tainted police tasks in need of moral repair.

I begin by briefly introducing Checkel's notion of 'socialization' as a way to conceptualise the extent to which junior officers have internalised the official rights narrative promoted by chief officers. I then use Hughes' (1958) concept of 'dirty work' to understand the social and moral taint of the TSG's routine tasks; that is to say, the occupational setting in which officers are making sense of human rights. With this conceptual scaffolding in place, I scope out the presence of human rights in the working lives of the TSG. What appearance did human rights make day-to-day, and when did officers hear about it or see it, and why? I then identify and examine officers' counter-narratives they attached to human rights as a normative vision for policing and a legal standard to regulate their behaviour. If the official PSNI narrative cast human rights as a source of ethical power capable of rebuilding organisational self-esteem and empowering chief officers to act as social commen-

tators, I argue that the TSG's counter-narrative weakened these legitimating qualities of human rights. Whilst they knew human rights were important to the organisation, they struggled to draw upon it as a resource to make sense of or repair the stigma attached to their 'dirty work'.

The Social Lives of Human Rights

In seeking to instil a 'human rights approach' to policing within its community of policemen and women, the PSNI might be thought of as what Checkel (2005: 806) terms a "*promoter* of socialization". Socialisation is a process whereby actors are inducted into the norms and rules of a community through social interactions that lead newcomers and novices to endorse expected ways of thinking, feeling, and acting (Checkel, 2005: 804; see also Johnston, 2001: 494). The study of socialisation spans many academic disciplines and worldly institutions. Most relevant for our enquiry, though, is the core idea of the 'internalisation' of norms, which can be understood as the desired end-point of full norm socialisation, arrived at when actors' identities, roles, and understandings align with those of the institution (Johnston, 2001). This process is said to involve actors adopting a 'critical reflective attitude' (Hart, 1961) to an authority and its requests, the conclusion of such reflection being the belief that obedience is morally right (for application to police legitimacy, see, e.g., Tyler and Jackson, 2014). It is the shift from a 'logic of consequences' to a 'logic of appropriateness', whereby pro-human rights behaviour is preferred because it 'is just the right thing to do' (Johnston, 2001: 495).

In the next two chapters, I am keen to grasp how the PSNI's official rights narrative has been internalised by junior officers doing routine police work. In so doing, it is necessary to account for the fact that the police, like most organisations, are already and always '*site[s]* of socialization' (Checkel, 2005: 807). Voiced in corridors, custody and cars are the series of norms, identities, roles, and understandings expressed by junior officers (Chan, 1997). The existing corpus of research on police occupational culture captures the "accepted practices, rules and principles of conduct that are situationally applied and generalized rationales and beliefs" (Manning, 1989: 360). As Mulcahy (2016) quipped (to a room full of Guards), police rarely emerge from these works as people you would want to invite to your mother's house for Sunday lunch. It is a sub-culture "explained and condemned" by its mission, cynicism, suspicion, isolation, conservatism, machismo, and racial prejudice (Reiner, 2010: 118-332; see also Waddington, 1999; Loftus, 2009). I draw on this work where relevant to help make sense of officers' narratives and understandings of human rights.

In conceptualising police organisations as both *sites* and *promoters* of socialisation, we ought to be careful not to detach them from the social and political worlds that individual officers, as civilians, belong to, and which, through their occupational lives, they service and reproduce (Loader and Mulcahy, 2003: ch.2; Reiner, 2010: ch.3). Nor, of course, is this culture, monolithic. It is a product of individuals, with their own personalities and temperaments, ideals and standards, histories and hopes, notwithstanding the unifying features of a collective 'canteen culture' (Foster, 2003: 207-208). Accordingly, the settings, orientations and contestations discussed in Part I remain an important backdrop to the concepts and empirical data that lie ahead. It is thus necessary to be mindful of variation in how policemen and women from different departments, performing different roles, across different parts of the country, from different generations were exposed to, or insulated from, the ethno-political tenors of human rights, the external oversight mechanisms and, indeed, the PSNI's official rights narrative.

Various other heuristic devices have, of course, been adopted in policing research to make sense of these social processes whereby the power and logic of organisationally endorsed visions, strategies and practices interact with individual's own personalities and experiences, as well as group cultures and identities[10]. I prefer Checkel's notion of socialisation because it helpfully frames the (dis)connection between official rights narratives and these sites of policing in which junior officers actively interpret it. But more significantly, in his influential analysis of socialisation, Checkel has distinguished between varying degrees of internalisation of norms; a distinction crucial for understanding junior officers state of mind when it comes to human rights. The strongest form of internalisation, which he refers to as 'Type II', arises where individuals accept organisational norms as the right thing to do; it implies that they have adopted the interests or even identity of the organisation (Checkel, 2005: 804). This is to be contrasted with 'Type I' whereby individuals act in accordance with organisational expectations, regardless of whether they like the role or agree with it; there is an awareness of the 'proper' way to talk or act and individuals consciously role play in accordance with it when the situation requires (Checkel, 2005: 84).

The extent to which the official police narrative of human rights, disseminated through its organisational presence in training, briefings and documentation was internalised by the TSG is the central question which I seek to address in the following sections. I explore how junior officers made sense of human rights as a narrative of policing promoted heavily by the organisation, but one which was received by officers in the immediacy of their own site of policing and interpreted in

[10] See, e.g., Chan (1997), who uses Bourdieu's concept of habitus, Brewer and Magee (1991), who deploy Schütz's (1967) concepts of 'recipes' and 'schemes of experience'; Hornberger (2011), who adopts Goffmann's (1959) front- and back-stage metaphors.

light of their own dispositions, understandings and experiences. In this section and the next, I explore the narratives of the TSG which, I think, reveal the presence of 'Type I' internalisation and a general absence of 'Type II' amongst this group of junior officers.

Doing the PSNI's 'Dirty Work'

In describing his work to me as 'dirty', TSG Constable Jay struck upon the very term coined by Everett Hughes (1951, 1958) used to capture tasks and occupations perceived as disgusting or degrading, those manifestly "counter to the more heroic of our moral conceptions" (Hughes, 1958: 50). 'Dirtiness' is neither inherent in the work itself nor those who do it, but socially constructed by audiences who see it as somehow physically, socially or morally tainted (Hughes, 1958: 199). By delegating dirty work to others, groups feel clean, even superior, but for workers dealing with dirt, they take on its stigma, becoming 'tainted' by association. What unites dirty workers is the stigma they endure from audiences internal and external to their trade, as experienced through putdowns and demeaning questions or implicit assaults on their character and worth (Ashforth and Kreiner, 1999: 417-418).

As Bittner (1974: 30) observed some time ago: "no human problem exists, or is imaginable, about which it could be said with finality that this certainly could not become the proper business of the police". In an attempt to resolve human problems, often arising in situations of despair, deprivation or degradation, policing has been classed as a dirty trade (Van Maanen, 1973; Waddington, 1999). It has been said the most dubious or 'dirty' feature of policing is officers' routine exercise of coercive authority in circumstances of moral ambiguity (Dick, 2005), involving conduct that "otherwise would be exceptional, exceptionable or illegal" (Waddington, 1999: 299). Yet we should not be too quick to overlook other dimensions of policing that might be seen as tainted in one way or another. This is especially so when it comes to the routine work of the TSG. The officers I spoke to gave numerous examples of the kinds of physical,[11] social and moral stigma alluded to by Hughes (1958) and helpfully clarified by recent work in organisational studies (Ashforth and Kreiner, 1999; Kreiner et al., 2006; on 'dirty work' in private security see Löfstrand et al., 2015).

The TSG firmly believed that in the eyes of many Loyalist and Republican communities, their work was not just unpopular but amoral and of a "somewhat

[11] The TSG also experienced physically 'dirty work', however, it is less relevant than social and moral taint when it comes to thinking about the capacity of human rights to restore challenges to officers' moral authority.

sinful or of dubious virtue" (Ashforth and Kreiner, 1999: 415). TSG units were often deployed at contentious parades when disorder broke out. They became the physical manifestation of the Parade Commission determinations that restricted communities' marches and protests (discussed in detail in Chapter 6). Forming strong cordons to prevent violent clashes between rival communities, officers were derided by some communities as the "riot squad" or "bully boys" and subject to vitriolic remarks: "they regularly come off with things like, you know, 'You should be ashamed of yourself' and 'Your mother must be so proud of you' – sarcastically obviously." (TSG Constable Pauline). As TSG Constable Nathan further explained, "we have people saying to our faces, and it's just a quote, it's not pleasant, but they call us 'the Taig[12] Support Group' so they say that we would favour Nationalists because they're getting their parade re-routed" (TSG Constable Nathan). Dressed in protective uniform (body armour, balaclavas, helmets) the TSG felt dehumanised:

> I think there's a stigma attached to us that we're not approachable, you can't speak to us. Certainly, the likes of Twaddell it would be regularly heard 'Don't be speaking to them, they're just the TSG' you know, as if we're not the real police kinda thing. (TSG Constable Quin)

Many in the TSG described how they were labelled as 'Robocop', thus suggesting they were not human beings worthy of respect. This verbal and physical abuse took its toll, with many officers mentioning in interviews how morale dipped after long periods of public disorder.

The immorality of dirty work also derives from "methods that are deceptive, intrusive, confrontational, or that otherwise defy norms of civility" (Ashforth and Kreiner, 1999: 415). For the TSG, few tasks were as tainted as house searches. In their quest for incriminating evidence in suspects' homes, the TSG crossed the boundary of public and private space, at times forcefully, to encounter home-owners whose reactions ranged from hostility and aggression to confusion and despair. The policemen and women of the TSG had to come to terms with the morality of this intrusive, disruptive task:

> Searching is a very invasive task you know, when you go to somebody's house and sometimes you force entry, you damage their door when you come in and it's maybe a family home and there's maybe kids there or elderly people there and you're coming in to basically go through every belonging that they have, all their drawers and there's nothing private at that point, we're going through everything, and it's very very invasive, so it's not surprising that you get that abuse (TSG Constable Owen)

It was common for TSG officers to be accused of 'raiding' homes, breaking front doors and leaving behind a trail of destruction. While the TSG prided themselves

[12] A derogatory name for a person who is Catholic.

on doing a professional job, the presence of ten bulky officers rummaging around only reinforced certain communities' perceptions the TSG were "mindless thugs".

In addition to the perceived immorality of their work, TSG officers experienced social taint: the stigma arising from regular contact with groups that are themselves stigmatised (Ashforth and Kreiner, 1999: 415; see also Löfstrand et al., 2015: 307-10). Several TSG interviewees described how they arrived in situations "where there's a problem" (TSG Sergeant Adam), "if things had got out of hand" (TSG Constable Jay), "when something bad happens" (Focus Group 2) or "to pick up the pieces" (TSG Constable Larry). They were expected to defuse already hostile situations (e.g., incidents in custody, riots in neighbourhoods) or to perform tasks that would likely result in hostile encounters involving challenges to their authority (e.g., counter-terrorist searches or patrols). As such, residents in communities where searches and patrols took place (often Loyalist and Republican housing estates) associated the TSG with notorious characters or streets in their locality. In other cases, officers felt criticised for being overly protective of suspected drug dealers or paedophiles because they asked angry residents not to gather around the property or refused to disclose confidential information about police investigations.

The stigmatisation endured by the TSG also had a historical dimension to it, the legacy of the troubles is never far behind policing in N.Ireland. The TSG's predecessor was the Mobile Support Unit (MSU), which had a notorious reputation. Specially trained in riot control, ambush techniques and firearms, these elite units were the "macho men" of the RUC, capable of confronting paramilitary groups with "firepower, speed and aggression" (Brewer and Magee, 1991: 122; see also Ellison and Smyth, 2000: 108). Despite only a minority of TSG officers having ever served in the MSU, some still felt they had yet to shake off the MSU's negative stereotype within certain 'hard-line' communities. In the words of one interviewee, "our department has always been viewed from the man in the street if you like as boot boys, heavy handed, thugs, gorillas" (TSG Constable Kevin). This especially frustrated younger officers because they felt unfairly condemned for their association with a unit of which they never part of. Some insisted the verbal abuse they received from teenagers not even old enough to remember the Good Friday Agreement was "not their own, you know they haven't formed this opinion themselves, it's something that's been regurgitated maybe from their parents and their grandparents" (TSG Constable Quin).

A further source of social taint derived from the TSG's servile relationship with police management. Organisational hierarchy, coupled with tasks delegated from various police departments, meant the TSG enjoyed little, if any, autonomy to plan their daily work. TSG units followed regimented schedules devised by centralised administrators, requiring them to be at set destinations by set times; even

when they arrived at local stations to be briefed by police teams, some TSG officers felt judged by their smartly dressed colleagues. As explained to me by officers in one focus group, they felt conscious of being perceived as lazy by their colleagues: "we maybe seem for a lot of people as just sitting about and sort of doing nothing but at the end we're waiting to get briefed or we're waiting for the search to come in, so what do we do? Do we just sit in the back of the truck and hide?" (Focus Group 2). Other officers were concerned that they were starting to lose key skills they had worked hard to gain in their initial years, from taking statements to correctly filling out forms. Wary of this predicament, and growing tired of the TSG, Constable Larry had taken his sergeants exams; he was ready to move up and on. As he explains, the "TSG is an infantry solider, you're told go here, stand there, eat that, hit that door - don't think about it…its mind-numbing".

Particularly galling for officers, however, was the sense that their bosses disowned them when controversy arose. After rioting or hostile house searches, district teams were thought to be quick to apportion blame to the TSG and distance themselves from any fallout from residents, as illustrated in the following excerpt:

> TSG A: I think sometimes TSG is just used as the scapegoat of policing. If something goes wrong they just blame the TSG type-thing. You're out there in your blue suits and you're obviously looking the worst side of policing for the public perception, but at the end of the day we just do what we're told, we have to act professionally as best as we can.
>
> TSG B: It's almost a case of nobody really wants to have us and if they could get away with not having us they would, but things are still happening and they need us, so we're like a necessary evil for them [police managers]. (Focus Group 2)

Similar frustration simmered in the stories told about the TSG uniform. On one occasion, a district commander had told a TSG unit to put yellow visibility jackets on top of their blue suits to appear less threatening to communities. For officers, baking in the summer heat under yet another layer of clothing and now wearing a flammable jacket over their specially designed non-flammable suits, perfectly epitomised their bosses lack of respect for, or understanding of, the TSG. Many officers' I spoke to believed their rights were subordinate to those of rioters: "basically you're the pawns, almost like cannon fodder at times" (TSG Constable Jay). This is an issue we will return to in detail in Chapter 6.

The Organisational Presence of Human Rights

As Hornberger (2010) notes from her study of policing in Johannesburg, human rights have gathered momentum through "technologies of training courses, codes of conduct, conferences, inspection…which do not coerce people but rather try to persuade, entice, or convince them" (Hornberger, 2010: 268). The PSNI has heavily promoted human rights as key to the organisation's identity – how it was

'imagined and made' – and gone to great lengths to persuade officers to internalize the basic principles of human rights. These principles range from the idea of individuals as bearing legally enforceable rights against the police, to categories such as positive and negative duties of the police and concepts like proportionality, which governs the legitimate engagement with a right. Through the process of socialising officers in human rights, the aim is for officers to internalise the basic values, principles and understandings by virtue of their normative appeal, rather than fear of sanction or hope of reward. The social processes by which officers are exposed to, receive, and process the official discourse of rights they are expected to internalise primarily arise in training sessions, operational briefings and formal documentation.

The PSNI's initial human rights training (2001 to 2004) attracted stinging criticism from legal commentators for being overly-simplistic, inaccurate and silent on rights abuses during the conflict (Kelly, 2002; O'Rawe, 2007; cf. Hornberger, 2011: ch.3). Significant improvements have since been reported, thanks in part to the careful oversight of the NIPB's legal advisors who have reviewed manuals, lesson plans and class delivery. With training at police college well-behind them at this stage of their careers, TSG officers continued to receive a regular dose of the HRA 1998 at bi-annual refresher courses for firearms and personal safety protection, as well as tactical exercises for searching and public order. There was a consensus amongst the TSG that the drum of the PSNI's official rights discourse beat loudly in their occupational lives: "it's just something that's always in the background" (TSG Constable Larry); "it's drilled into us so much" (Focus Group 1); "it's something that applies to everything and you just have to listen to it" (TSG Constable Ben). Officers sensed the emphasis the PSNI placed on human rights, noting how it was raised explicitly by trainers at every session who would ask them which rights were engaged by various powers or tactical options.

One experienced police trainer I interviewed described how human rights teaching had, in his eyes, evolved over the last decade, emphasising the knowledge he thought officers now had:

> The pendulum went full tilt and I think it went ridiculously – everything, even in training, we had to mention human rights in every single lesson, the pendulum has come back down a bit, it's sitting at a really good spot – you hear about death by human rights, you know, 'cause people switch off. But realistically, because it's been engrained, we've got that bank of knowledge, if we're putting a lesson together, we don't have to go down and say, if we're using a baton or shield tactic, oh what human right would you infringe if you were doing that? Years ago, people would said you need to ask them, now we don't because you'd be aware.

I observed several public order refresher courses, where engagement with human rights by both trainers and officers was notably brief. At one course, the morning session began with TSG units gathered in a large room. A flickering projector

beamed out references to public order policy, the code of ethics and decision-making model for bleary-eyed officers to re-familiarise themselves with. Across the yard, a large hanger housed a collection of doors affixed to wooden stands, designed for practicing forced entry in a manner that would prevent injury to officers or occupants. Under a large poster which bullet-pointed Article 8 HRA 1998, the trainer explained the importance of a 'graduated response', a term officers later joked about as one of the PSNI's buzzwords, which meant officers should try opening the door before hammering it down. After this session, officers, laden with protective gear, waddled to another building for a refresher in how to forcibly remove obstructive sitters from roads. Before the practical activities, they listened to another short presentation, regurgitating the relevant legislative powers and PSNI policies. The trainer asked a muted audience what the relevance of the HRA 1998 was for this tactic. She reminded them that because this involved the use of force, their actions needed to have a basis in law, be necessary and proportionate to achieve the aim and thus justifiable in the face of formal scrutiny.

In interviews, officers described this lacklustre as a response to rights fatigue, rather than blind ignorance or principled hostility – they were fed up hearing stock phrases like 'legality', 'proportionality' and 'necessity'. In fact, when purposefully asked in the setting of our interviews, I was struck by the ease with which most officers could identify how their daily tasks fell within the ECHR and the practical steps they made to respect human rights:

> It's present in everything that we do, from, you know, you stop someone in the road, there's the likes of the right to private and family life and a right to privacy, so you're not discussing your dealings with them with everybody back at base, or you're not putting that into the public domain […] Right to life is the most extreme obviously, but you know, you have your right to privacy, your right to freedom of assembly, which comes into your protest, your right to freedom of conscience and thought and religion, which comes into protests as well, and then your privacy comes in to searching people and house searches as well. (TSG Constable Owen)

Crucially, as analysed in detail below, this did not mean officers consciously made sense of their work as police men and women in rights terms, but rather when asked in an interview setting they could draw upon their training to explain how certain ECHR articles were engaged by their tasks. Although this is indicative of some level of internalisation of human rights, many in the TSG had reached saturation point. Indeed, according to TSG Constable Jay, "every time it was human rights, and people basically just switched off because it's like white noise, you get so much of it and the brain can't take anymore".

The official PSNI narrative of human rights was further seen and heard by the TSG in their routine briefings for searches and public order tasks. The presence of human rights in briefing packs and operational orders was very familiar. Officers explained how extracts of ECHR articles and principles could be found over three

or four pages in a dedicated section of the 'ops order'. The extent to which human rights was 'briefed out', and the manner in which it was done, varied depending on who was responsible for the briefing and the nature of the operation. Generally, officers recalled how only passing reference was now made to human rights, with briefing officers "just going through the motions". As TSG Constable Larry explains:

> As part of the briefing pack it'll generally say the search is human rights compliant and then read – 'If anyone wants to read, it's here" but generally we wouldn't…a lot of the boys have heard it that many times we don't listen to it anymore. It's like listening to a… on an aeroplane, the safety brief. Do you listen to it or do you just continue reading your book, you know?

As was the case with training, officers explained that reference to the ECHR was so familiar they no longer needed the same level of detail they were given during the early years of the PSNI. As one TSG Sergeant explained: "I'm sitting there doing an [Operational Order] at the minute and I've put human rights on it, but it's a reminder for people, they know it and they know not to step outside of it." (Focus Group 5). The function of briefings as a mode of communicating the official police narrative and framing of public order policing is a topic we will return to in greater detail in Chapter 5.

When I probed further in interviews and spent more time with the TSG, a number of re-interpretations of human rights distinct from the official narrative emerged. These narratives suggested that officers knew human rights was core to the PSNI's identity, hence their willingness to entertain a prolonged discussion of human rights in our interviews and focus groups. However, it became clear that the way in which TSG officers understood human rights meant it had lost its power to legitimate, or even make sense of, the dirty work officers were tasked with carrying out on daily basis. The extent to which the official police human rights narrative disseminated through its organisational presence in training, briefings and documentation was really internalised by the TSG is the central question we turn to now.

(Counter) Narratives of Human Rights

In my interviews, focus groups and observations with the TSG it was apparent that human rights were understood by, and registered with, officers not merely because failure to do so would result in sanction from police management or external accountability bodies. There were subtler, more complex elements at work which explained how TSG officers received and processed the PSNI's official rights narrative in the context of their 'dirty work'. Their experiences, outlooks and anxieties

coalesced around three core narratives: 'It's just common sense', 'It's what we've always been doing' and 'It's for the bosses'. Collectively, these narratives, informed as they were by the TSG's sub-culture and officers' own experiences and attitudes, suggested the TSG were not wholly persuaded by the official narratives identified in Chapter 1. Rather, they re-interpreted and made sense of human rights in their everyday work through narratives that de-constructed the official human rights voice, all the while being cognisant of the importance of human rights to the organisation and that it could be enacted or deployed should trouble occur, promotions arise, or senior officers appear. Let us take each of these (counter) narratives in turn.

'It's just common sense'

Clifford Geertz (1975: 17-18) describes common sense as an account that strikes at the heart of a topic and is distinguishable by "the air of simple wisdom with which it is uttered". To pass something off as common sense in our day-to-day business is to suggest it is so obvious, banal or uncontroversial that we need not dwell upon it, let alone subject it to great analysis or debate. In interviews with the TSG, common sense was a quality that strongly influenced officers' interpretation and understanding of human rights in their occupational lives. Indeed, officers' insistence that human rights were "just common sense" made my focus on rights an awkward line of enquiry in some interviews. I still recall one constable who stopped me mid-question as I asked in one of the focus group discussions about human rights criteria governing the use of force, a topic covered heavily in their training. The officer stated:

> I don't know, am I missing something? Whenever you're doing your training…somebody's giving you verbals, you don't point your gun at them! They talk about lawful and proportionate and blah blah blah. To me it's common sense and it's probably common sense put on paper. (Focus Group 4)

As Geertz (1975) argues, such simple wisdom is, in fact, more complex. Common sense is a cultural system; it is an organized body of considered thought based on our interpretation of the immediacies of our experiences. It tells us something about a group's culture, as well as the topic under discussion. As such, common sense has "an ingenerate order to it capable of being empirically uncovered and conceptually formulated" (Geertz, 1975: 25). The notion that police training can simply "deal with" common sense "assumptions", as Grewal and Munasinghe (2016) bluntly assert, belies the depth of meaning lurking within common sense phraseology.

We should, therefore, be prepared to dig a bit deeper when officers pass off human rights as simply common sense. Indeed, the idea of common-sense

knowledge is considered so central to junior officers' understandings of their daily work that Holdaway (1986: 140) describes police culture as: "the attitudes, beliefs and associated actions about policing that officers regard as 'common sense'" (see also, more recently, O'Brien-Ollinger, 2016). Greater clarity, however, is found in Brewer's (1984; Brewer and Magee, 1991) description of common sense using Schütz's (1953) ethno-methodological approach. According to Brewer (1984: 69), common sense knowledge is a "set of beliefs, maxims, ideas and types which are often vague and contradictory" that are "taken for granted" and become group members' "natural attitude". This stock of common sense knowledge derives from a process of reasoning informed by personal biographies, as well as socialisation with peers. Narratives of common sense, then, can tell us something about the reasoning and knowledge police officers learn to rely upon in managing the precarity of 'the street' (Van Maanen, 1973; McNulty, 1994) and the complexity of rules, procedures and policies designed to govern their work (Holdaway, 1986; Ericson, 2007).

Geertz's (1975: 18) five properties of common sense – '*naturalness'; 'accessibleness'; 'thinness'; 'practicalness'; 'immethodicalness'* – offer a helpful guide to unpack the 'process of reasoning' and 'stock of knowledge' that contributed to TSG officers' narrative of rights. These properties are, in Geertz's (1975: 18) words, "the stylistic features, marks of attitude, tonal shading that animate common sense thought", and each can be heard in pronounced form in officers' human rights discourse. As we shall see, their effect is to downplay the elevated status of human rights in the official police voice, casting human rights as something ordinary, typical, and thus not worthy of making such a big deal about. Notably, very few officers recited populist tropes heard in the tabloid media that described human rights as aiding defendants, failing victims and protecting criminals (cf. O'Rawe, 2005: 947). Moreover, despite most officers being of a Unionist persuasion, none described human rights as being part of a 'Republican agenda' in the same way as the politicians referenced in Chapter 2 did. Rather, TSG officers associated human rights with the claims of chief officers and its organisational presence. Yet, at the same time, neither the properties of ethics, legality and accountability were present in TSG own accounts of human right, nor the narratives of Nationalist politicians nor the scepticism of Unionist politicians. Rather, for most officers in the TSG, human rights were an unremarkable part of policing; neither exciting nor greatly concerning them.

In contrast to the official police voice, TSG officers' understanding was not anchored firmly in either the HRA 1998 or the ICP's reforms, but their own humanity – their basic decency. This understanding is allied to two related properties of common-sense identified by Geertz (1975: 18, 24): *naturalness* ("matters as being what they are in the simple nature of the case […] depicted as inherent in the

situation, intrinsic aspects of reality, the way things go") and *accesibleness* (any person can grasp common-sense conclusions and, if clearly stated, will embrace them). Human rights were commonly referred to as: "sort of human nature … you know it's the right or the wrong thing to do without sort of having to recite the articles (TSG Constable Quin) and "it's generally don't be a scumbag, be an ordinary human being…99 people out of 100 would adhere to human rights legislation without even knowing anything about them" (TSG Constable Larry). Consequently, respect for human rights came "automatically as a good officer" (TSG Constable Greg), something that "general, normal, decent people would buy into" (Focus Group 1) or "if you're any normal thinking person, you're never gonna sort of… you know, object to any of those rights" (Focus Group 5).

By detaching human rights from the HRA 1998 – which appeared in briefing documents, operational orders and policies – and re-attaching it to a taken-for-granted morality, officers were able to speak of the maturity and discipline they saw in their colleagues. But some did acknowledge that the 'naturalness' and 'accessibility' of human rights were also linked to its heavy organisational presence. Rights had been translated into phrases and a pneumonic[13] that filtered into officers' sub-consciousness. Thus, in explaining their practical knowledge, officers struck upon a third property of common sense, *simpleness,* meaning the matter at hand is precisely what it seems, as such, "sobriety, not subtlety, realism, not imagination, are the keys to wisdom" (Geertz, 1975: 22). When it came to firing Attenuated Energy Projectiles (AEPs), for example, the use of force standards of Article 2 (discussed in Chapter 6) permitted potentially lethal force only when it was *absolutely necessary* to protect life or serious injury. What did this standard mean for officers? Echoing the view of several AEP gunners I spoke to, Constable Owen explained:

> To use potentially lethal force as a baton gun there has to be an immediate threat to life or serious injury, so, the example they always use in training is if somebody is likely to throw a petrol bomb into an empty shop you can't shoot them because it's empty, you can't shoot to protect property, but if somebody's going to throw a petrol bomb into a shop where there are people in it you potentially could shoot them because there's then a threat to life or serious injury.

In accessible, 'common sense' language, officers explained how training taught them to apply legal standards with their AEP rifle in hand and target in sight. As Constable Owen further stated: "they drill it into you that you aim for the belt buckle, as opposed to chest or tummy or head, so yeah, that's the main thing with shooting anybody". It was these through these kinds of practical tips that officers came to know how to err on the right side of human rights law.

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[13] The pneumonic 'P.L.A.N' (Proportionate, Necessary, Accountable and Legal) was commonly referred and appeared in the training material.

Not all officers, though, were as receptive to even this type of common-sense thinking. As Ericson (2007: 372) remarks, "following a rule is a social practice against a background of taken-for-granted knowledge, assumptions and routines". TSG Sergeant Eric, for example, was proud of having served over two decades in the police. He was a hardened man, sceptical of fresh-faced recruits who got caught up the minutia of 'training speak' on the use of force. His personal biography had taught him the need for quick, sensible decisions in stressful situations. As such, Eric felt unaffected by human rights: "I try not to think too much about it, you know. You know, I think you've got a gut feeling, he's doing bad, you put a baton strike in and whatever." The greatest risk, Eric thought, was younger officers walking on egg-shells and not intervening to defend someone because of fear of breaching the aggressor's human rights. "What's better", he asked, "a minor breach of an article or preventing someone from being seriously injured?". It is this assertion of officers' own common-sense 'right attitude', that causes some legal activists considerable dismay. Such a perspective is thought to be problematic precisely because it has drifted too far from legal standards – like legality and proportionality – that training ought to have instilled in officers (see O'Rawe, 2005: 946).

A further strand of officers' common-sense rights narrative combined two further properties identified by Geertz (1975). The first is referred as *practicalness*, not in the sense of being useful but in the "folk-philosophical sense of sagacity that is involved. To tell someone, 'be sensible' […] to wise up: to be prudent, level headed, keep his eye on the ball" (Geerz, 1975: 20-23). The second, closely connected, concerns its *immethodicalness* expression "common sense wisdom is shamelessly and unapologetically ad hoc. It comes in epigrams, proverbs, obiter dicta, jokes, anecdotes". Both of these are well captured in the following extract, typical in its wit and wisdom that officers used to play down human rights as typifying anything special:

> The bottom line is it's common sense, that's what a lot of these things have come from and again, from experience, you sort of think it shouldn't hinder you if you're doing your job right, with a bit of sense, using a bit of common-sense. There's people here that say 'oh, this human rights, it stops us…' What is it stopping you from doing? I watched this programme the other night 'confessions of a copper' Did you watch it? Like you know, these guys policing in the 70s they wanted to drag people off and beat them up and pin things on them, 'oh human rights, it's all human rights now' well, thank God it's human rights now, if that's what you were up to! (TSG Constable Kevin)

Human rights were thus synonymous with sensible, respectful policing. Indeed, many officers jumped to straight to Articles 2 and 3 ECHR, stating that they obviously would not torture or kill someone. Human rights were considered a "grand way" of putting what was, in fact, "simple, basic stuff". As TSG Constable Greg quipped when talking to me about house searches, "I will respect someone's

right to private and family life… It's not like I'm going to run around with someone's knickers on my head, you know what I'm saying?". The stock phrase used near-universally by officers was that human rights were "about treating people the way you would like to be treated yourself" (for a similar finding, see Bullock and Johnson, 2012). This rule of thumb was described as an easy way of "keeping you right" and reducing the chances of complaints. Examples offered by interviewees included ensuring that suspects in custody were offered a drink of water or the chance to use the toilet on arrival, or that if the wrong house was searched by mistake, a padlock would be put on the door and keys left at the local police station.

'It's what we've always been doing'

A strong narrative of 'nothing's changed' belonged principally to a group of TSG officers who could be labelled 'the old guard'. Its essence is captured in the response of one officer when I asked about the impact of the introduction of human rights in the early 2000s:

> I've been in the police before they brought in all the human rights training and your job hasn't changed any. You have the legislation there, it was what we were doing before, only now there is legislation there to ensure that's what we're doing, if you know what I mean. You're still a police officer doing your job and if you were doing it properly, you wouldn't have been breaching any of the human rights anyway. (Focus Group 4)

This narrative, though connected to common-sense, was more subversive; indeed, it was one warned of early on in the reform process because of its potential to undermine human rights training (O'Rawe, 2005: 962-963). To suggest that respect for human rights was a new feature of policing, or something that TSG officers could proudly point to in completing their dirty tasks, was to miss the point: they had always respected people's rights, known the legal basis for their powers and acted properly. And yet their work was stilled sneered upon, their skills played down and their occupational image tainted. Furthermore, it was a strong challenge to the official police voice, which boasted of the great energy the organisation had invested in far-reaching, world-leading human rights reforms.

The 'old guard' found themselves caught somewhere between the past and present of N.Irish policing. Having spent half of their careers in the RUC (they had between 20 to 28 years of service), their socialisation and experience as police officers began in the N.Ireland of the late 1980s – a less violent, but nonetheless personally dangerous and politically turbulent period captured in Brewer and Magee's (1991) terrifically detailed ethnographic study of routine policing in Belfast around the time of the Anglo-Irish Agreement. In fact, one old-timer remembered

Kathleen Magee's spell as a researcher in Belfast, joking about how she was always "hanging about with the guys" in a station not far from his own. But at the same time, the officers voicing this narrative had out-served their erstwhile colleagues in the RUC and experienced the introduction of the HRA 1998 and the ICP-inspired reforms. As PSNI officers, they had signed up to the new human rights-inspired code of ethics, attended specially devised human rights courses and had become accustomed to the human rights lingo in briefings and refresher training.

A claim of consistency was at the heart of this narrative: as police officers in the RUC, they respected human rights just as much as they did now as PSNI officers. This is a hotly contested claim, one that is strongly refuted by a significant portion of the community who perceived the RUC as a sectarian organisation, reliant on a paramilitary style of policing that showed limited regard for rights. This narrative of consistency is a hard one to assess concretely with respect to routine policing due to the relative dearth of research on the RUC; this is not, of course, to deny the various human rights abuses reported, spanning from police detention and interrogation, to police collusion with paramilitary groups and allegations of a shoot to kill policy against terrorist suspects. What is clear from the ICP's (1999) report, however, is that even by the late 1990s, human rights, as a legal standard, had a lowly, poorly recognised status in the RUC:

> In our contacts with the RUC, we found them broadly aware of [human rights] issues but at a very early stage of considering how to address them, and then mainly in the context of specific implications for policing of the Human Rights Act 1998. Human rights training in the RUC also lags behind other police organizations we have spoken to […] of 700 sessions of training there are only 2 sessions dedicated to human rights, compared with 40 of drill and 63 of firearms training; the preponderance of these last two subjects reflects the security situation that has afflicted Northern Ireland and its distorting effect on policing, including the integration of human rights into policing culture. (ICP, 1999: 19)

Further insight can be gleaned from an officer (outside of the TSG) I interviewed who was a member of the team responsible for implementing the HRA 1998 in the RUC and then the PSNI. The team's attempts to screen training and policies for ECHR compliance in the late 1990s were, he admitted, "a lot of guess work…we didn't have the guidance or anything, we were trying to make it as compliant as we could by our own studies… It was a lot of trial and error." This viewpoint is supported by the NIHRC's evaluation of the initial post-Patten training for new-recruits. Despite their efforts, trainers struggled to render human rights law and principles meaningful to student officers and admitted lacking sufficient knowledge of the law themselves (Kelly, 2002). However, with the appointment of human rights legal experts by the PSNI and NIPB since 2003, the same officer explained that understandings of the law improved, but that selling it internally to officers remained difficult. There was, I was told, scepticism and obstructionism

within police departments, including the training teams, which remained unconvinced of the merits of this human rights-inspired approach. As this officer explained, "there was a perception that human rights is the criminal's charter, all that sort of nonsense, it's just going to make policing impossible. The old guard weren't happy".

The old guards' narrative of consistency has, unsurprisingly, been critically received by some in N.Ireland's human rights community. Most notably, O'Rawe (2007: 223) has described this attitude as "devaluing" the (seemingly proper) "human rights message" through their "insufficient knowledge" and reluctance to confront historic wrongdoing, thus "shoring up unhelpful mind sets". Frustration that some have failed to grasp the need for discontinuity with past practices and for critical re-appraisal of what went before is understandable, particularly for those who believe in the potential of human rights law to offer redress and transformation. Writing in the international context, Bronitt (2011: 17) similarly warns of rights rhetoric being detached from legal standards and operating "only as a set of ethical imperative". To avoid "window dressing", he insists on "the importance of grounding police action in *compliance* with human rights *laws*" (Bronitt, 2011: 17; original emphasis). However, Part I has shown just how malleable human rights are, even in proximity to legal sources. Human rights are capable of being picked up, recast and re-directed for ends which those of us trained in its doctrinal purity, may be both surprised at and uneasy with. To echo Waddington's (1991: 294) sentiments regarding police sub-culture, to simply condemn or dismiss attitudes we find unpalatable is to retreat from the explanatory task at hand. Once we accept that alternative human rights vernaculars *do* exist, the pressing question is how this 'nothing's changed' mentality was sustained by officers despite objective challenges to the veracity of its core claim.

There were two discursive elements at work in officers' accounts of human rights consistency. The first was an acknowledgement of change in form, but not substance; that is, reference to human rights had just put a label on parts of training and practice that implicitly put individual's interests first anyway. Officers frequently cited the Police and Criminal Evidence Act 1984 as an example of legislation that gave formal rights to suspects to evidence the RUC's regard for human rights. The sense that human rights had merely been a way of expressing old ideas in a more formalised manner was widely held by this group of officers. The view of Constable Nathan, a long serving member of the TSG, is typical of his colleagues:

> It's just pretty much been formalised now in the form of adopting the ECHR. Pretty much everything we did before, either consciously or unconsciously, is included in the ECHR. I mean the talk now about, the first time I ever heard it used and I thought 'What are they talking about?', somebody came on the [police] radio and said, 'If there's

> an article 2 issues there, you know, intervene.' You know, okay, article 2 is the right to life, and if there's a threat there in regards to that, well, deal with it. Well in the past somebody said, 'If somebody's life's in danger, deal with it'. You didn't have to know it was article 2 […] Yes, it does have an impact, but it's more that it's been formalised, not so much that it's something new, you know.

It is significant that this narrative seems to have circulated in the PSNI since human rights reforms began (see also O'Rawe, 2007: 222). Officers recalled their minds being set at ease by police trainers in the early 2000s, who stressed the HRA 1998 was nothing new or significant: "people with big experience who'd policed through the 1970s and [19]80s – were saying this isn't any different from what you do anyway, it's just there's a label to it now" (TSG Constable Kevin) and "trainers were saying we've nothing to fear about HRA because everything we do is human rights compliant, but it wasn't spelled out boldly in the RUC" (TSG Sergeant Adam). Hornberger (2011: 102-4) reports similar sentiments with police in Johannesburg. Officers from the apartheid era referenced legislation existing then as evidence of a longer-standing commitment to the law and regulatory procedures. This claim is one Hornberger debunks, but as I argue here, its significance lies less in its veracity than in its ability to foster a mind-set of consistency amongst officers. In striking similarity to their N.Irish counter-parts with respect to the HRA 1998, this enabled South African officers to "present the changes brought about by constitutional democracy as not particularly radical, and perhaps even negligible" (Hornberger, 2011: 104).

In trying to make some sense of the 'nothing's changed' narrative in N.Irish policing, Brewer and Magee's (1991: 272-275) remarks on the use of force policy in the RUC in the late 1980s is intrusive. It does, at least, lend some credence to the idea that legal standards existed, formally at least, even though they were not couched in ECHR terms. Brewer and Magee report how the RUC's use of force had become more restrained in the wake of public outcry over an alleged 'shoot-to-kill' policy of suspected paramilitaries. New regulations were introduced by the late 1980s to limit officers' use of firearms and physical violence and a new code of conduct addressed these issues. For district policing, the bureaucratic regime governing the use of force was particularly strict, with officers recounting stories to Magee about policemen who had been demoted because of excessive use of force. Echoing this, a former legal trainer in the RUC and PSNI who I interviewed explained how principles like limited use of force were present in firearms training, but that processes and accountability were not framed around Article 2 ECHR. From the 1970s to 1990s, the criminal law was the primary legal basis; it was not until the late 1990s that human rights compliant lessons plans were devised (see also O'Rawe, 2007: 228).

The second element sustaining the consistency narrative was one that bound human rights closely to officers' personal sense of self as ethical policemen and

women. To talk about human rights reform as bringing a new style or philosophy to policing was interpreted as a critique of the RUC and the professionalism of its officers. This criticism did not resonate with this group's occupational experience; they were proud of having served in the RUC, the resilience it showed and sacrifice of its officers. "The way I police hasn't changed since I was in the RUC" insisted TSG Sergeant Adam, who had two decades of service. The sense of identity, ethos and belief that bridged the transition from RUC and PSNI was perhaps best summed up by TSG Sergeant Eric:

> Albeit there is a name change and a slight uniform change but the ethos to me remained the same. It didn't matter what I was wearing one day to the next, you know, I was there for the transition, I didn't get up the next day and go 'Right, I'm a member of the PSNI now, I'm a different person.' You're the same person, you have the same beliefs to go out and do the same job. And the expectation across Northern Ireland has always been that the police service provides this, to me, quite high level of a service.

When I presented this perspective to some senior officers who had been proximate to the ICP-inspired reforms, they offered some explanation of why TSG officers might plausibly hold this view. Superintendent Brian, for example, cited the non-fatal shooting of a suspect who had driven a car bomb into Belfast city centre in the early 2000s. Shots had been fired by experienced police officers:

> Those guys that pulled that trigger were exactly the same people who were in the RUC mobile support unit, not that long ago. In fact, most of them had been in it for twenty to twenty-five years. Exactly the same people, who were doing exactly the same jobs against the provisional IRA and not killing people ten years before that, fifteen years before that, twenty years before that. (Superintendent Brian)

His colleague, Superintendent Edwin, was more balanced. He understood the sentiments expressed by his rank-and-file colleagues from the RUC. Policing during the troubles was often about balancing the rights of colleagues and communities, as well as suspects, but the expression of human rights as being fundamental was absent: "and that was the critical terminology that came along with the codification of the Convention, these are fundamental". Reflecting on this point, former Chief Constable Hugh Orde explained that it was the heavy emphasis the PSNI placed on rights that defined it: "it was more explicit and it was the golden thread throughout everything we did. Now that was different".

'It's more for the bosses'

Thus far we have heard how officers made human rights intelligible using narratives of common sense, while claims that human rights amounted to a new philosophy of policing were diluted by a narrative that emphasized consistency over change. In seeking to grasp the degree of officers' socialisation in human rights, it is necessary to determine their sense of ownership of human rights as a legal tool

for decision-making – something the PSNI, as an organisation, promotes so heavily. This functionality of human rights is salient to the TSG's 'dirty work': could they draw upon human rights to repair the challenges to their self-esteem? In interviews, for example, I asked officers whether they thought human rights helped them in doing their day-to-day work, whether human rights were something they had to think much about, what level of knowledge should be expected of them as junior officers and if this could aid them in navigating the web of accountability that had been spun around them. In this section, I give voice to a narrative that further helps to locate the place and status of human rights in policing for this group of officers. This discussion extends the common-sense notion of 'thinness' mentioned earlier, suggesting a functional detachment from human rights. TSG officers understood human rights as a resource that belonged to senior officers who, first, dealt in its technicalities, and second, played in its rhetoric.

With respect to the first, in their routine work, the TSG saw little need to engage with the HRA 1998 in a legalistic sense; as frontline officers, their job was to ensure the rules were followed, not to interpret, apply or digest the rules in the first place. The latter role was something they were neither experienced in nor had much proximity to, with few having spent time in specialist roles. Some had heard stories about a whole filing cabinet full of policies and procedures being wheeled into a senior officer's command room in the run up to high-profile parade. Others assumed commanders must have been liaising with the PSNI's legal services department to help them reach decisions. In this high-pressure environment, TSG officers pictured their bosses devising public order or search operations: "they'll put the decision-making model up and go right 'our thoughts on this is' and they will go through that. When it gets to our level we just do it… a lot of it I think is just for senior management, they would look at it in a lot more depth than what we would" (Focus Group 2). The product of these meetings, as recounted by the TSG, were operational orders and briefings, discussed further in Chapter 5. Most officers sensed these functioned primarily as "ass-covering": that is, the legal terminology and reference to case law suggested that the real audience were solicitors in case the operation went wrong and attracted liability.

Some TSG officers were particularly frank in stating that none of them could recite all the articles of the HRA 1998, let alone specific case names or points of legal principle. As one focus group ended, the officers reflected on the discussion we just had, stating how interesting it was because it made them think about a topic they would not otherwise have dwelled much on. As officers in this group and others explained, they trusted that the PSNI – equipped with lawyers, trainers and policy-teams – had verified the compliance of legislation, powers and procedures with the HRA 1998. As frontline officers, all they needed was clear instruction on

what their powers were and the limits of them, as explained by one young conscientious constable I met:

> *We're not human rights lawyers*, I couldn't go in and tell you, you know, Article 2 right to life, I know what it enshrines but other than right to life and a few wee bits. I couldn't start to go into the article 10 and give it to you verbatim, and nor do I want to, but I know what it is, what it allows me to do and what it doesn't and who it protects and how as a police officer there's times where I potentially could breach that but it would be for a legal purpose. I know that there, but *I don't need to go into the real, you know, the real bones of it, I just need to know what I can do and what I can't do and why that's legal or why something's not legal.* I don't' need to go into [it] – I mean I've seen the full documents, there's a lot of reading in it you know (TSG Constable Jay; emphasis added)

As Hornberger (2011: 8) argues in the South African context, we should not overlook the fact that this legalistic understanding, technical competence and educational opportunity tends to be "framed by and steeped in a middle-classness". For many in the TSG, police training was the first time they had to engage with human rights, or the law for that matter, in a more sustained and focused way:

> It was hard going, but again, for most of us we'd never experienced it [human rights] before and it was like being back at school, you're trying to learn algebra. It's exactly the same thing, your head's pickled. [Focus Group 3]

Few had positive experiences of learning human rights training at police college, which was invariably described as too academic and out of touch with practical skills needed 'on the ground'. Some, but not all, TSG officers did not seem to have enjoyed the same level of education as senior colleagues, either before or since joining the PSNI, for a variety of reasons to do with class, culture, personalities and job roles. Some officers played up popular stereotypes, joking in self-deprecatory tones that police were not known to be the sharpest or brightest group, whilst others jested that they had drank away their school days in the park or had never really been that "academic, you know, books and stuff" (Field notes, 04.02.15).

That said, officers were mindful of the need to know the legislative source of the powers they were using in case they were confronted by 'savvy' members of the public, or even Dissident Republicans, and challenged on the grounds for an arrest or stop and search. Once again, though, personal biographies were relevant. Take Constable Nathan, for example, with whom I chatted to at length in a police truck in North Belfast one evening, waiting for a Loyalist protest to 'pass off'. He had joined the police because he hated bullies, whether it was at school decades ago or in society now. He had strong religious faith, years of experience and a confident manner to go with it, sometimes to the frustration of his colleagues. We discussed in a later interview the topic of human rights and stop and search:

> There were challenges in the courts that what we were doing and had been doing then [suspicion-less stop and search] wasn't compliant with that [Article 8 ECHR], but when they looked at it and said, 'well, actually, it is compliant all we need is a code of practice to sort of govern this, and the code of practice must be ECHR compliant'. Well then,

> that's what happened, but I never really had any doubt that what we were doing was the right thing, if you know what I mean […] again me as an individual officer saying to myself 'what I'm doing here is right because I'm trying to save someone's life or I'm trying to prevent this person taking somebody else's life or whatever, be it stopping a terrorist suspect or searching their house or stopping people with drugs and all the rest of it, so I never really had any moral sort of conflict in my mind that I was doing the right thing.

The power under the Terrorism Act 2000 to stop and search without reasonable suspicion had been held by the ECtHR to violate Article 8 because it was insufficiently circumscribed to pass the 'in accordance with law' standard[14]. Nathan had some sense of the legal issue, but from his perspective as an officer searching the 'bullies', the morality of his power, as he explains, was never in doubt.

There was a sense amongst TSG officers that human rights served as an important tool for bosses, but it was debatable whether it could do the same for them as lowly constables out on the street, faced with 'dirty work'. External accountability bodies, especially the Police Ombudsman and the PSNI's own complaints department, were felt to be lurking around every corner, just waiting for officers to slip up. The power of a good notebook entry was key to coming out on top of any investigation, or even court case, that might follow a complaint from the public. This was particularly if officers had resorted to the use of force. And yet few TSG officers described relying upon the language of the HRA 1998, in terms of the articles engaged or the qualifying conditions that justified interference with the right, as public order commanders did (see Chapter 6). Rather, the task was one of post-hoc rationalisation using a decision-making model officers were taught in training (see Neyroud and Beckley, 2013: ch.3). If an AEP had been fired by the TSG during a riot, sergeants described instructing the driver of their Land Rover to scribble down who fired the shot, the conditions they faced and who had been targeted. Or if an arrest was made that officers suspected would attract a complaint, they knew to take great care in documenting salient points like the arrestee's demeanour, the threat they posed and the prior warnings given.

Turning, second, to the rhetoric of human rights, the TSG sensed human rights were a brand owned and deployed by their bosses in the management of the politics of policing in N.Ireland. As one officer observed:

> They [the PSNI] don't want to get caught by it [human rights], it is a big hot potato, as you say, it is a big selling point to say we're human rights compliant, it's a big buzzword…it's a great thing for the organisation to turn around and say we've got it. (Focus Group 3)

As documented in Chapter 1, human rights are core to the PSNI's organisational identity. In what TSG Sergeant Colin referred to as the "goldfish bowl environment" of N.Ireland, with all eyes focused on the PSNI, many in the TSG thought

[14] See *Gillan and Quinton v UK* (2008).

their senior officers had to be seen to be doing and saying the right things, especially when it came to building bridges with sceptical politicians or community leaders. "It's all about image", stated TSG Constable Quin. Even if the TSG rank-and-file were not present at the NIPB events or monthly meetings, they knew from its organisational presence and remarks of their bosses that human rights were part of the PSNI's image management. In addition to serving as officers, they were members of N.Irish society. They read the local papers and watched the regional news in the station or at home with their families. They saw and heard their chief officers trying to control the narrative around the usual political fissures – conflict-related deaths, parades, paramilitary shootings, and so forth.

As an internal audience in receipt of this official narrative, the TSG were not easily won over by their bosses' discursive performances. For some officers, the feeling was one of disheartenment at witnessing what they perceived to be their bosses' pandering to politicians or community leaders with dubious histories, the "bad boys" from days gone by (due to affiliations with Republican paramilitary organisations). For others, the endeavour of trying to "appease the unappeasable" – those communities or groups (often Loyalists and Republicans) that were disillusioned with policing – was a distraction from real police work; it was politics at the expense of 'getting on with the job' of policing, regardless of how police actions were perceived. A mixture of these sentiments is expressed in the following account:

> You just have to have a look at the police officers that come on TV who are just being politicians, they don't want to offend anyone or they don't want to be seen to be going with any political side or any side that a party might align with. For us it's just pathetic really, they're supposed to be commanders, leaders of people, but they're crapping themselves about human rights when they shouldn't be, it's nothing to do with them. (Focus Group 2)

A disconnect existed between what officers received via the official narrative and what they wanted to hear as officers doing the PSNI's 'dirty work'. Reflecting the disjuncture between 'street cops' and 'management cops' found in other studies (e.g., Foster, 2003: 212-213; Reiner, 2010: 132-134), the PSNI's official rights narrative did not resonate with the daily hardships, frustrations or successes of the TSG. There was a strong sense amongst officers that the official narrative was failing to promote the issues they saw as properly worthy of credit, such as the kinds of news items and press releases that would help repair the damage in their moral and social esteem. TSG Sergeant Colin, for example, thought the PSNI "fell down badly on the PR front, massively in fact" because the PR department were not active enough in countering critical media narratives. He continued, "it's a media savvy world out there, certain political groups and community associations are only too keen to hang us by the media noose, I think we should be a bit more

savvy." What 'savviness' meant was police chiefs publicly accounting for operations the TSG were involved in, leaving the communities and officers better informed about the likes of high-profile parades or protests where violence broke out. Examples included explanations of why the use of AEP was authorised, descriptions of the damage caused by rioters and appreciation of the injuries sustained by officers. TSG Constable Anthony summed it up: "I don't think there's any harm in our organisation coming out quickly to support us in quite strong words".

It is noteworthy that the Code of Ethics – the documentary proof of the PSNI's ethical credentials that chief officers promoted so heavily (see Chapter 1) – rarely came up when I asked officers about human rights. It was not, it seemed, something that naturally came to mind or was immediately associated with human rights by most officers. When asked explicitly when the Code would be referred to or talked about, officers explained it would only be if a complaint was made against them or they were preparing for a promotion. If one of the aims of the Code was to act as 'an ethical framework' to assist and empower police officers, in almost all discussions with TSG officers this goal was lost to more cynical interpretations of the ends it served. An oft-repeated phrase was that the Code was nothing more than a "stick to beat police with", emphasising its disciplinary function. The Code was described as too broad and ambiguous, which made it very easy to breach. The major concern was that such ambiguity could be seized upon (unfairly) by the PSNI's complaints department or the Police Ombudsman as a way of sanctioning officers. This was an example, some TSG officers thought, of the complainants' rights being prioritised of those of officers who had to make split-second decisions, often relating to use of force, in high-pressure situations.

Conclusion

In her study of policing in Johannesburg, Hornberger (2010, 2011) skilfully illustrates how the 'middle-classness' and 'techno-legalism' of international human rights law rendered it a remote, de-legitimate language for the officers she met. Formal manuals and standards simply did not resonate with officers' social and cultural realities. To see this as a failure to 'institutionalise' human rights, however, is to misunderstand both what human rights are and the significance of the settings in which they are applied. Police human rights training in Johannesburg was less of a 'failed' project and more of a lesson in translation; a process of construction of local rights vernaculars. Hornberger (2011: 85-94) describes how the techno-

legalism of rights was translated into Christian terminology; that is, rights compliance was akin to a conversion, requiring commitment and self-discipline to achieve some higher morality. For lawyers trained in the purity of legal meanings, such re-imagination and re-interpretation might be perceived as the bastardisation of the very properties that give human rights a moral authority: secularism, universality and unifying concepts like proportionality or necessity. But crucially, for officers in Johannesburg, it was this re-imagined version of rights that offered the kind of moral authority that helped them to make sense of their power in a way the formal version did not.

The vernaculars of rights expressed by the TSG officers in N.Ireland were also a product of an interpretative process, but the version of human rights officers were presented with, the cultural resources they relied upon in the interpretive process and the narratives they produced, each mark significant points of departure from Hornberger's findings in South Africa. Human rights were not presented to the TSG as the product of international law devised in the 'Global North', but rather as a local initiative, born out of the HRA 1998 and ICP reforms. Most significantly, however, human rights were now the language of the organisation, spoken vocally by chief officers. Rank-and-file officers were being asked to share in it and adopt it. Training, policies and briefings were not aligned to alternative orientations, like Christian values or even linked to the ethno-political colourings from Chapter 2; rather, the narrative was distinctly secular, formulaic and legalistic in tone. Officers knew of its organisational importance to the PSNI, and they could recite ECHR articles and the principles of legality, necessity, proportionality when asked to do so. There was, I have argued, 'Type I' socialisation: TSG officers knew what the lines of the script were and when it had to be performed, without whole heartedly adopting human rights as *the* purpose of policing.

The TSG's interpretation of human rights was influenced by the norms of police culture that animated their work, including, most obviously, those that relate to the belief that common-sense is the key to survival, and that as senior officers' pipettes grew more sparkly, they left 'real' police work behind, along with concerns for junior officers. Local histories and cultures played an interpretative role too. Former RUC officers were proud of their years of service: even if human rights were supposed to be an ethical *identifier* of the PSNI, they would not allow it to become an ethical *distinguisher* from the RUC. The TSG's narratives (common sense, consistency, irrelevance) served to play down the official rights narratives (ethics, legality, accountability) promoted by chief officers. The organisation's commitment to the Code of Ethics, ECHR compliance and external oversight meant little to TSG officers in need of more immediate, personal and affective resources to garner the self-esteem and resilience needed to do 'dirty work'. These

resources instead came from humour and camaraderie, as well as narratives of discipline and professionalism. Ultimately, human rights could provide neither.

Chapter 4.

Community Work: Neighbourhood Policing Teams

If the TSG were the 'pantomime villains' – a label used in jest by one senior officer – then the Neighbourhood Policing Teams were the friendly side-act trying to keep community audiences on-board with the performance of local policing. Neighbourhood Teams are the embodiment of the PSNI's 'policing with the community' strategy, an organisational ideal the ICP twined with a 'human rights approach' to policing. However, as we will see in this chapter, the relationship between these two models remains poorly understood, both analytically and empirically. Whereas the TSG roamed the country in their heavy trucks, performing specific tasks, Neighbourhood Teams were wedded to their community 'patch', priding themselves on the detailed local knowledge they accrued. Despite being under the watchful eye of their Sergeant, neighbourhood constables still enjoyed greater freedom than the TSG to shape their shift. Working in pairs, they drove out of the station gates in their yellow and blue 4x4s, able to decide which parts of their patch to visit, where to stop off on the way, when to erect a vehicle checkpoint or speed trap and whether to follow up on community complaints now, later or never.

Perhaps because of community policing's ill-defined terms and liberal connotations (Newburn and Reiner, 2012), it has proven easy for policy-makers, as well as academics, to annex it to human rights in an uncritical fashion that does little to illuminate connections or expose disharmonies. Well-intentioned NGOs continue to promote community policing as the panacea to rights abuses in transitional societies (Brogden and Nijhar, 2005: 7). Kelling and Coles (1996: 158) baldly state that a function of community policing is "protecting constitutional liberties". Easton (2014: 22), writing on community policing in Belgium, refers to an (undefined) 'right to security', working off the premise that: "[f]rom the point of view of community policing, the police are assumed to be guardians of human rights in democratic societies". Though Easton hints at why this might not be so, the analysis is wholly detached from human rights law and discourse in policing. Koci and Gjuraj's (2016) purported examination of the relationship between community policing and rights in Albania is similarly sparse. They restate the point that police have the capacity to both uphold and undermine democratic rights, at which point human rights fade out of their frame of analysis entirely.

This chapter addresses these shortcomings by engaging in a closer, detailed examination of the relevance of rights in neighbourhood officers' everyday work with communities. I begin by introducing community policing in N.Ireland, as well as the two towns where the fieldwork took place. The analysis is then developed across three sections, drawing on neighbourhood officers accounts, narratives and experiences. First, I critically test the two analytical bridges that have been constructed by PSNI and NIPB to discursively connect human rights with community policing. Second, I examine how officers encountered, and responded to, the lay lexicons of rights that confronted them within communities, as juxtaposed with the official narrative of chief officers presented in Chapter 1. This analysis reveals how removed officers felt human rights were from their daily work; that is, rights could neither adequately account for, nor make sense of, their relationships or activities in communities. I conclude by asking what this distance means for the protection of certain groups in society.

Community Policing in N.Ireland

It is hard to avoid clichés when introducing community policing. Most reviews recite its amorphous form (a 'semantic sponge', Manning, 1997) and its benevolent ideals ('like cherry pie', Brogden, 1999), as well as the difficulties in its implementation and assessment (Tilley, 2003; Reiner, 2010; Cordner, 2014). The genesis of community policing in England and Wales can be located in the reactions of police and policy-makers to fears of waning police legitimacy in recent decades, compounded by bouts of protest and disorder, as racial and class tensions simmered over (Brogden and Nijhar 2005: ch.2; Cordner, 2014). Its advocates speak of decentralized partnerships; shared ownership of crime control; police proactivity in addressing local needs; greater police discretion along with more personal, welfare orientated service. In theory, community policing is about police being more integrated in the communities they purport to serve, and communities playing a greater role in identifying, prioritising and addressing local crime issues (Skogan and Hartnett, 1999; Tilley, 2003). In practice, it is the reorientation of policing away from patrol and investigation, towards greater citizen involvement in police-community forums, joint crime prevention projects and neighbourhood watch schemes (Newburn and Reiner, 2012).

In N.Ireland, the model of community policing was attractive to the RUC's senior officers, who saw it not only as fashionable, but a chance to appeal to disaffected Catholics, whilst also managing crime in Protestant areas (Brewer and Magee, 1991: 94). The RUC invested heavily in neighbourhood and community

relations teams. They were assigned a small geographical area and were responsible for developing local knowledge, showing their presence and fostering informal community contacts (Brewer and Magee, 1991:103-105). These were tasks neighbourhood constables enjoyed and performed well at – in predominantly Protestant 'Easton', at least. In west Belfast, however, the potential of beat patrols, outreach projects and school visits were greatly diminished. Many Catholics were distrustful of such 'ploys', while others were fearful of being seen to co-operate with police in case of reprisal from within their community, not least from the IRA (Brewer and Magee, 1991: 111-117). In these areas, neighbourhood patrols took the appearance of heavily armed convoys, stretching even the most generous interpretation of community policing.

The ICP-inspired reforms to policing in N.Ireland came loaded with attempts to reinvigorate the community policing ethos in the hope it might stand a greater chance of success in a more settled, peacetime climate (Brogden and Nijhar, 2005: ch.9). Branded organisationally as 'policing with the community' by the PSNI, its ideal was re-stated to me by one Assistant Chief Constable I interviewed: "it's about the police being a key participant in policing but not the only participant, that communities are drawn into policing as an endeavour". The responsibility of the police to foster local partnership and collaboration, aimed at improving safety and reducing crime, was cemented in legislation by section 32(5) Police (NI) Act 2000, which requires the PSNI "as far as practicable, [to] carry out their functions in co-operation with, and with the aim of securing the support of, the local community". The PSNI's bureaucratic machinery drove the 'policing with the community' strategy (known as 'PwC') forward, with mission statements, corporate guidelines and practices rolled out in 2002 and further revised in 2007 and 2011 (CJINI, 2012). Communities received dedicated Neighbourhood Teams,[15] and a multi-million-pound fund was created to support locally identified and managed projects.[16]

Community policing has been heavily researched in N.Ireland, culminating in an impressive collection of studies (e.g. Brewer and Magee, 1991; Topping, 2008; Topping and Byrne, 2012; Ellison et al, 2012). Almost without exception, Belfast has been the site of study – and the city's appeal is obvious: it serves as a microcosm of the country's inter-community tensions, legacies of the conflict, social

[15] Due to budget cuts in 2015, the number of NPTs were cut from 80 to 34. The communities retaining their Neighbourhood Teams are those which continue to experience high levels of crime and deprivation (McAleese, 2015).

[16] Between 2005 and 2009, e.g., over 277 partnership projects received matched funds with other statutory and voluntary organisations (CJINI, 2009). Despite some successful reports (e.g. CJINI, 2012), questions about the PSNI's implementation of community policing has not escaped the critical gaze of local criminologists (e.g. Topping 2008; Ellison and O'Rawe, 2010; Topping and Byrne, 2016) or oversight bodies (CJINI, 2009, 2012).

segregation and enduring poverty. But in consultation with a trusting district commander, I was offered a unique snapshot of community policing in a rural part of the country where researchers had yet to venture, to a place where the threat of paramilitary violence remains significant and police-community tensions still simmer at a high heat. Over the course of one month, I conducted interviews and focus groups with officers (seventeen in total) from two Neighbourhood Teams working in 'Clantown' and 'Orangeville'[17], and spent two weeks observing shifts in Clantown. A longer period of observation would have been ideal in order to gain more than an impressionistic account, but time constraints, coupled with pressure to complete other parts of the fieldwork, made this unfeasible. Let us begin with a brief preview of Clantown and Orangeville to help situate this chapter's analysis.

The Research Sites: Clantown and Orangeville

Clantown is located a several hours drive from Belfast. Once a market town that prospered from the linen trade, its economy booms no more. Turning off the motorway, you will soon reach the hairdressers, charity shops and fast-food outlets lining its short high street. Like many places, Clantown suffered its share of conflict-related tragedies: members of both communities were injured, maimed and killed by paramilitary groups and the RUC, while the fabric of the town itself was damaged by bombing. The RUC officers killed by the IRA in Clantown live on in the PSNI's organisational memory, as symbolised by the prominent plaque that hangs in the private quarters of the station, listing officers' names under the title, 'Our Murdered Colleagues'. The legacy of religious segregation also lingers on; to such an extent that you could trace a Protestant-Catholic transect over the town's map. Housing estates are distinctly Loyalist or Republican, with rows of terrace housing colourfully decorated with union jack or tricolour flags flying next to paramilitary modifications of each. Although some estates are just one hundred metres from each other, their residents – in their politics, if not their poverty – are worlds apart. But you do not have to drive far again to reach Clantown's wealthier residential areas, situated between the town centre and the pleasing rural scenery.

Clantown's police station sits resolutely on a corner site near the main street. Its concrete facade rises to meet the sheets of metal caging that form a strong outer shield, protecting its buildings and their inhabitants from outside attack. Clantown's Neighbourhood Team has its own office on the main corridor, housing eight constables and four probationers. The constables are supervised by their Sergeant, who regularly pops in to brief them, to check their progress or to just nudge

[17] These, like the officers' names, are pseudonyms to protect participants' identities.

them back out on patrol. Unlike the TSG or response teams who drive Land Rovers or darkened four-door saloons, neighbourhood officers usually patrol in liveried 4x4s. One constable reckoned their vehicle reflected neighbourhood policing: they were more approachable, even friendly looking. Each constable has their own area for which they are responsible for having a visible presence in, maintaining contacts and managing local concerns (e.g., anti-social behaviour, drug-dealing, burglaries). Clantown's sectarianism, deprivation and paramilitary presence ensured it kept its Neighbourhood Team despite the budget cuts to local policing in 2015.

However friendly the 4x4s look, their armour and bulletproof glass allude to the threats that police in Clantown face from Dissident Republicans – referred to by the policemen and women I met as the 'DRs'. Viscerally opposed to the peace process and Sinn Féin's political campaign, the DRs are comprised of IRA splinter groups who continue to launch attacks against 'crown forces', as well as administering rough justice within some Republican communities (Wilson, 2016: 43-46). Lethal plots against police are known to have been devised in Clantown and house searches by the TSG continue to uncover weapons and terrorist paraphernalia in its estates. When responding to routine calls, officers follow protocols to ensure they are not lured into potentially lethal DR traps (a threat referred to by officers as 'come-ons'). During house searches, local officers provide passing cover to ward off youths prone to petrol bombing police who hang around too long. The challenge DRs pose to the PSNI's legitimacy is most apparent in one of Clantown's estates, where masked men march each year dressed in military regalia and dark sunglasses, reading out threats and firing live shots into the air. The murals in the background read: 'Oppose PSNI, M15' and 'RUC-PSNI, different name, same aim'.

The town of Orangeville is not too far away, but its story is slightly different. Unlike Clantown, its religious make-up is primarily Protestant and it is well-known as a politically engaged Unionist constituency that proudly displays its Orange heritage. In Orangeville there is a more peaceful, less dangerous Republican enclave lying behind a 'peace wall' separating it from its Protestant neighbours, with whom they have an antagonistic relationship. This was not always so. The town was less segregated in the 1980s but, before long, sectarian intimidation set in and estates soon become exclusively green or orange. Loyalist paramilitaries were responsible for most, but certainly not all, the deaths Orangeville endured during the conflict. This paramilitarism remains, whether its force is directed within communities (punishment beatings) or towards 'outsiders' (the immigrants trying to make Orangeville their home). In fact, in N.Irish terms, Orangeville is a fairly diverse town, with local shops selling a variety of Eastern European and North African foods and goods, reflecting the origins and cultures of newcomers.

The Neighbourhood Teams displayed a strong ownership over their 'patches'. As shifts began, officers searched incident logs for names and addresses that could alert them to local goings-on. They drove me by the trouble spots – drinking dens, notorious houses – taking pride in their ability to name local characters and recall recent issues. Such familiarity arose from chance encounters and small-talk with residents, as well as planned initiatives like visits to schools or attendance at council meetings. Officers' sense of belonging in the communities they policed was affirmed by small but important signals, ranging from high-fives from school children (as I observed) to nicknames they had been given by teenagers. I was told that communities distinguished 'their' neighbourhood officers from officers in the TSG or response policing. In Orangeville's Republican enclave, for example, councillors complained when neighbourhood officers were spotted in a public order unit drafted in to tackle an outbreak of local disorder. This sat uncomfortably with the softer vision of policing this community had put their faith into: "they were in up in arms, 'the neighbourhood teams shouldn't be in blue suits!'" (Neighbourhood Constable Andrew). It is within this local context that accounts, understandings and narratives of human rights and community policing ought to be understood.

Joining up the Dots: Human Rights and the Practice of Community Policing

Taking the official narrative presented in Chapter 1 as our starting point, it is apparent that the discursive bridge between human rights and community policing constructed by the PSNI and NIPB has two dimensions. The first links Neighbourhood Teams' familiarity with communities with an ability to best identify and protect the vulnerable groups within them:

> [C]ommunity consultation should identify and address the needs of vulnerable groups such as women, minority ethnic communities, the elderly, children, members of the gay, lesbian and bisexual community and people with disabilities (NIPB, 2006: 132).

This proximity to vulnerable groups ought to help the police fulfil their positive duty arising from certain articles of the ECHR that requires them to protect and properly investigate those at risk of serious harm.[18] The second dimension links a

[18] In the leading case of *Osman v United Kingdom* (1998), the ECtHR held that Article 2 required effective criminal law provisions to deter the commission of offences, but also law enforcement machinery capable of preventing, suppressing and sanctioning violations. The application of this to policing in domestic courts has been seen in recent cases, see, e.g, *OOO v the Metropolitan Police* (2011) (duty to carry out effective investigation into credible allegation of serious ill-treatment under Articles 3 and 4 ECHR) and *DSD and NBV v Commissioner for the Metropolis* (2014) (failure to maintain confidence of victims in cases of serious sexual assault contributed to breach of positive duty under Article 3 ECHR).

commitment to human rights with public trust. Respect for rights ought to "help integrate the police into the community" (NIPB, 2013: 128). In his keynote speech at the launch of the 2014 Annual Human Rights Report, former NIPB legal advisor Sir Keir Starmer went further, insisting human rights promoted an "intense focus" on victims, transparency and accountability, making it integral to public trust in police. Striking a similar tone, Chief Constable Hamilton (2014a), stated: "I believe that human rights are a core element of Policing with the Community and act as an enabler for the delivery of effective policing and community confidence" (Field notes, 17.03.14).

If this is how human rights and community policing were formally fused and promoted by official voices, how do these discursive connections unravel in the working lives of neighbourhood officers? In approaching this question, I was keen to get a sense of when, if at all, Neighbourhood Teams encountered organisational references to human rights in their daily work. The Teams I met – mostly made of up younger officers, earlier on in their years of service – did not voice such distinct rights narratives as did officers in the TSG. Neighbourhood officers articulated a broad, but less sharp, awareness of the legal principles (e.g., they could refer to the articles of the ECHR) and knew their importance to the organisation (e.g., "it's one of the core values" (Neighbourhood Constable Andrew) and "the first thing you affirm to in your oath as a constable" (Neighbourhood Constable Gary)). But when pushed to explain when they encountered human rights as a guide to instruct, inform or make sense of their work it was never linked to the tasks that defined community policing (e.g., fostering local partnerships, addressing vulnerability, tackling low-level criminality, etc.). Instead, rights norms were attached, almost exclusively, to typical police powers (arrest, stop and search, house searches) or the types of work often performed by the TSG (responding to disorder, conducting house searches).

A focus on these formal powers is certainly not a bad thing; in fact, as we shall see in Part IV, greater attention ought to be paid to the issues of arrest and detention. What is most interesting for the purposes of our immediate enquiry of the socialisation of rights in community policing is how the two discursive connections promoted by the PSNI and the NIPB were replaced by other narratives of community work inspired by officers' experiences, attitudes and outlooks. This analysis is best structured by taking each of the two official frames – first, human rights and vulnerability and, second, human rights and community trust – in turn and illustrating the re-interpretive work associated with each.

When it came to responding to forms of vulnerability in communities, Neighbourhood Teams agreed that they had the added time and resources to go beyond the policing of the 'usual suspects' and better identify and respond to groups most in need. As Neighbourhood Constable Louise explains:

> We have a community surgery at the health centre every other week, so that people can come and report stuff to us who maybe wouldn't normally go into the police station or make a call, particularly older people, they will come over and chat […]. We try to reassure them to pass on the relevant telephone numbers or put them in touch with other agencies that may be able to help with their problem.

This dimension of community work was not understood in human rights terminology though; no mention was made of positive duties to intervene where individual's were known to be at risk or the right of victims to an effective investigation. Instead, narratives centred around the more mundane, practical aspects of the job. The fiscal squeeze was a common trope as local success stories were qualified by concerns of diminishing budgets and staff shortages which divested officers of the resources to set up local projects. Another framing narrative, common to police culture (Banton, 1964: 85; Stenross and Kleinman, 1989), was the tedium and frustration of working with vulnerable groups. Constable Fiona complained of the rigmarole for getting a PIN notice for victims of harassment, if it could really be called harassment in the first place: "harassment these days is someone looking at you funny". Even if the alleged harasser was found, Fiona continued, "you hear the whole story from his view and it's never ending, and all this for one wee bit of paper I'm going to submit, all this work that has to be done". Constable Eddie, one of few officers to mention hate crime, described working on an incident involving a woman from an ethnic minority group who was subject to abuse by local teenagers. Despite the fact that a criminal offence had been committed and he had sought to reassure her, the job was still "a pain in the arse". In Eddie's view, going to schools to educate youngsters about causing offense was hardly 'real' police work (see also Van Maanen, 1973: 414-415; Ericson and Haggerty, 1997: 299).

The rare instance where explicit reference to human rights *was* made occurred when incidents involved a risk to a person's life. This type of incident was labelled an "Article 2 issue", alluding to the positive duty imposed on public authorities by Article 2 ECHR, requiring them to take positive steps to protect threats to life, including where the threat or harm emanates from private actors. As Neighbourhood Constable Fiona describes:

> The odd time you'd maybe hear it mentioned in custody but it's never really mentioned out on the ground too much, it's never really mentioned in the station and I doubt that we'd be able to name all the human rights. The only one is article 2 right to life, you'd hear it a lot on the radio: 'Is there an article 2 issue here?' Am I putting on blue lights, basically…If there's somebody in a house with a knife or whatever, is there an article 2 issue here, and then you get supervision coming on giving the whole spiel about 'Oh, article 2'. But you're so used to hearing that that you zone out.

This label added a formality to the police response because a commander was now overseeing the incident, especially those involving weapons or firearms. At this

point, the controller took over the radio, reciting their assessment of the situation and the precautions taken to protect the rights of officers, victims and the suspect. For some constables, this script was so familiar so they "zoned out". But for the officers first on the scene, the framing of the event in terms of article 2 duties could be anxiety inducing:

> Say you're told not to go into a house unless there's article 2 issues, you hear that all the time, 'Contain unless there's article 2 issues'. And we're sort of going okay, theoretically if you were to disobey that and go in, justifying in your head there's article 2 issues, and it goes horribly wrong, they'll say you shouldn't have went in, you misread the situation. By the same token, if you stand outside and don't go into the situation and it does go horribly wrong and somebody does get seriously injured or killed they'll use that same piece to say you should have went in, you had the personal responsibility that there was an article 2 issues there. (Neighbourhood Constable Andrew)

Reference to Article 2 raised the stakes and concentrated officers' minds as to the possible interventions they might have to make to protect the person in grave danger. Yet the Article 2 duty to protect rarely gave frontline officers a clear guide to action; if anything, it posed a dilemma for which there was rarely a right answer but always a risk of "in-the-job trouble" (Chatterton, 1979) if things went wrong. The legalistic script commanders read out, which was triggered once an incident became an 'Article 2' issue, reinforced junior officers' suspicions that rights terminology was being used to guard against negative blowback. This concern is strikingly apparent in the experience recalled by Constable Andrew, following on from the extract above:

> I had managed to get to a situation where the person who had contacted police was locked in a room but he was under the impression that the person with a machete was trying to get into the room. I had eyes on that door and I was happy enough that nothing was happening to the person that had phoned the police but while that script was going on about Article 2 issues and body armour and everything else, I heard somebody outside calling for the guy to climb out the window. I couldn't get on the radio to say there's nobody outside the door, he's safe, tell him to stay where he is until we get the other person. That person climbed out the window and jumped from the upper floor of the building! *Literally because I couldn't get space on the radio because of this script, which just strikes me as a tick box exercise: we've read out that script, therefore anything that happens we're covered, the organisation is covered.* And it doesn't inspire confidence in the officers on the ground because we're all looking at each other going, get off the bloody radio so we can tell you what's happening. (emphasis added)

The construction, deployment and function of this 'scripting' of events in rights terminology is an important theme which we will return to in detail in Chapters 5 and 6 in the context of public order policing.

The PSNI and NIPB's second discursive connection between human rights and community policing is that respect for the former ought to engender trust in the latter. The basic intuition at the heart of this claim is well-supported by the burgeoning procedural justice research, which holds that people are more likely to

trust institutions that treat them with respect, listen to their concerns and give them a voice in the process (e.g. Tyler and Blader, 2000; Jackson and Bradford, 2010). And yet the same corpus of work alerts us to the social, cultural and economic factors that extend far beyond the police but which remain critical to how the police are judged. The social characteristics of neighbourhoods – their cohesion, order, development or decay – are particularly important because they are symbolically associated with the police (Loader and Mulcahy, 2003; Jackson and Sunshine, 2007; Jackson and Bradford, 2009). Impressions of community breakdown "undermine the narrative of policing – they suggest that there is a failure to maintain order and cohesion, and the police are implicated in this failure" (Bradford and Myhill, 2015: 27). In fact, recent research by Bradford et al (forthcoming) in N.Ireland reveals how critical disorder and poverty, but also segregation and sectarianism, are in shaping public trust in the PSNI.

For the neighbourhood officers I met and observed, establishing semblances of order in their areas was core to their occupational self-understanding. In some housing estates, this was an order already enforced to a certain degree by community, including paramilitary, groups (McAlister et al., 2009; Topping and Byrne, 2016). As such, the task was proving the PSNI's credentials as *the* security provider. At crucial times symbolism was enough. This was clear during a Monday morning shift I observed in Clantown. Over the weekend armed DRs had walked through a Republican estate as a show of strength to residents and the PSNI. The Neighbourhood Sergeant, keen to re-assert the PSNI's status, sent her team out on a foot patrol through the estate. Usually, however, the key signal police used to communicate their status as security-brokers within communities was an acute responsiveness to low-level complaints, especially anti-social behaviour. Constables eagerly pursued complaints of teenagers loitering, drinking or drug dealing in housing estates and actively patrolled the usual trouble spots. These policing activities chimed with officers' narratives of crime-fighting, as community meetings and youth groups were a chance to gather 'intelligence' about local crime.

The relationships police described as having with communities were not framed in terms of individuals, or groups, as rights bearers with the PSNI as the duty-bound public authority. Rather, relationships were characterised by a mixture of affectivity and instrumentality; there was an ongoing negotiation between police officers and community representatives who shared the goal of reaching agreement on matters of mutual interest with minimal fallout.[19] When it came to deadlines for state-funded projects, representatives were described as most helpful and communicative with police, but on other occasions, like when disorder broke in estates or

[19] A transactional kind of relationship was also reported by O'Brien-Ollinger (2016: 220-4) in the context of ethnic minority interactions with An Garda Síochána at police-community forums.

paramilitary attacks occurred, lines of communication were shut down as quickly as they had first appeared. Likewise, when communities wanted problematic tenants ousted from their estate's social housing, they worked closely with police and the Housing Executive. But when it came to reporting a spate of thefts, residents trusted informal (paramilitary) policing to resolve it. Officers made no reference to whose rights this kind of 'order' protected, or conversely, the groups whose rights might be negatively affected in targeting types of anti-social behaviour. This practice is something we will return to in the following section.

The transactional, give-and-take nature of police-community relationships was aptly illustrated by Neighbourhood Constable Callum (Orangeville). As part of the Queen's Diamond Jubilee, a baton was due to pass alongside one of the Loyalist estates. However, in the preceding weeks, paramilitary flags still hung from the streetlamps. Wary that terrorist branded union jacks offered a rather embarrassing backdrop to the Orangeville leg of the procession, the PSNI wanted the flags taken down. The problem, Callum explained, was that "you could guarantee if we'd taken those flags down 10,000 flags would have been up". Instead, Callum liaised with his community contacts in the estate and, within two days, the flags had been replaced with plain, unbranded union jacks. The precise terms of this deal remained unclear. It was apparent, however, that the PSNI could offer their own services to communities when the time came. As Callum explained, the same community was very protective of their annual 12th of July bonfire – even more so after it was lit prematurely the previous year in an act of sabotage. Cautious of the inter-community tension this had caused, and keen to foster improved relationships with this local community representatives, the Neighbourhood Team made a point of keeping a watchful eye on the bonfire this year, re-assuring the estate's bonfire builders and liaising with their Republican neighbours.

The lingering theme of mistrust was a defining feature that officers felt animated their relationships with communities. They described the slow but steady progress being made in fostering relationships within Republican and Loyalist estates that could elicit information about local criminality. The hallmarks of success were being able to conduct regular beat patrols with less security precautions and even take part in community meetings – something described as impossible in Republican areas as recently as five years ago. However, the quest for trust was not thought to be found in greater human rights compliance, or the institutional transparency and accountability it was officially associated with in chief officers' narratives. Rather, neighbourhood officers preferred to credit their progress to high visibility policing and determined efforts to resolve the low-level issues reported to them. The imprisonment of paramilitary leaders was also cited as an important step in reaching out to what some interviewees termed the "decent folk" living in estates who were fearful of contacting police because of paramilitary intimidation.

A reluctance to openly engage with the PSNI remained within Republican, and to a lesser extent Loyalist, estates but residents were thought to be more forthcoming with minor complaints.

Just as communities were still establishing how far they could trust local police, officers themselves were scoping out the trustworthiness of the individuals and groups within their policing patch. They described how internal feuds and power-plays between characters claiming to represent communities made it difficult to identify the 'true influencers', let alone the sentiments or concerns held by the community at large. The serious crimes (e.g., drug dealing, punishment beatings, sectarian attacks) police were keen to hear more about tended to be heavily filtered by rumours and agendas within communities, leaving officers with limited lines of enquiry. Such uncertainty was compounded by a sense of insecurity within some Republican estates. Many officers managed the dangers of staying too long in certain parts of their towns in case they were attacked, with many attuned to the risk that a mundane call could, in fact, be a 'come-on' planted by the DRs.

"What about our rights, our safety?" one constable in Clantown asked. For some officers, the simple fact was that Republican communities remained a relatively unknown entity. Suspicion remained. Constable Callum, for example, described encountering an ardent Republican while going door-to-door as part of a Christmas crime prevention scheme in Orangeville's Catholic enclave:

> I'm well aware there's some community reps, and some of the [Republican estate], where I don't know whether I trust them, we have to work with them, but I don't know if I trust them or not. It may be a smiling assassin shall we say. I mean, we were in a house with this lady and she's got Portlaoise Republican Prisoner's Association posters on her wall and it's like, this is weird, this is surreal, we should not be in here and then she shakes your hand and stuff and it's like this is strange, I don't know what to make of this…

Here, the legacy of the past confronted the promise of the present. Police were in the area to offer reassurance to residents and to help them to stay safe in their homes, yet, confronted by a culture alien, if not hostile, to his own, it was officers like Callum who soon felt unsafe.

Talking Rights in Communities

The malleability of human rights that enables it to be adopted, interpreted and propelled towards certain ends is an idea encountered and applied to N.Irish policing in Part I. For chief officers, the properties distilled from human rights (i.e., ethics, legality and accountability) were heavily amplified and promoted as a language of legitimation directed at influential audiences. The local political parties responded to this human rights argumentation in different ways, revealing as much

about the ethno-political fissures that remain today over the legacy of the conflict and the status of N.Ireland as they did about the legitimacy of the PSNI and its policing practices. We have already begun to explore the processes of adaption and interpretation within the PSNI itself that TSG officers used to make sense of the official narratives of rights promoted by chief officers, management and trainers. In the context of community policing, it was striking, however, that these official narratives had to compete with other, public narratives perhaps more prominent in their frequency and potency. In this section, I explore the 'rights talk' that Neighbourhood Teams heard expressed in the communities they policed – talk to which they had to respond in managing local order.

The primacy of rights talk within N.Ireland's grass-roots organisations and residents groups is well-documented. McEvoy (2003), for example, has demonstrated how rights vernaculars were adopted and applied by various actors in their respective efforts to promote (or resist) peace-making. Likewise, Curtis' (2014) rich ethnographic work has revealed how rights discourse was crafted into everyday advocacy by activists in Belfast to challenge the social, political and economic injustices communities faced. Human rights have also been thrust into political debates since the mid-2000s with the N.Ireland Human Rights Commission's attempts to introduce a Bill of Rights (as discussed in the Introduction). In Clantown and Orangeville, officers described how human rights seeped into local crime talk. Prominent voices in communities wanted to see police responding to crime and anti-social behaviour in a more tough and efficient manner. Constable Andrew explained how negative reporting of rights in tabloid papers (e.g., "the media just love having the big stories about somebody's breach of human rights") and anti-European sentiment (e.g., "'what's the EU law is going to introduce next?' sort of thing") had given human rights a bad name. As such, it was best to avoid entertaining this discourse where possible:

> It's actually sometimes more beneficial to avoid talking about human rights as such. People – and it's the media thing again – people hear human rights and it automatically gets their back up a lot of the time. Sometimes you're better to edge around an issue and talk about an issue – you might be talking about somebody's human rights but as long as you don't let them know you're talking their human rights, they take it on board a lot better. And it's a simple matter of maybe talking with them via example, you know, if this was your son or this was your cousin, and talking about it that way and trying to get them to picture it from another point of view… People just hear human rights and they switch off, they don't want to know, they just automatically assume that somebody's getting something for nothing or getting one over on them and they just don't want to know, so I find it better not to use that language at all with them. (Neighbourhood Constable Andrew)

I witnessed a similar narrative in an encounter between officers and one of Clantown's middle-class residents. A builder's van had been stolen from the driveway of a house where extensive renovations were being done. The theft took place

in broad daylight: two men had walked up the driveway and, within seconds, jumped into the van and sped away. The builder was bewildered. The home-owner, who had employed private security, was irate: "Aw, it's a disgrace, absolute disgrace somebody could do this, that was his livelihood, they will be off down the border. You can't trust people these days, you couldn't have good faith in people, it was a matter of time before something was stolen". The blame fell not on police, but the law itself: "I know you'll do your best. It's not your fault, it's the law that's crooked". The probationary constable was as curious as I regarding the home-owners' assessment:

> 'What do you mean crooked?' The answer was clear: 'It favours the offender, it's *for* the offender. I just want police to get him, to find the guy, lock him up and throw away the key.' You're that worried about telling someone to get off your land because they've all these civil rights, their rights, you know. And if you interview them they all refuse to speak, they shouldn't be allowed to do that, they should have to speak and tell the police where they were. (Field notes, 19.05.15)

Neighbourhood officers had varying degrees of sympathy for such views. Constable Callum was obviously torn between the official police narrative, the counter-narrative he heard in communities and his own on-the-job experience:

> Human rights legislation protects everyone, but I honestly believe it does protect the perpetrator or offender more than the victim or more than even us. I mean, you know, examples. One night I was in custody, it had been a long day, I was well into my own time in terms of being beyond my shift, I had missed this and I had missed that. I was ready to interview someone and the sergeant went 'Wow, can't do that, it's going to be another half hour.' 'Why?' 'He's entitled to his meal break' And I went, I haven't eaten in hours, right to private and family life, what about our family life? Being held on for hours simply because your waiting for a solicitor or interpreter or some idiot is just being a complete tube and going on about 'I want to speak to this, I want to speak to that'. So yeah, I think it is stacked in the favour of the perpetrator or the offender, I do.

Neighbourhood Constable Andrew, reflecting on his own time in court as a police officer, described how frustrating it was to see guilty defendants walk free or receive unduly lenient punishment. He found it hard to avoid agreeing with the criticisms he heard in communities, but feeling implicated in the apparent failings of the system, he tried to explain to critics in his patch that rights were for everyone and police did their best to bring offenders to justice – what the courts did was another matter.

Although officers were content to manoeuvre around or lend a sympathetic ear to the popular grievances just mentioned, the same could not be said where suspects raised the flag of human rights to challenge officers on the street. In such instances, rights talk shifted from understandable, even legitimate, grievances to baseless moans of the ill-informed. In officers' accounts, I heard echoes of what Hornberger (2011) has coined human rights 'forgery' or 'fakery': improper claims

to entitlement or protection cloaked in the language of rights. Whereas this language may draw its normative thrust from international conventions and treaties, such claims are loosely connected to the standards and prescriptions to which lawyers or judges would point to. In contrast to law's authenticity, Hornberger (2011: 10-12) argues lay rights vernaculars are rarely clear or coherent but rather situational, improvised and momentary, crafted and deployed to affect change in the face of the circumstances or predicaments faced by their users. Detached from questions of law, these rights claims tell us something about the power relationship between the claim-makers and their recipients who can validate or discredit them.

The ease with which 'fake' human rights claims slipped off the tongue of members of the public was a common feature of policing according to the officers I spoke to. Several criteria were used by police to quickly assess the authenticity of rights-claims, the outcomes of which reinforced the role of officers as street adjudicators of 'right' or 'wrong' claims. The first concerned the claims-maker themselves, and whether they were deemed worthy or authoritative enough to substantiate their claim:

> Yeah. Kids are all 'my right to a solicitor' and 'you have no right to search me, you need an adult to search me'. Some of them can lay it on real thick and you're standing there going 'Why? What?' This is quite a simple job to do and they just make it more difficult. (Neighbourhood Constable Katrina)

The second criteria related to whether the kind of behaviour or circumstances connected to the claim indicated that failure to respect or validate the claims-makers' complaint would likely result in 'trouble' for the officer. Constable Katrina continued:

> Yeah, I was talking to a guy on Saturday night and I was telling him to go home because he was trying to start a fight, but he wasn't being disorderly enough [to be arrested], but he decided to take his phone but he wanted to walk down the street past the guy he was trying to fight with and I was telling him to go the other way, so he said I was breaching his human rights because I was blocking him walking down the road, but I was trying to prevent a fight happening, so he was recording me then because I told him he couldn't walk down the street. So, you get idiots like that.

The third arose in circumstances where officers sensed 'real' human rights claims were being made (i.e., claims which registered sufficiently with what they had been taught in training) but for which they were confident they still knew better than the suspect. Exploring how these criteria are actually put to work (or not) in officers' daily practices would be an especially interesting avenue of future research.

A striking instance, however, where officers' power to validate or invalidate potentially 'fake' rights claims was obviously challenged concerned police encounters with the DRs. The story told by officers was that DRs were extremely well-versed and confident in the legal limits of police stop and search powers. Officers

described acerbic encounters with DRs who recited their rights and demanded police cite their own powers. As Neighbourhood Constable Fiona put it, DRs:

> Ask you what legislation are you using. They'll know that under article 21 they can give you their name, their date of birth, the power to stop and question and they can walk on unless they are detaining them for a search under different legislation, like they're fully aware of all of this. And some of them would be quite blunt, that's all you're getting, and they'll walk on. And it is a bit of challenge because in the back of your head you're going what is that legislation, I can't think is that all I can do?

New recruits were warned to be alert to this type of challenge to authority. In a training session I observed, actors played suspected paramilitaries writing down vehicle registration plates. The task for the aspiring officers was to conduct a stop and search under terrorist legislation. The trainers were fierce in their criticism of what we observed: one officer cited the right article but the wrong legislation; the other cited the wrong article but the right legislation; and another ran after, and forcibly stopped, the suspect, something the trainer warned could amount to battery. The gravity of their mistakes was laid out in stark terms: "We've got three suspects out there that we've let go with the registration numbers of my car, Sergeant A's car, your car, your car and your car [pointing at the trainees] which they're going to take back to their bosses who are going to plant IEDs under our cars" (field notes, 18 September 2015). The wily trainers reinforced the need to know the law, thus being able to out-smart rights 'forgery' by their adversaries: "Don't let them walk away from you when you've speaking to them. You're police officers, no matter what people think of the terrorist legislation and powers, you've got that power to stop someone and search them, be confident using it." (field notes, 18 September 2015).

Whose Rights, Whose Order?

The disconnect between human rights and neighbourhood officers' accounts of their work offers insight into the extent to which they internalised human rights. Chapter 3 demonstrated how TSG officers could, if asked to do so, frame their 'dirty work' using the formal version of rights promoted by chief officers – even if this was reinterpreted in light of officers' own experiences, attitudes and outlooks. Neighbourhood officers, as discussed above, policed 'fake' or 'forged' versions of human rights but, overall, found this language more difficult than TSG officers to apply readily to the types of task they performed. Returning to Checkel's (2005) two-fold conception, Neighbourhood Teams can be best characterised as displaying only a partial form of Type I internalisation (role-acquiring knowledge, reflecting organisational expectations) and certainly not Type II internalisation. But does

limited rights-consciousness and a reluctance to entertain lay vernaculars of rights really matter?

To answer this question, it is necessary to return to the idea that human rights are a mode of regulating public authorities like police; that is, human rights frame how officers understand their work and guide the decisions they make. Some might argue, however, that provided officers endeavour to protect vulnerable groups and foster mutually beneficial community relationships, it is irrelevant whether they perceive such work as derived from the ECHR or their status as a public authority under the HRA 1998. If outcomes seem broadly reasonable, we need not get too caught up as to whether the steer is, in fact, human rights law. In this final section, I tackle this point head on and consider the possible consequences of limited rights consciousness for the policing of certain groups. I suggest, as Hornberger (2011) has done in the South African context, that a lack of human rights consciousness might enable, even facilitate, practices which leave certain groups under- or over-policed. The practices discussed in the following include the intersectional nature of vulnerability; the policing of young people and anti-social behaviour; and the socio-economic conditions that exist within marginalised communities.

The first – which I raise tentatively due to my short period of observation – is that vulnerability tends to be associated with an 'ideal-type' of victim, one that is usually white, female and perceived as innocent (cf. Christie, 1986). The following examples are illustrative. On patrol in Clantown, we pulled over to have a brief chat with an elderly women walking her dog in a Republican housing estate. Constable Fiona explained that the lady had severe dementia and had been burgled by men she had let into her house after they asked to borrow her phone. Another, rather sad encounter, involved a widow whose garden gate had been marked with white chalk; the rumour was that this signalled her home had been targeted by burglars. Sitting in her small living room, the constable offered some crime prevention tips, as a tear ran down her cheek. Her fear was that burglars would kill her dog, the only thing left since her husband's recent death. The following week, Clantown's officers gave an internet safety talk to children in social care. Constable Kirsty explained the dangers of speaking to strangers on social media, warning them not to send private pictures or agree to meetings. Kirsty told me how she worried about the young girls in the group, who had been in abusive relationships already and were victims of 'nasty' crimes.

The people just mentioned are, of course, deserving of support and protection. The point here is that there are many other groups, equally, if not more, vulnerable, who remain under-protected. It is thus necessary to acknowledge the fact that gender, class, social isolation, ethnicity, visa status, sexuality and religion can intersect to reproduce and reinforce types of vulnerability (Sokoloff and Pratt, 2010; Mill-

ings, 2013; Parmar, 2016). O'Brien-Ollinger's (2016) ethnographic study of policing ethnic minority groups in Dublin, for instance, offers a stark illustration of how police unfamiliarity with such groups, combined with 'neo-racism',[20] can lead to negative treatment and under-protection of ethnic minorities. Guards downplayed racially-motivated hate crime as mere 'bullying', enabling police to dismiss such complaints as irrational (O'Brien-Ollinger, 2016: 218). I did not experience such practices during my short-time in Clantown, but the kinds of knowledge gaps and parochial attitudes detected by O'Brien-Ollinger might begin to explain the strikingly low clearance rate for the catalogue of hate crimes in N.Ireland.[21] Tolerance and understanding cannot be bred by human rights reform alone, yet a greater rights consciousness in officers' daily work – especially the guiding principle of the universality of rights, regardless of one's race, creed, gender, ethnicity, sexuality[22] – might better alert them to the range of vulnerabilities across groups, particularly ethnic minorities.

The second practice concerns the over-policing of some marginalised groups. Approaching this issue of how police prioritise local issues, concerns and vulnerabilities from a different angle, Goold (2016: 236) argues that improved knowledge of, and proximity to, communities can in certain circumstances undermine the rights of certain groups:

> What may start as a well-intentioned effort to protect the rights of individuals living in these communities, can quickly evolve into a situation where the police become a constant factor in the life of the community, with the result that more and more individuals become subject to police power […] a greater focus on rights – as well intentioned as it may be – can lead the police to pursue law enforcement strategies that have negative effects on already vulnerable communities, which may exacerbate existing problems relating to class, gender and socio-economic status.

Goold's observation raises an issue that was rarely, if ever, made explicit in officers' self-accounts of their work; that is, who are the rights beneficiaries of the 'order' that police reproduce and whose rights are interfered with to achieve this 'order'? As Bradford and Loader (2016) note in their analysis of stop and search in England and Wales – a power they expose as a means of monitoring and controlling marginal populations – it is only when such practices are stripped of official rhetoric (safety, deterrence) and discussed in terms of their social reality (discrimination,

[20] Where the source of racism is not pseudo-biological inferiority, but rather attributes, "individuals from ethnic minorities' difference, deviance and their criminality to some assumed aspects of their cultural background' (O'Brien-Olinger, 2016: 204).

[21] As reported in the 2016 Peace Monitoring Report, detection and outcome rates remain low for all forms of hate crime, especially when compared to general crime. As summarised by the author of the Report, "[t]his is a matter of concern, in that is raises the question of the adequacy with which crimes with a hate motivation are being pursued by the PSNI" (Wilson, 2016: 31).

[22] See Donnelly (2007: 282) on 'conceptual universal': "…human rights are ordinarily understood to be the rights that one has simply as a human. As such, they are equal rights, because we either are or are not human beings, equally".

coercion) that collateral harms implicated in police order maintenance become alarmingly clear.

The types of political, economic and cultural order police are crucial to maintaining in capitalist democracies is a topic of ongoing discussion (see, e.g., Loader and Mulcahy, 2003; Wacquant, 2009; Ellison and Pino, 2012). Many empirical studies of routine policing report the enforcement of laws and a vision of order "particularly unfriendly to disempowered youth, minorities and those suffering from economic hardship and social and political disenfranchisement" (de Lint, 2017: 353). Such arguments are not intended to doubt the need for a service that enforces the criminal law – something itself the ECtHR has recognised as crucial to compliance with the effective protection of the rights of vulnerable groups[23] – but rather to underscore the point that the law, which has its own in-built biases, is often enforced asymmetrically, reflecting the outlooks, attitudes, prejudices, biases, pressures and mistakes of junior officers given the awesome responsibility of deciding what behaviour will be subject to the coercive state power (Ericson, 1981; Choongh, 1997; Hillyard and Gordon, 1999; Sanders et al., 2010).

In the micro-contexts of Clantown and Orangeville, young people's anti-social behaviour was, according to Neighbourhood Teams, a major challenge to communities' micro-orders. It was a hot topic animating local 'crime talk' (Loader et al., 1998: 389) as voiced in complaints made to officers, which usually involved young people 'hanging around', 'being a nuisance' or 'up to no good'. The anxiety anti-social behaviour provoked in communities is likely an expression of a host of social, economic and moral changes (Loader et al., 1998). In Republican and Loyalist communities, changes include the shifting provision of security from paramilitaries to the state, challenges to personal and communal identities cultivated during the conflict, and fears that social controls are weakening and deference to authority is diminishing (McAlister et al., 2009). The concerns of adult residents and, by implication, local officers, were interwoven with visions of how youngsters ought to behave, socialise and interact with authority. Neighbourhood Constable Fiona captures this sentiment:

> Youths hanging around causing annoyance, we [are] definitely getting more people phoning that in. But they don't hang around their own estate, they go across the road to the old factory or they go up to the local school […]. Probably within the estates they've still got that little bit of respect for elders, but then they move it across [outside the estate] and they just don't care that they're pissing up against somebody's fence or they don't care that the wee old lady has come out and shouts at them, but it's not where they live so it's nearly like nobody's going to find out – come over here and act the big lad and whenever I go down to my own estate I'll be fine. But a lot of stuff like

[23] See, e.g., *MC v Bulgaria* (2005) in the context of Article 8 and the criminalisation of rape: "Positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves" (para 150).

> eggs being thrown at windows. Like this morning, I was out at Green Park and a couple of new trees had been bent over and snapped last night and the local people don't take too kindly to that because that's their park, which is situated very much in their side of town… it's a nice area and it's a complete bonus to have it on your doorstep but it's not used in the right way. I mean, there's football pitches there but there's stuff there that just isn't used.

In this account, Fiona is sympathetic to residents' concerns. Teenagers belonged in their estate where they were subject to informal social controls. When they strayed from there, they did not know how to 'use' the nicer area in the 'right way' or how to respect the places and spaces belonging to others.

In their efforts to protect against the threat of anti-social behaviour to communities' micro-orders, police have arguably upheld the interests of adult residents at the cost of one group in particular: young people. With a high premium placed on pro-active intervention, I observed officers patrolling alleyways, street corners and parks where teenagers spent their evenings and weekends joking, drinking and making mischief. In interviews, officers described how they tried to divert teenagers away from certain areas before trouble arose and encouraged them to join local youth clubs instead of being a nuisance outside of them. Several officers had short shrift for teenagers annoying 'decent folk'. They contrasted this misbehaviour with their own, pro-social, behaviour as teenagers ("when I was their age, there was no youth clubs for me, but I used to kick a ball in the park and play cricket, climb trees and stuff"), while others explained local children's bad attitudes as a product of their upbringing, pointing the finger at parents. In one encounter I witnessed, the mutual distain was apparent: a teenager waved a stick at the police and shouted unsavoury words as we drove by. "Wee dickhead!" was the response from inside the police car.

The impact this kind of police attention and intervention can have on young people's rights to freely assemble and enjoy public space is evidenced in McAlister et al.'s (2009) extensive research involving 196 eight to 25-year-olds across N.Ireland, including the districts containing Clantown and Orangeville. Young people complained of routine abuse, discrimination and a lack of respect from police. They considered themselves an 'easy target' and recounted experiences of officers' constantly forcing them to move through their neighbourhoods, something they experienced as harassment and intimidation (McAlister et al., 2009: 67). In their eyes, age, rather than religion, was the most serious kind of discrimination they faced (McAlister et al., 2009: 78). The number of young people subject to police stop and search further hints at the over-policing of this group in many parts of the country. Between 2010 and 2017, almost 28,000 children (under 18 years of age) were stopped and searched by police, with an average of just 6% of stops resulting in further police action (Topping and Bradford, unpublished).

This leads us to the third and final practice, best introduced as a question: if an organisation like the police are committed to human rights, must it also confront, or at least be sensitive to, the challenges of the socio-economic rights of those living in deprived communities? After all, is the anti-social behaviour complained of, and which police actively respond to, not intimately linked to the exclusion, adversity and limited opportunities confronting young people in Clantown and Orangeville's housing estates? As expressed by one 16 to 25-year-old participant in McAlister et al.'s (2009: 73) study:

> People aren't bothered with us. They just want us out of their area. But it's our area as well. It's not their place, we've been reared here too … We should have more say. Most of the things they complain about we complain about as well. You know, like dog poo and the state of the estate. And there's nothing for us.

As noted by Ellison (2009), the ICP-inspired police reforms focused exclusively on civil-political rights, but the groups over-policed – young, poor, minorities – are usually those whose basic socio-economic rights (to housing, education, healthcare) are least satisfactorily met by the state. The average rate of unemployment for 16 to 24-year-olds in the most deprived parts of N.Ireland is 34%, compared with a national average of 18.5% and the UK-wide youth unemployment rate of 11.9% (Wilson, 2016: 93). Regarding educational attainment, just over 30% of teenagers attending non-grammar schools (a proxy for lower social classes) and entitled to free school meals gain five 'good' GCSE grades, compared with over 90% of grammar school pupils not entitled to free meals (Wilson, 2016: 100).

This socio-economic context raises a much bigger question about the utility of rights discourse for those confronted with poverty and marginalisation in their daily lives and thus its value as a language for police engagement with communities. As Beirne and Knox (2014: 12) have remarked rather frankly, "no one describes concerns about damp in flats (or the disparaging treatment of people with mental health issues, or racist attacks, or a failure to treat hospital patients with dignity) as a 'human rights abuse', or cites chapter and verse from international law". The connection between socio-economic rights and policing has been gestured at in the PSNI's official discourse, albeit in qualified fashion:

> Keeping communities safe requires a coordinated approach which increases the resilience of local communities and addresses concerns arising from a range of issues, such as isolation, a lack of opportunity, poor health and low educational attainment. *Many of these are human rights challenges which are beyond the remit of policing alone.* (PSNI, 2013a: 5; emphasis added)

Neighbourhood Teams were confronted daily with material deprivation and relative social disadvantage. During patrols they saw unemployed men and women nipping to the shops. At community meetings they heard complaints of dirty streets, broken lights, pavements in need of repair. Echoing the PSNI statement

quoted above, officers generally understood these as issues far beyond their remit, instead the business of the local council or Housing Executive (cf. Miller, 1999: 211). Although this understanding may well be correct as a matter of civic administration, it is noteworthy that officers saw neither the connection between deprivation and rights, nor the link between socio-economic conditions and young people's misbehaviour. Officers maintained that their job was about law-enforcement – clearing up crime, not crumbling curb stones. The fact that living conditions were being brought to police attention was just another example of police being saddled with issues that other under-funded agencies were struggling to cope with.

Conclusion

In his now classic definition, Egon Bittner (1990: 131) describes the role of the police as "a mechanism for the distribution of non-negotiable coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies". It is this capacity to use coercive force which has been the focal point of analysis in the few recent works on human rights and policing (Hornberger, 2011; Goold, 2016; McClanahan and Brisman, 2017). A common insight is the duality of this power; it can be used to fatally undermine rights or fundamentally protect them depending on how it is used. More interestingly, human rights can also serve as a powerful conceptual and semantic resource to convert illegal violence into legal force through ideas of 'proportionality' and 'necessity' (Hornberger, 2010). These valuable insights are given due attention in Part III, but before travelling there it is worth dwelling on Bittner's influential description of the police role a little further. As Bittner (1990) elaborates, the police mandate, rooted as it is in the potential to use coercive force, is an ongoing negotiation; a process of tacit bargaining between police and society as well as between individual officers and the people, behaviours and, we might add, communities, they encounter (see also Manning, 2013).

An analysis of the role human rights play in policing surely ought to capture these dynamics of negotiation, audience and situational exigencies so core to the police role itself. This chapter has taken some initial steps in this direction by exploring how Neighbourhood Policing Teams encounter, understand and interpret human rights when policing Clantown and Orangeville. The discursive framing and primacy of rights articulated by official police voices faded in relevance and meaning for the officers I met. While they could repeat the rights references from training, the distribution of policing as a resource was shaped not by positive duties or the recognition of rights but by audience demands and by the communities

where trust was still being worked out. Embedded in these neighbourhoods, officers had to maintain an ongoing relationships with key influencers, make compromises and respond to local demands. Rights talk was rarely helpful to officers in conveying messages or resolving local disputes. Similarly, when confronted on patrol with challenges framed in rights terms, officers described the same kind of pragmatic assessment Bittner's own work captured so well; that is, they quickly assessed the individual, their behaviour and the likelihood of trouble to decide whether to tolerate rights 'fakery'.

In sum, there is no doubt that chief officers would be proud to hear the ease with which their junior colleagues could recite lines from the official voice; the vernacular of rights has clearly entered the lexicon of officers in these sites of routine policing. Yet, the internalisation of rights amongst the TSG and Neighbourhood Policing Teams was heavily shaped by their respective sites of socialisation. In both sites of routine policing, the official tropes of ethics, legality and accountability were translated by officers drawing upon their experiences, outlooks and attitudes. Likewise, the discursive bridges drawn by official voices between rights and policing had to compete with the mundane realities of the tasks officers performed, along with the demands faced and pressures felt. In Parts III and IV, we continue the exploration of human rights and policing, taking with us Bittner's (1990) insights regarding the dynamics of negotiation, audience and situational exigencies. There is a slight shift in emphasis away from officers' socialisation in human rights, towards the influence of human rights law on officers' decision making, as we critically examine police self-regulation in two further sites of policing: public order policing of parades and protests and police custody.

PART III

Public Order Policing: The Rights of Protestors, Public and Police

Chapter 5.

Righting the Public Order Script

> There's a script the brass have and they want you to stay with it. They tell you to block this road so you just stand at that road and take abuse and take abuse and you can't do anything about it, and it's quite frustrating. (TSG Constable Larry)

> You're from this part of the world the same way I am, observer of this part of the world the same way I am, that's the nature of Northern Ireland, we're not politicians…we're dealing with very sensitive, emotive, contentious issues, where there are absolutely competing views, if not rights, and I don't have it within my gift to bring a resolution to those competitions. I need to police in the middle of that and I suppose manage that. (Chief Superintendent Andrew)

How senior officers interpret, apply and generally make sense of human rights law in policing the country's contentious parades and protests are issues ripe for analysis. These events present a paradigm case of competing rights, requiring the PSNI to respond in ways that respect the rights of the various parties involved. This is a weighty task. Parades and protests often take place in communities where police are working hard to establish or maintain trust and where the risk of rioting is real. In this operational context, the PSNI is equipped with formidable tactical options, albeit their use comes with exacting external oversight. The legal scheme does not make the situation any more straightforward for the PSNI. Since 1998, the statutory responsibility for adjudicating upon notified parades, including the application of any restrictions on them, has been transferred from the police to a quasi-judicial body, the Parades Commission, which itself suffers from a legitimacy crisis and has been the subject of possible reform. The PSNI must enforce contested Commission determinations whilst upholding the rights of marchers, counter-protestors, nearby residents and police officers, and, in the case of parades about which the Commission is not notified, determine the appropriate response themselves.

Offering the first empirical account of human rights in public order policing, the next two chapters explore how mid to senior ranking PSNI officers engage with, adapt to and make sense of the very rules they promote so heavily in their official discourse. I consider the following questions: What appearance did human rights take in the planning and carrying out public order operations? To what extent did public order commanders understand the duties arising from the HRA 1998? How did they interpret these duties, and, most interestingly, make them meaningful in an operational setting? Were there techniques or understandings that

enabled officers to creatively use human rights law protections, perhaps enhancing or undermining its regulatory force? Did a rights-based approach make it easier for the PSNI to account for their decisions to communities and oversight bodies? The answers to these questions are addressed in the next two chapters and represent the views of a select sample of officers intimately involved in public order policing in N.Ireland. In producing this account, I rely on interviews with twelve public order commanders (chief inspector to assistant chief constable); interviews and focus groups with eleven sergeants and thirty constables from the TSG (the primary public order unit); four interviews with public order trainers/tactical advisers; and observations of public order training days and a week-long commander course.

To make sense of the firm institutionalisation of human rights in this site of policing, I introduce and develop the idea of the PSNI's public order 'script'. The script can be thought of as the organisation's carefully constructed template for managing public order events, especially contentious parades and protests. This script is written and promoted by public order commanders who are acutely aware of the political sensitivities of parades and protests and the formal oversight they face in policing them. In the material form of operational plans and briefing documents, the script is communicated to frontline officers – often the TSG – who are tasked with performing the police operation according to the script.

In the first two sections of this chapter I provide the platform for the analysis of the police script by explaining the social and legal context within which it is written and performed. I then trace in detail the production, promotion and delivery of human rights as an integral part of the police script, before analysing how public order commanders came to acquire the knowledge and expertise needed to become human rights script-writers and decision-makers. This hints at the movement away from the kinds of 'common-sense' understandings described in Chapter 3, towards a more legalistic, technical one, suited to the responsibilities commanders shouldered and formal audiences they addressed.

Parades and Protests in N.Ireland

Two centuries of Loyalist parades have provided rich subject matter for those eager to understand the rituals and changing dynamics of Ulster Loyalism (Bryan, 2000, 2015; Jarman 2003). A key question yet to be addressed, however, is what these cultural and political performances mean for policing; that is, how are we to make sense of parades and protests as policed events? In the last decade, only two studies of public order policing in N.Ireland have been conducted, both produced after periods of particularly bad disorder. The first, commissioned by the PSNI in

2011, offers community perspectives of public order policing in Belfast (Byrne et al., 2013). The second, produced by Nolan et al. (2014), provides a detailed account of the 'Flags Protest' in Belfast (discussed below), tracing its origins as well as the experiences of those involved. Both reports are welcome additions to this significant yet poorly understood aspect of policing. Still, the need remains for conceptual scaffolding and empirical data so that we might begin to examine questions that have excited debate in other parts of the UK, where "a very considerable body of extant work" (Newburn et al., 2015: 987) on policing, disorder and protest stands in enviable contrast. Here, I take some initial steps in that direction by introducing parades and protests as events that are policed.

It has been said the "great challenge" facing the reporter of parades in N.Ireland rests in conveying their sheer scale and significance (Walley, 2013). For some, parades evoke images of bandsmen in sashes and bowler hats, proudly marching along traditional routes. For others, they are a symbol of Unionist domination, harking back to a time of discriminatory practices and repressive governance. Regardless of one's political outlook, and for better or worse, parading is, in the words of the Chairman of the Parades Commission (2011: 7), "[p]art of the cultural fabric of our society, an inherent part of what is Northern Ireland". Over the last decade, this fabric has become interwoven with a host of groups which enjoy membership and meaning regardless of one's creed, culture or nationality. As seen in Figure 5.1, there are growing numbers of 'other' parades, a category featuring a kaleidoscope of events from the North Down Cycle Club to fairs and festivals, from Gay Pride to the Ford Anglia Owners Club. For other threads of the cultural fabric, however, meaning remains located in long-standing, deeply contested religious and cultural difference. This reflects the enduring presence of ritualised parades and protests organised by groups aligning themselves exclusively to Unionist/Loyalist or Nationalist/Republican communities.

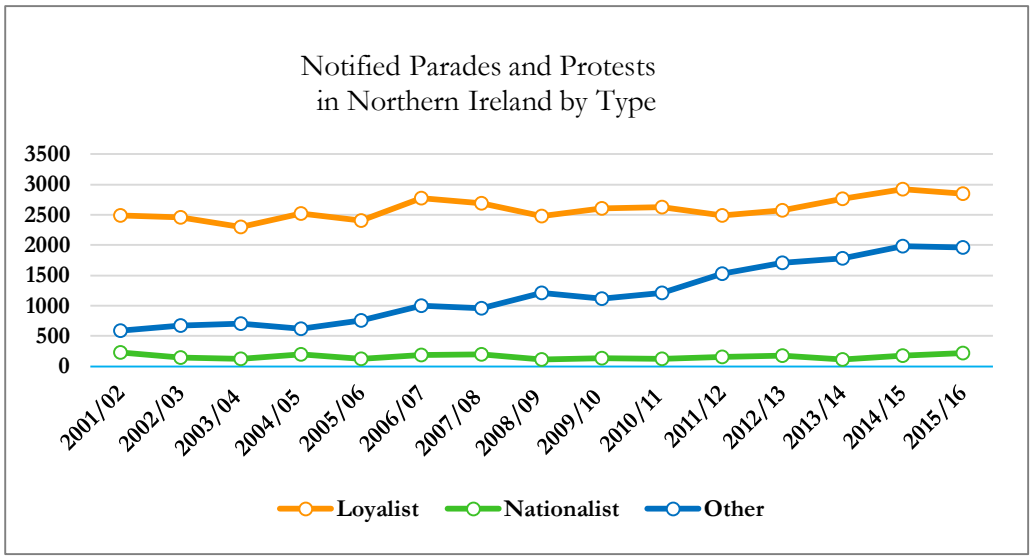

Figure 5.1- based on figures from the N.Ireland Parades Commission

The largest events in scale and frequency are the Loyalist marches punctuating the months of April to September, a period known locally as 'the marching season'. In the words of Jarman (2000: 159), "[t]he men march behind the Union Flag and the Ulster Flag, behind banners illustrating Biblical ideals, banners commemorating the Williamite wars and the Somme and other images of conflict or noble sacrifice for Faith, for the Crown and for Country". The climax of the so-called marching season is the Twelfth of July, when Unionists celebrate the victory of Protestant King William III over Catholic King James II at the Battle of the Boyne in 1690. In 2015, for example, over 100,000 people took part in 800 Orange Order demonstrations across the country, policed by 3,000 officers, including 58 public order units (Black, 2015). Parades and related protests by Nationalist groups are much fewer, reflecting historical differences in tradition and treatment by the Unionist state (Bryan, 2000). Nationalist marches are also high-profile and politically significant, celebrating Republicanisms' own moments of victory and sacrifice, including the 1916 Easter Rising, the interment of terrorist suspects in 1971 and the hunger strikers of the early 1980s (Jarman and Bryan, 1998). The Republican Anti-Interment League march held each year in Belfast can attract especially large crowds, with up to 4,000 marchers and hundreds of counter-protestors (*BBC News,* 2014a).

A small but significant number of Loyalist parades are deemed 'contentious' by the Parades Commission, meaning they have the potential to raise concerns and community tensions (see Figure 5.2). These occur at well-known trouble spots where tensions are already high – usually interface areas of Belfast, where Republican and Loyalist communities share tight urban boundaries (Jarman, 2006). In their efforts to uphold Commission determinations, police have been badly injured by rioters armed with petrol bombs, heavy masonry and even firearms. One of the

worst periods in recent years was 11-16 July 2011, when disorder erupted across Belfast and beyond, resulting in over 50 officers injured, extensive damage to property and 175 police baton rounds fired (NIPB, 2011: 58-63). The sharp spike in the number of contentious events and restrictions imposed between 2014 and 2016, illustrated in Figure 5.2, is due to the nightly Loyalist protest held in North Belfast in response to the Commission's decision to reroute the return leg of an Orange Lodge parade away from Republican shop fronts in July 2012. Initially over 1,000 people strong, and marked by four consecutive nights of rioting, this protest was sustained for over three-years by a small, nightly parade marching up to the point at which the parade was originally halted in July 2012 (*Belfast Telegraph*, 2016).

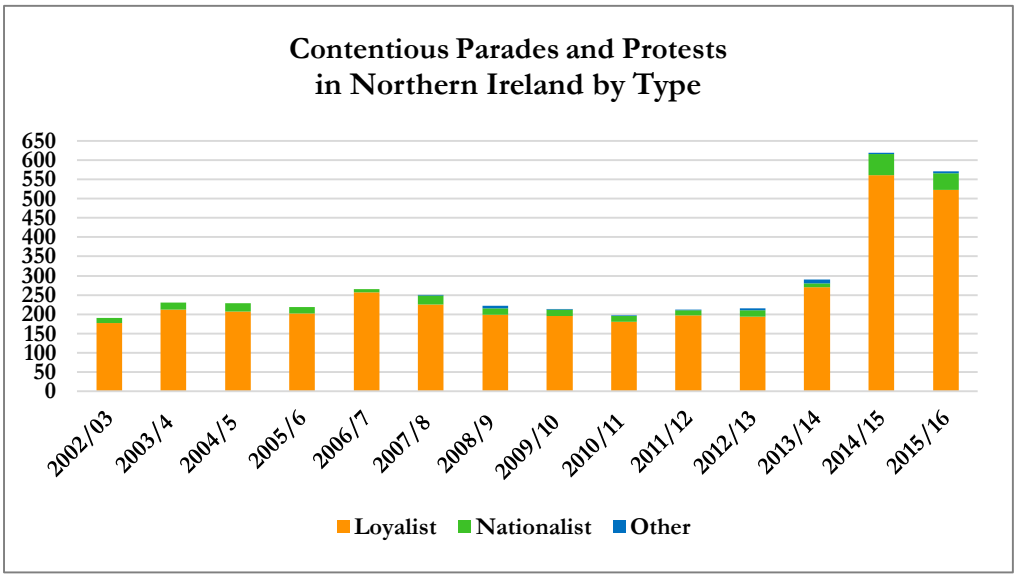

Figure 5.2 based on figures from the N.Ireland Parades Commission

Growing Loyalist disenfranchisement with political parties, and the refusal of Republican groups to engage with the 'British state', has led groups from both communities to refuse to comply with the statutory notification scheme for public processions. The most significant period of un-notified parades erupted in December 2012 after Belfast City Council voted to limit the flying of the Union Jack at the City Hall to 18 designated days. In grave despair, Loyalists rioted for several nights. Known locally as the 'Flag Protests', at its peak almost 10,000 people were involved in protests at 84 different locations, with a total of 2,980 crimes, incidents and information reported to police (Nolan et al., 2014). The so-called Flag Protests were followed by sustained protest marches in and out of Belfast City Centre on weekends from December 2012 until March 2013. The police operation is estimated to have cost £21.9 million, with over 214 arrests made and 160 police officers injured (PSNI, 2014b; Nolan et al., 2014). Albeit less high-profile, Republican groups have also refused to notify the Commission, in some instances trying to

lure the PSNI into urban areas to provoke public disorder and injure police officers (Orde, 2009).

What binds these thousands of ethnically aligned parades and protests together is their political and cultural significance. They are performances and symbolic displays, projected at audiences within a society that continues to ache from bitter sectarian divisions. In contrast to "mere rioters" or "wanton hooligans" who occupy positions outside of the moral community (Waddington, 2000: 157), many marchers and protestors involved in these events see themselves as championing a cause or identity, albeit a deeply divisive one. In their eyes, and those of their communities, they are actively participating in, and even contributing to, civic debate *within* the broader moral community. The belief held by those involved in contentious demonstrations, even when rioting occurs, is that these are acts done in defence of a culture and protection of an identity.[24] These performances reinforce in-group identities and, in interface areas, test the close urban boundaries opposing communities share (Jarman, 2006).

We might think of such groups as taking part in a social phenomenon referred to by Charles Tilly and others as 'contentious politics'; that is, a mutually recognisable, public interaction between competing claim-makers, in which the government acts as a mediator, target or claimant (Harrow and Tilly, 2009; see also Waddington, 2000). Applying Tilly's term to parades and protests in N.Ireland, we can substitute government for the PSNI as the mediator (and occasionally target) of competing claims made by the two communities, Loyalism/Unionism and Republicanism/Nationalism. Police efforts to manage crowds and violent outbreaks are interpreted through the lens of identity, belonging and territoriality. The actions of the PSNI – how they deploy officers, the uniforms they wear, the tactics they use, the behaviours they tolerate – all convey signals to communities about their relationship with police, authority and the law. Groups are quick to compare experiences how 'their' community has been policed compared to the 'other' community. Allegations of partisan or political policing are routinely levelled at police by both Loyalist and Nationalist communities (Byrne et al., 2013). Having now sketched out this picture of parades and protests in N.Ireland, I turn to further situate this chapter in the legal context that has emerged since Waddington's (1994) classic study.

[24] As reported by Nolan et al. (2014), a metaphor used by the flag protestors was that the Council's decision was "the straw that broke the camel's back". The protest was a response to a whole series of issues: the inquiries which put the security forces in the dock; the role of former IRA members in government; increased visibility of the Irish culture; and the belief that Catholics were privileged in the jobs market. Loyalists described a sense of "loss" and the "threat" of the peace process.

The Shifting Legal Landscape: Revisiting *Liberty and Order*

The most authoritative account of the role of law in policing political protests remains Waddington's (1994) seminal work, *Liberty and Order*, conducted with the Metropolitan Police in the early 1990s (see also Waddington, 1995; 2000; 2003). His study was firmly anchored in the law and order debate that was unfolding in 1970s and 80s Britain, amidst social change, political unrest and concerns that police were becoming more coercive, even paramilitary, in their style and appearance. The legal embodiment of these fears was the Public Order Act 1986, which criminalised forms of protest and assembly and empowered police to impose restrictions on demonstrations. Emerging from his fieldwork with the Metropolitan Police's public order commanders, Waddington produced a strong counter-narrative to the concerns of civil liberties groups. The most controversial provisions of the 1986 Act were barely used at all: no marches had been banned, few restrictions had been placed on protests and arrests were rare (Waddington, 1994: 37-39). More strikingly, the 1986 Act, and indeed, the law more generally, was largely absent in how senior officers discussed, understood and policed political protests and demonstrations.

Why was law confined to the margins? First, commanders were keen to avoid confrontation and manage 'trouble' in their precarious working environments by maximising their control over events. This was best achieved through informal negotiations with parade organisers. Commanders used a combination of "interactional ploys" and techniques of inducement to "win over" organisers (Waddington, 1994: ch.4). The law was of little assistance and was rarely mentioned because it risked alienating organisers and removing the air of friendliness and co-operation commanders consciously cultivated (Waddington, 1994: 87). Commanders' reluctance to engage with statutory powers also reflected their uncertainty over the precise meaning and application of the legislation. Ironically, this reluctance was compounded by a cultural expectation that experienced officers were cognisant of legal parameters. As Waddington (1994: 80) explains, "[r]eferring to the law was regarded by those [police officers] who deal with demonstrators on a regular basis as gauche and a sign of amateurism". Second, law was confined to the margins because political protestors were themselves well-organised and receptive to these informal negotiations. In the eyes of the police, political protestors were "professionals" that "played the game"; use of legal powers were generally reserved for less "institutionalised' groups, such as unruly youths or football hooligans (Waddington, 1995: 4).

When thinking about the law relating to public order policing today, we must extend our gaze beyond the Public Order Act 1986, to consider the influence of the HRA 1998. Articles 9 to 11 ECHR protect the right to peaceful assembly, the

scope of which is fleshed out by the jurisprudence of the ECtHR and domestic courts (Mead, 2007; Dickson, 2013). Most significantly, police must not only refrain from interfering with the rights of protestors (negative duty), they also have an obligation to facilitate peaceful demonstrations and protect those taking part (positive duty). Police must further consider the rights of those affected by public assemblies and processions, including residents and businesses, as well as police officers. The law, therefore, is no longer confined strictly to police powers, but also includes legally enforceable rights that must be respected, and proactively protected, by police. To this end, influential reports of statutory and parliamentary authorities now call for human rights to be at the core of how police respond to public processions and protests (HMIC, 2009, 2011; JCHR, 2009). These calls have helped give momentum to efforts to anchor human rights law more firmly in public order policies, training and assessments (Stott et al., 2013; College of Policing, 2016a).

In N.Ireland, duties under the HRA 1998 interact with another significant shift in the legal framework. The public order powers contained in the Public Order (NI) Order 1987 – akin to those at the heart of Waddington's study – have been repealed. After violent bouts of disorder at Loyalist marches in the mid-1990s and strong accusations of discriminatory use of force by the RUC, the North Report (1997) recommended the establishment of an independent body, the Parades Commission, to mediate, and ultimately adjudicate, on parades and protests. The North Report was implemented in part by the Public Processions Act 1998, which requires organisers of a public procession or protest meeting to give advance notice to the police, specifying the details of their proposed event.[25] The PSNI provides these details to the Parades Commission and is it then the Commission, not the PSNI, that issues a determination on any notified procession/protest. The Commission may impose such conditions as it deems necessary on those organising, taking part in or supporting the procession/protest, including restrictions on the parade route, the numbers involved and the timing of events.

It might be thought this scheme would, if anything, lessen the significance of the law. The PSNI, after all, is no longer the key 'negotiator' but merely the intermediary and enforcer of the Commission's determination. But this has not been the case; rather, police powers and human rights have become central to the policing of parades. The most contentious parades and related protests are subject to Commission restrictions (Figure 5.3), forcing to the surface questions about how rights of assembly and expression are balanced between marchers, residents, businesses and police officers. The Commission's determinations have proven divisive,

[25] s.6(4) and s.7(4)) Public Processions (NI) Act 1998.

highly contested and subject to routine derision by senior politicians and community leaders (*BBC News*, 2014b). PSNI commanders are challenged on how they will interpret and apply restrictions, respect competing rights and use police powers in an impartial manner (Public Session, NIPB, May 2014; CAJ, 2016). In voicing their concerns, a rights discourse has been adopted by community leaders to bluntly assert their preferred course of police action (Curtis, 2014). Caught between communities acutely attuned to their actions and decisions and the Commission's legally binding determinations, PSNI commanders described in our interviews this predicament as being 'piggy in the middle'.

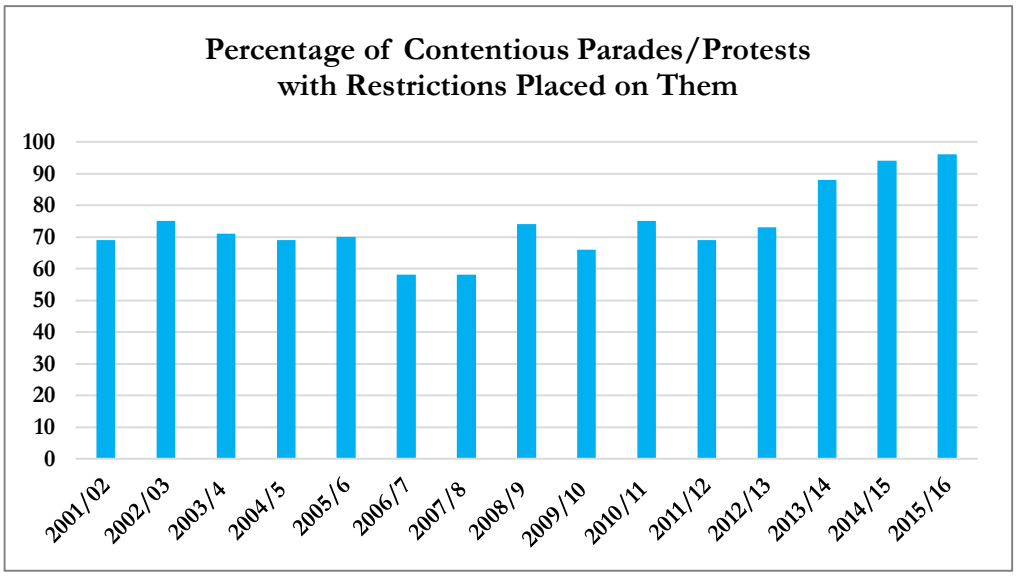

Figure 5.3- based on figures from the N.Ireland Parades Commission 2001-16

In summary, the policing of parades and protests takes place in the crucible of contestation over how democratic rights ought to be politically respected and legally regulated. We will return to critically engage with Waddington's (1994) insights on the role law plays in policing political protests throughout this chapter and particularly the next. For now, I want to delve into the internal workings of the PSNI to explore how human rights came to form such a prominent internal narrative for commanders in making sense of these events and the way that they ought to be policed.

When describing how parades and protests were policed, officers likened them to tightly choreographed, staged performances. It was as if the police operation was 'scripted' by senior officers, who were keen to exert control, and performed by public order units, who were trained to stick within the script's parameters. In the following sections, I illustrate how human rights have become an integral part of this script, reflecting the strong internalisation ('Type II' in Checkel's (2005) terms) of human rights amongst mid to senior ranking police commanders. In the

next chapter, I proceed to explore why human rights have taken on such prominent form, in light of the functions they serve for the senior officers responsible for this high-profile, contested part of N.Irish policing.

Embedding Human Rights: The Organisational 'Script'

The script took the material form of the strategic and operational plans devised by commanders. Its content was an amalgamation of PSNI formal policies and domestic human rights law, as well as relevant community intelligence gathered by the police. I begin this section by tracing how the script was written, promoted and delivered by commanders, revealing how human rights law was firmly institutionalised in the planning of contentious parades and protests. I then examine how references to human rights were understood and translated by police commanders and key 'bridgers' in the organisation.

Writing the Script

Public order policing in N.Ireland is regulated by a distinct operational command structure, based on the College of Policing's guidelines. The 'gold commander' (an Asst. Chief Constable) is responsible for setting the strategic parameters for public order operations during the marching season. The 'silver commander' (usually a Superintendent) has the greatest operational duties, tasked with devising and overseeing the police approach and the tactics used. They are assisted by 'bronze commanders' (usually Inspectors) who are responsible for implementing the tactics on the ground. Based on their meetings with police departments and community groups, silver and bronze commanders must produce their own plans for each event, corresponding to their roles and responsibilities. We might think of commanders, quite literally, as writers who draft the organisational script. In so doing, they bring together hundreds of officers of different rank, geographical district and operational expertise: from roads policing and intelligence branch, to the TSG and NPTs.

Taking each rung of command in turn, we can see how the self-commitment to human rights by senior commanders ensured that reference to rights emerged as a central plot line in the scripts they produced for internal and external audiences. The injection of human rights was initiated by the gold commander, as former PSNI Deputy Chief Constable, Duncan McCausland (2007: 216), describes:

> The key document, which underlies all planning and operational activities, is the Gold Strategy. This document is a comprehensive resource, containing detailed references

> to the HRA 1998 and other human rights standards, and addressing a range of potential operational scenarios. These scenarios range from benign, such as a parade proceeding peacefully, to scenarios involving credible threats of terrorist attacks… A detailed analysis of the European Convention rights engaged is provided in relation to each scenario…

The gold strategy, devised months in advance of the marching season, sits at the apex of the PSNI's approach to public order. Providing the overarching principles for operations, it was described by one commander as "setting out the stall and saying we will do it like this, these are the considerations you will undertake and this is what you will do" (Silver Commander Charley). With the weight of an Assistant Chief Constable behind it, the early emphasis on human rights in the gold strategy served to embed it firmly into the script, requiring commanders at the next rung of the command ladder to pick up the baton and engage with human rights principles themselves.

When devising their 'tactical plans', silver commanders' chief task was to evidence how they would "get the job done" in light of the gold strategy. Having been talked through a plan by Silver Commander Derek in our interview, I saw how it included detailed, practical assessments of key components including the history of the event, the intelligence assessment, the efforts being made to minimise disruption to the community, a brief description the 'tipping point' at which commanders would intervene in a parade/protest, and the contingencies in place should disorder arise. The plan further replicated the ECHR, citing the human rights and key principles engaged and, most obviously, the outer limits of peaceful protest per Articles 9, 10 and 11, the standards governing the use of force and how this linked with the "style and tone" of the operation (discussed below).

Silver commanders emphasised that human rights were now part of their language, a "touchstone" they would return to throughout their planning and strategy meetings. The tactical plan was passed down to the Bronze Commander, who was responsible for the task of devising a bespoke 'deployment plan'. Depending on the event, there could be multiple bronze commanders, from 'Geographical Bronze' (responsible for particular streets or locations), to 'Functional Bronze' (carrying out specific roles, such as a tactical option). With human rights law references flowing down through the tactical plan, the task of the bronze was to try "to evolve and roll out a plan which marries up with what the silver commander is trying to achieve" (Bronze Commander Cliff). We can see how continuity in rights-based thinking continued to be consciously replicated, here in relation to minimising the recourse to the use of force, as described by Bronze Commander Daniel:

> There are silver tactical plans which are written by the silver commander where you would expect to see those – in terms of strategic intentions – you would expect to see those things [legality, proportionality, necessity] … If the silver commander, as _____ frequently does, says 'I want to see a graduated response' then as a bronze commander

> I try and then demonstrate that within my deployment plan… (Bronze Commander Daniel)

Once bronze commanders had produced a draft of their deployment plan, it was submitted to the silver commander for approval, serving as an example of the self-regulatory approach designed to ensure consistency across the public order script.

Great attention was placed on the importance of writing a comprehensive script that captured the various actors involved parades and protests, including local community leaders and politicians, so as to minimise the likelihood of disorder arising.[26] Commanders were expected to embed the relevant aspects of the PSNI's Policy Directives and Service Procedures, specifically the Manual of Policy, Procedure and Guidance on Conflict Management, as well as the College of Policing's Authorised Professional Practice, each containing statements on the legal framework under the HRA 1998. The format and language of commanders' plans were heavily dictated by these pre-written policies, which they had first encountered as part of their command training. By referencing these documents, specifically the sections on ECHR standards, commanders' plans formed part of the bureaucratic bind that embedded the discourse of human rights into the policing operation.

Significantly, the NIPB's human rights legal advisor attends the major police planning meetings for the parading season. The advisor is present in her capacity to monitor the PSNI's compliance with the HRA 1998 and thus has no input into the police operations. The advisor observes meetings and pre-briefings before high-profile parades and takes notes, which then provide the basis for the advisor's assessment, which is written up in the public order section of the Board's Annual Human Rights Report. Attendance at these meetings has been described by the advisor as "the most critical element of what I do" because it provides an insight into how police plan with their positive duties under the HRA 1998 and, most notably, Article 2 ECHR, which requires the police to plan in such a way that minimises the likelihood of recourse to potentially lethal force (Kilpatrick, 2015). Consequently, the self-regulatory process of human rights script-writing takes place in the shadow of the NIPB and its specialist human rights lawyer.

Promoting the Script: Reporting to the Parades Commission

Human rights are further institutionalised and actively promoted to attentive outside audiences through the reports the PSNI must submit to the Parades Commission. Following notice of a sensitive parade/protest, the Commission requests

[26] The extensive planning meetings and the diverse range of police officers involved in them are well documented in the NIPB's Human Rights Annual Reports. See, for example, NIPB (2006: 60-72).

police evidence regarding the proposed event. In producing their report (known as the '11 /9'), the PSNI has adopted a standardised form, completed by the district community planning team in conjunction with the silver commander[27]. Commanders must make a "judged assessment" of how police strategies might affect the rights of individuals who may be affected' by filling in a series of boxes assigned to articles of the ECHR. Commanders are instructed to pay special regard to: "…the effects police tactics have had in the past and may have in the future upon individual human rights. The author should in particular note the circumstances under which a human right can be restricted in furtherance of a legitimate aim by a public authority." (PSNI, 2008b: 10). Interestingly, the guide alerts commanders to the fact their reports are disclosable to public audiences and should be written with this in mind. In this way, the self-regulatory force of human rights was enhanced by the possibility of external scrutiny. Accurate completion the form was made easier by a detailed sample report issued to commanders, which stated the broad ECHR principles to be applied.

Although it is easy to dismiss the 11/9 as a bureaucratic copy and paste exercise, commanders insisted it was part of a conscious process of trying to ensure the rights of different groups were consciously considered. Silver Commander Andrew, for example, described it is an "added element" to the planning process that helped to institutionalise rights-based awareness:. He explained:

> [E]ven the way we report to the Parades Commission, yeah it's a template and that doesn't mean it's embedded in our culture and stuff but actually over a period of time it is. So, you know, we report our evidence to the Parades Commission along that spine of key human rights.

However, when reading the 11/9 reports made publicly available, some variation was evident in the detail with which commanders from different districts engaged with ECHR standards. Regarding Article 10 ECHR, for instance, one 11/9 report from an Apprentice Boys of Derry March in Lurgan explicitly acknowledged the rights of all individuals and groups to express themselves, set out the police aim to facilitate peaceful protest and the need to balance this against the overarching requirement to ensure that lawful activity can still take place (PSNI, 2015b: 7). In contrast, a form for the Orange Lodge parade in Dungiven simply stated "it is not the police intention to restrict freedom of expression" and cited powers under the Public Order 1997 (PSNI, 2013b: 5). Further research observing officers carrying out these administrative tasks would be particularly valuable in explaining this kind of variation.

[27] Since 2007, the PSNI has made it policy to disclose 11/9 forms to interested parties. Copies can be found online courtesy of disclosures by the PSNI under the Freedom of Information Act 2000.

Delivering the script: briefings and operational orders

With the script written, the task for commanders was then to deliver it to its actors: the hundreds, and for major parades, thousands, of junior officers on the front line of policing. This delivery was done in person at meetings and briefings in a systematic and detailed manner, especially for major parades/protests, as Bronze Commander Cliff explained:

> Briefings are vitally important… We have to be sure that people know what their task is. So, in terms of the levels gold, silver, bronze, silver commander does his briefing, after his briefing's finished it's a breakout… 'All the TSG commanders who are in _____ Street, go over to the corner there and speak to the bronze, he's going to tell you exactly what he wants and what he needs', and then it's down to me, it's my responsibility as the geographical bronze to talk to my inspectors who will be there on the ground …

A crucial part of commanders' efforts to control the event was ensuring junior officers performed their lines as planned (see also Waddington, 1994: 144-46) and, in this way, the self-regulatory format of human rights continued. Bronze Commander Cliff further explained that "practically speaking on a day-to-day basis that needs to be gripped by the bronzes in the briefing room to tell the people: 'Here's where we want you, here's the way we're doing it, now get that down to your people and make sure they understand"'.

Junior officers could view a summary of the script in the 'Operational Order', emailed to TSG Inspectors and Sergeants in advance. I read some of these orders during my fieldwork. They cover an array of information, from the history of the event to the radio channels. References to human rights were littered throughout and generally belonged to one of two categories. The first were organisational pronouncements, echoing the official voice by re-affirming the importance of human rights to the PSNI. These appeared in the opening lines of the Chief Constable's policy on public order:

> The human rights of all those affected by such events will be central to all stages of police preparations and subsequent actions. It is recognised that not all human rights are absolute rights and in some instance the rights of individuals must be balanced with those of others.

The second were more legalistic. Each order had a generic section dedicated to human rights that included a mission-style statement introducing the HRA 1998, a brief reminder that it incorporated the ECHR into UK law, followed by: "It is imperative that all operational policing decisions are made against the background of the effects of this legislation". This statement was preceded by a table listing articles of the HRA 1998 with an 'X' marking the rights engaged by the police operation. Greater detail was found in the page-long outline on the use of firearms, which repeated Article 2 ECHR in full and underscored the conditions where a

negative and positive duty arose. In one operational order, these statements on human rights were supplemented by the gold commander's specific strategic aims, which included: "Plan to reduce the likelihood of police recourse to the use of force particularly lethal or potentially lethal force. (This is in accordance with our positive obligations under Article 2 ECHR ref McCann v UK…)".

Appearances of human rights law in briefings and operational orders demonstrated the ability of commanders to drive the script down through the organisation in bureaucratic form so as to regulate the behaviour of front-line officers. But how were these lines received by the actors tasked with delivering them on the ground, most commonly the TSG? As discussed in Chapter 3, officers in the TSG were broadly familiar with the format of briefing packs and operational orders and knew that, if they really wanted to, they could find references to the ECHR in a dedicated section. The extent to this was 'briefed out', and the way in which it was done, varied depending on the individual briefing officers and the nature of the event.

TSG officers described the concerted efforts made for major parades/protests, which involved multiple, detailed briefings given days in advance by bronze commanders and local neighbourhood inspectors. For low-key, less contentious parades, TSG officers described how only passing reference was made to human rights, with the briefing officer tending to "just go through the motions". The over-familiarity with human rights that officers described is summed up well by TSG Constable Jay:

> It becomes second nature because for ten years now that's how you operate, you have to take them [human rights] into consideration. You have to be aware of them, you have to work within them. So therefore, it's not a major problem to do that, it's in effect dipping your clutch to change gear. It comes as second nature now to take them into consideration.

Commanders were wary of this fatigue and the danger of human rights "just rolling of the tongue", but insisted, nonetheless, that the ECHR remained a central plot line that was communicated to the actors of the public order script.

For TSG sergeants, however, detailed briefings could not always be carried out because of more pressing and immediate demands they faced. Reminding their unit about human rights sat alongside a range of other issues emerging from the "whole slew of documents that come along" in the run up to operations. While technically the operational order should be read out, Sergeants explained their primary concern was ascertaining the correct radio channels and ensuring their unit had eaten beforehand. As one Inspector similarly conceded during the bronze command course: "you'll skip through the human rights stuff and you say you know it and then look for the meat and the bones – deployment of the unit, where you need to be". Besides, there was a strong suspicion that many orders were "copy and paste

jobs" (TSG Sergeant George) lifted off the shelf from the last operation. In fact, a common view amongst the TSG was that it was counter-effective to give a detailed briefing on human rights, either because it was patronising or simply done for the sake of it. TSG Constable Jay recalled briefings before the human rights component had been scaled back in briefings:

> [I remember] your briefing officer standing up and saying 'we're now going to touch on human rights' and you know you could just seem the room and the boys – just the heads went down 'cause every time it was human rights, and people basically just switched off because it's like white noise, you get so much of it and the brain can't take anymore, you just switch off. It's overkill. Everything was human rights.

As mentioned in Chapter 3, there was an even stronger suspicion that inclusion of the ECHR in the operational orders, especially references to case law, was a blatant "ass covering exercise" by commanders should anything go wrong. TSG Sergeant George asked me rhetorically during a frank conversation, "do you think these were written for me or for an audit trail and the Ombudsman?". Similarly, TSG Sergeant Freya, having just printed off the operational order for the night's operation, quipped, "ten pages on human rights! A tree dies every day for this". Many officers accepted that the inclusion of human rights law in operational orders was simply part and parcel of today's policing operations and had to be done by their commanders.

Understanding the Script: Translating Human Rights Law into Practice

According to Gold Commander Alex, human rights had "brought a consistency, a common language, a common understanding, a common way in which things are evaluated and interpreted". Yet, as academics, we know little about how legal rules come to be a common language or commonly understood. As Dixon (1997: 277-8) observed two decades ago, the way police learn about the law, and how it is taught to officers in a way that transmits the necessary facts and their practical application remains poorly understood. Manning and Hawkins (1989) describe officers' 'recipe knowledge' of the law, derived from oral traditions passed on by their colleagues or gleaned from exam material revised during promotion cycles. In Dixon's (1997: 277-8) research, officers were well-able to recite the law in "parrot fashion" but when applying it to the facts, they fell back on generalised, normative statements about what people should or should not do. In this section, I want to look more closely at how officers came to know about and understand the human rights law standards that appeared in the police script, focusing on public order command training and the organisational actors who provide a 'bridge' between law and practice.

Public Order Command Training

The role of public order commander was just one of many responsibilities that kept senior officers busy. Their schedules were otherwise filled with a myriad of tasks connected to the district they oversaw or police units they were responsible for, from management meetings to community engagements. To acquire the skills and knowledge necessary to be a certified public order commander, officers had to attend and pass specialist bronze or silver command courses. These courses, run by the PSNI's Combined Operational Training department, are based on the College of Policing's standardised public order training curriculum and assessment used by police forces across England and Wales. With command training emerging as a key site of human rights law translation by the police for the police, I eagerly took up the PSNI's offer to observe a bronze commander course in early summer 2015.

In N.Ireland, these courses are a strong illustration of how the NIPB's legal advisors have played a significant role in aligning the PSNI's organisational script with ECHR standards. The legal advisors have invested considerable energy in reviewing policies and observing a range of training courses. Between 2005 and 2007, the NIPB made recommendations requiring the ECHR to be presented prominently, and explained more clearly, in the training lessons and materials.[28] Over the last ten years, the legal advisors have continued to monitor the content and delivery of public order training, reporting positive findings.[29] In the broader context of the UK, some of the most critical findings of HMIC were linked to commanders' poor understanding of, and inadequate training in, human rights law and public order powers.[30] Having read the College of Policing's command course curriculum, it is apparent that efforts have also been made to remedy the knowledge deficit identified amongst commanders in England and Wales (College of Policing, 2014a; 2014b). Key learning outcomes for bronze and silver courses now include consideration of powers and policies relating to human rights, alongside an understanding of the human rights framework (College of Policing, 2014a, 2014b). In the guidance for trainers, the ECHR is described as "an overarching theme" that must be "delivered throughout all aspects of the public order training curriculum" as part

[28] See, e.g., NIPB (2006: 58) and NIPB (2007: 127). The PSNI implemented these, with the NIPB approving the revised procedure and guidance as "clear, comprehensive and carefully drafted" (NIPB, 2007: 120).

[29] It has been described as "exemplary and a template for best practice" and "an exceptional package of training which has at its core the duty to respect, protect and fulfil the human rights of all members of the community" (NIPB, 2009: 98).

[30] HMIC went as far as to state: "It is disquieting that what appears to be a very modest amount of time is devoted in public order training to the complex legal landscape. Of particular concern is the low level of understanding of human rights obligation of the police under the Human Rights Act 1998" (HMIC, 2009: 14).

of a "pragmatic and lawful approach to human rights" (College of Policing, 2016a: 17).

The PSNI command course I observed was attended by nine inspectors from police departments across the country, who assembled in the well air-conditioned and windowless training room. Equipped with PowerPoint, a whiteboard and the College of Policing lesson plans, a five-person team of accredited public order trainers delivered the course across six days. The goal was to train the inspectors in becoming competent script-writers and decision-makers and to provide them with the knowledge to engage with ECHR principles. The officers were welcomed by a silver commander who made clear the organisation's expectations: "It is not enough to just say 'it's an Article 2 issue' – we'll push you to deeper, what does that actually mean?". Likewise, as they were told early on by one trainer, "Are all human rights the same? No, you've got balanced rights. You need to manage that – ask your silver in advance. It seems easy 'protecting rights', but it's more difficult when they're qualified and you're balancing them." It was apparent that some aspiring commanders were apprehensive about the depth of understanding required of them when the ECHR appeared on the 'needs and expectations' list they scribbled on the whiteboard on Day 1.

Commanders were instructed, much like I was as an undergraduate law student, on the importance of being able to select and cite relevant cases, rather than "just listing a whole load of cases" from the training material. They were taught to cite the principle for which the case was an authority and how it might apply to the police operation. Trainers told the inspectors they had to learn "to get into the weeds":

> TRAINER: Don't give us McCann and Others but what you're going to do to make sure McCann and Others is covered – we're looking for the where's and the how's […] Can anyone give me stated case?
> INSP.: Is Osman one?
> TRAINER: Yep, some info that could have brought to arrest, you need to know it.
> (Field notes, 11.06.15)

Linking back to the presence of human rights in the public order script, one trainer remarked: "there are loads of cases and you should be familiar with them, they're in [operational] orders now and again". In choosing which cases to reference in their deployments plans, the training team helped by identifying the leading ECtHR cases in their presentations, such as *Bukta and Others v Hungary* (2007) and *Handyside v UK* (1976) for Article 11 ECHR (discussed in the next chapter), as well as the domestic authorities under the HRA 1998, for example *Woods v Commissioner of Police for the Metropolis* (2009) (regarding the retention of photographic evidence).

Providing a more legalistic, less 'common sense' understanding of human rights than officers were accustomed to in everyday police work posed a challenge

for the trainers too, one joking to another "No pressure!" when officers wrote 'Understanding of the ECHR' on their list of course needs. In most instances, trainers managed to summarise the law accurately[31]. The ambit of the right to peaceful protest (discussed below) – which, objectively speaking, is made up of clear core principles – proved straightforward to convey to trainee commanders:

> After the right to freedom of assembly, the next slide was freedom of expression. The trainer was explaining how it applies to opinions and ideas. Speaking through rhetorical questions again, he asked 'Handyside v UK, tell me about it? I think he was an artist – anyway, the point is that freedom of expression includes ideas that offend, shock or disturb. If I hold an opinion that you find offensive, unlucky! If I'm not being obstructive or breaking the law, then we should be tolerant'. He then gave a local example of the protestors outside the Marie Stops abortion clinic in Belfast, saying how the banners that the protestors outside might be shocking but they are still allowed to carry them. (Field notes, 11.06.15)

For more technical aspects of the law, like the formula to be applied for qualified rights, trainers seemed less comfortable and relied heavily on the College of Policing curriculum. On the concept of proportionality, for instance, trainers explained the need for a link between the measures and the legitimate aim, reading out the considerations verbatim from the public order manual and bluntly telling the commanders: "You must be cognisant of these when planning. It's in APP [Authorised Professional Practice]. Look for it." In an effort to make this policy meaningful, officers were shown short video clips of public order scenarios. The responses of the Inspectors suggested, however, that the structured thinking and precise terminology trainers recited to them had already faded into the background. To be fair, clarity of understanding was not helped by encouraging trainees to make impressionistic judgments based on the police actions and decision-making they could glean from the short video clips.

Most interesting was how trainers presented cases that were both trickier to grasp and more contested. It is in these situations that we might think more deeply about what it means to translate human rights law for police as practitioners, applying principles 'on the ground'. Take, for example, the cases of *Austin v Commissioner of the Metropolis* (2009) and *Austin v UK* (2012), which reached the Appellate Committee of the House of Lords (UKHL) and ECtHR respectively. The issue was whether the police containment of thousands of protestors and bystanders in a confined urban area for up to seven hours in cold conditions in order to prevent an imminent breach of the peace amounted to an unlawful deprivation of liberty under Article 5 ECHR. Ultimately, both courts held that the right to liberty was not engaged by the 'kettling' of the protestors. In command training, the points deduced were practical ones, stated plainly and without controversy by trainers:

[31] There were not, for example, any instances where trainers inaccurately adopted the dissenting minority judgement as the law or presented the lower courts judgment, cf. Dixon (1997: 278-9).

"containment is a gold consideration. Provided the tactic is used in good faith, proportionate to the necessary situation and enforced no longer than necessary it's lawful"; "the Bronze will have to be working with the Silver for this to work properly"; "you should be thinking about things like access to toilets or the weather, it's a hot July, will there be water for them?".

Another case, *R (Laporte) v Chief Constable of Gloucester* (2006), concerned anti-war protestors intercepted by police on route to a military air base. Rigorously applying the standards of Article 11(2) ECHR, the UKHL held that the police use of breach of the peace to send protestors back to London failed the standards of 'proscribed by law', 'necessity' and 'proportionality'. Central to the reasoning was temporal proximity. The breach of the peace had to be 'imminent' at the point of police intervention: that is, the violence had to be "about to happen" and not just "anticipated to be a real possibility". Yet, no clear view emerged from the judgment as to what these terms really meant. How did this ambiguity impact on the police translation? The trainers turned to the expertise of another 'translator', showing commanders an email from the PSNI's human rights lawyer, which identified factors police ought to consider in light of the UKHL's discussion of 'imminence' – for example, whether it was the last opportunity police had to take preventative action. Officers were told to write down the lawyer's number: "if you have any questions phone him and he'll get back to you, he's been very supportive in putting together the training. The advice of our legal advisor takes precedence over the cases we've mentioned". The *R(Laporte)* case was soon followed by reference to *R (McClure and Moos) v Commissioner of the Metropolis* (2012), which concerned whether a Metropolitan Police commander had reasonably apprehended an imminent breach of peace and the proper approach of the court in making such an assessment. The case was summed up by the trainer: "the case of Moos and McClure. The Met are at fault. Met appealed. All these fancy barristers paid loads of money to make the police look awful. But it was upheld on appeal that it was an honestly held belief by the police officer and that it was proportionate and in line with human rights." (Field notes, 11.06.15).

In translating these three leading authorities, police trainers prioritised their operational application and deemed finer points of law and broader concerns of constitutional principle academic (in both senses of the word). In academic scholarship, the *Austin* judgments provoked discussion over the court's premature assessment of proportionality and purpose of the interference to determine the very ambit of the right to liberty (Fenwick, 2009; Dickson, 2013; James and Pearson, 2015). Criticism has also been levelled at the excessive deference to the executive resulting from the court's reasoning. As argued by Fenwick (2009: 757), "[t]he impression given by all the judges involved in *Austin* is that they were seeking, after

the event, and in reliance on doubtful and convoluted reasoning, to find a justification for the police action". Similarly, in *McClure and Moos*, the Court of Appeal of England and Wales (EWCA) can be criticised for proving reluctant to meaningfully scrutinise decision-making, applying a test which is deferential to police, and relying on a subjective assessment of decision-making considering what the officer knew and perceived at the time, provided their evidence seems honest and accurate[32].

But does it matter that finer issues of law and broader points of principle were lost in translation? One police trainer acknowledged: "on a command course we're saying… we could spend days debating, and I'm sure if you went to Strasbourg you could spend the rest of your life discussing it, but when it comes down to the basics, for operational people, this is what you need to know". Indeed, for training generally, the NIPB's legal advisors have consistently promoted the practical delivery of legal tests and the value of applied, scenario-based learning[33]. Although such pedagogy undoubtedly has merit – most obviously, it makes rights meaningful and practically applicable for police as practitioners on the ground – from my observations, a more contextualised account (debated for minutes, not days) might be important for further promoting a positive culture of human rights. If a typical fear amongst officers is that human rights limit their ability to police effectively and firmly, then, if presented in terms of the role and extent of the court's oversight role, cases like *Austin* and *McClure and Moos* are an opportunity to reassure officers that the courts are interpreting human rights in a way that is sensitive to operational discretion. Conversely, *Laporte,* could be taught as a rare reminder that breach of the peace, as the go-to police power of choice and as wide-ranging as it is, should be used with greater precision (Fenwick, 2009).

More critically, in the absence of a closer analysis of the substantive scope of human rights, the inspectors seemed to be left relying on a 'gut feeling' of the ambit of ECHR articles. During a mock scenario, for example, officers were considering if the stoning of a football supporters' bus raised human rights issues:

> INSP. A: How about Article 3?
> INSP. B: No, it's not torture! It's an Article 2 issue.
> INSP. A: It's inhumane though!?
> INSP. B: No, it's in relation to the state, not this sort of stuff where it's groups of people doing it to each other. (Field notes, 13.06.15)

[32] Consider how the court approached the officer's assessment of possible disorder, such that the consequence works in the officer's favour regardless of whether the prospective outcome occurred: "The mere fact that an anticipated or feared happening did not, in fact, occur, rarely can safely provide any support for the contention that it was not reasonable to anticipate or fear that the happening would occur; however, as we see it, the fact that the happening did, in fact, occur can properly be cited in support of the contention that it was reasonable so to anticipate or fear." (Lord Neuberger, para 89).
[33] See, e.g., NIPB (2009: 111) and NIPB (2010: 57).

In another scenario, officers were grappling with what to do about football supporters misbehaving on the way to the football stadium:

> Officers were told that supporters were urinating and throwing litter in gardens of local residents. They were trying to decide whether or not to deploy uniform officers in the area to try and do something about it. Having decided to do so, they were faced with typing up the rationale for their decision on the computer. The officer typing explained he was going to record it as 'protecting human rights of the residents' and in an easy manner spoke aloud 'Their right to private life… that's article 8. Oh, and Freedom of Movement – the rights of both sets of football supporters too'. (Field notes, 13.06.15])

This kind of headline reading of the ECHR was apparent again in another group, when one officer got out their mobile phone out to search the HRA 1998 online. In an effort to impress the trainers, and slightly in jest, the inspector told his fellow trainees: "Aye, articles 9,10,11, put them down!". Although it is encouraging to see aspiring commanders attuned to ECHR considerations, the detachment from legal standards in these instances tended to result in a superficial, if not inappropriate, application of broadly worded articles of the ECHR to the facts, which undermined the ability of the law to regulate police conduct.

The 'Bridgers'

Command training was, however, just the beginning for the inspectors I observed. They would have to prove their mettle in the final course assessment, as well as future public order events, where their senior colleagues would determine who was up for the task. In interviews, the accredited bronze and silver commanders emphasised the importance of experience, especially when it came to the use of tactical options in periods of public disorder; it tended to be the seasoned, capable commanders that would be called on to police contentious parades and protests. In this way, the assessment and recruitment of commanders can be understood as another component of police self-regulation. With refreshers courses and operational exposure, commanders benefitted from the human rights law expertise of other actors in the PSNI, actors which a silver commander referred to as the PSNI's 'bridgers'. These were police staff and officers with knowledge and expertise of both human rights law and police practice and were able, therefore, to bridge the two.

The first 'bridger' was the PSNI's human rights lawyer, a solicitor with considerable experience in the field of policing and security, who provided the authoritative voice of translation of human rights law for the PSNI's commanders. Police legal departments, although rarely mentioned, are a significant source of legal knowledge and a conduit for informing officers of updates in case law and legislation (Dixon, 1997: 278-280). Throughout the earlier period of reform, the police

lawyer played a direct role in providing training programmes rolled out for all officers involved in operational planning and command of public order events. These courses were a form of what Chayes and Chayes (1985: 280) have referred to as "preventative law" whereby in-house lawyers attempt to insert legal standards and considerations into the earliest stages of decision-making.

In 2005 and 2006 the lawyer led three days of training on the amendments introduced by the Public Processions (Amendment) (NI) Order 2005[34] (NIPB, 2006: 58; NIPB, 2007: 117). Since 2008, short, intensive refresher courses have been delivered to up to sixty officers each year, outlining the legislative framework for parades and protests, the relevant human rights law standards and the key developments in public order cases (NIPB, 2008: 119). Officers were required to apply their knowledge of the legal framework and police powers to practical operational planning, and after completing each exercise, they were then debriefed and discussions were led by the human rights lawyer (NIPB, 2010: 55). These courses played a primary role in equipping the script writers with up-to-date knowledge and expertise beyond that provided in the specialist command courses. Notably, the lawyer's legal translation was incorporated directly into the police script when a decision was made to replicate the course material in the gold strategy (NIPB, 2008: 120).

When it came to the Gold and Silver Commanders' tactical and planning meetings, commanders stressed how the human rights lawyer would be "a part of the furniture, part of the team – a trusted and well-liked member of the team, who's known to give sound advice regularly" (Bronze Commander Cliff).[35] Commanders explained that they would ultimately be the ones who would make the operational decisions, but the human rights lawyer would be an "active player" whose advice "certainly goes a long way" to informing the approach taken. Commanders expressed how useful it was to have someone who could help them get a sense of issues like the level of tolerance police were expected to show in facilitating protest activity or the legal powers they had to restrict protestors' movement (e.g., whether breach of the peace could be used, or more specific legislation was more appropriate): "we've used him very practically. What is the terminology? What does it mean by imminence?" (Bronze Commander Cliff) and "they would tell you the kind of out workings of case law, give you their interpretation […] there's certainly room within that if you needed to go back and further debate the point or expand upon it" (Bronze Commander Daniel). This easy access to human rights legal advice, available 'on demand' throughout the strategic planning stages of operations, was

[34] The Order amended the Public Order Processions (NI) Act 1998 to enable, amongst other things, the Parades Commission to impose conditions on "any persons supporting" a parade.
[35] The presence of PSNI's human rights lawyer at these meetings has also been recorded in the NIPB's Human Rights Annual Reports (see, e.g., NIPB, 2007:123).

heavily encouraged by the NIPB's legal advisors as good practice for contentious parades (NIPB, 2006: 61).

In-house lawyers' familiarity, immediacy and continuity with the organization allows them to inject legal standards and opinion into routine decision-making, reinforcing pro-social aspects of workplace legalisation (Edelman and Suchman, 1999: 970). Commanders emphasised that in planning meetings there was time and space to "throw ideas round a bit" and seek clarification on particular ECHR standards. As Silver Commander Brian explains:

> Say we're going to put a block in at the exit of a roundabout or street, we're going to put a barrier in – we're thinking about the right to privacy of the nearby residents, blocking access to road users, are we blocking access to arterial route, are there other routes that we could block instead, what are options and alternatives are there to that barrier? In the slower time of planning meeting we can think about all of this, we don't have the split second-decisions to make.

With a select few senior officers regularly performing silver command roles for big events in recent years, their continued exposure to legal advice led them to believe they had improved their understanding far beyond that taught in command courses. They described having had to confront many scenarios that required discussions with their human rights lawyer: "we've been round the cycle in Northern Ireland, we've been right form that low-level sight and sound piece all the way round to serious disorder and all the way back round again, and we understand what each phase looks like and what the priorities are" (Silver Commander Brian). Consequently, although commanders admitted they would "never feel entirely comfortable talking to anybody whose specific focus is human rights legislation" (Silver Commander Andrew), they were accustomed to, and comfortable with, hearing case law and detailed considerations of ECHR standards from their lawyer. Over time, this created a solid foundation that experienced commanders could draw upon and feel confident about when incorporating human rights law into the powers and policy section of their plans, rather than just copy and pasting the HRA 1998.

The particular skill that commanders thought their lawyer had was the ability to take a "pragmatic approach" that identified the legitimate police objective and walked officers through how they could reach it, bearing in mind potential challenges. As explained by Silver Commander Brian:

> I have become increasingly aware that perhaps the policing approach to human rights is very pragmatically based and that's where we would tend to differ from others in the legal profession who are much about a paper-based exercise and that where the likes of [NIPB legal advisor] and [PSNI human rights lawyer], who can inhibit both sides of the world, are of such benefit, because they can translate both. I think the key element is that interaction.

Such interaction was necessary, Silver Commander Andrew reminded me, because "we're cops and cops have a broad knowledge of legislation but we're not trained like lawyers". Being "trained like a lawyer", commanders thought, brought with it unique knowledge and expertise. They made reference, for instance, to documents sent by their lawyer, offering specific commentary on the interpretation of 'lawful' and 'peaceful' protest under Article 11 of the ECHR and a condensed version of case law and legal opinion that was "really effective, practical guidance".
of case law and legal opinion that was "really effective, practical guidance".

The working relationship between legal teams and organisations has been singled out as an area of concern. Edelman and Suchman (1999) argue that organisations are powerful engines of socialisation (see Chapter 3) and the more embedded lawyers become, the more likely they are to use their legal expertise to secure, rather than challenge, organisational goals. Legal teams can use their talents to make organisations more skilfully evasive and equip them with legal justifications that are skewed to satisfy the exigencies of the organisation (Dixon, 1997; Edelman and Suchman, 1999). Suspicions of this kind of co-option have been voiced by outside observers of the PSNI, and commanders themselves did suggest, albeit in coded fashion, that they could draw upon legal advice to inform, if not realise, police goals. One example involved the assessment of proportionality made in the context of qualified rights. A commander explained how they had learnt from their lawyer to emphasise the seriousness of the police objective for big parading events. By suggesting, for instance, that "the whole rule of law in Northern Ireland is at stake and if that falls to the wayside, here are the potential consequences, even demonstrating that rationale immediately changes the proportionality discussion and debate and lifts it up", police tactics could appear more proportionate, and therefore defensible, in the context provided by police.

In another example, commanders described being tasked with policing a Parades Commission determination that would have resulted in Loyalist marchers passing through a particularly contentious Republican area at a time when community tensions were already high. On the day of the event, rival factions gathered, and notorious characters were spotted within the crowd. Surveying their options, the command team realised the danger of violent clashes was so high that they might need to set aside the Commission's determination and stop the marchers from continuing down the route. Aware that this would be a controversial decision, they did not want to "bluff it" and described how they searched for a strong legal basis that could justify contravention of the determination. In consultation with their human rights lawyer, the commanders worked through their options. Drawing on the legal advice, a decision was made (and the rationale written up) to restrict the march because of the fear of an imminent breach of peace, with particular

efforts made to demonstrate the factors what met the definition of 'imminence' as set out by their lawyer.

In the busyness of the command room, the PSNI's human rights lawyer was present alongside other actors, including firearm advisors, press officers, intelligence officers, staff-officers, loggists and camera operators, as well as the NIPB's human rights legal advisor. Based on the accounts of those present, the lawyer played a secondary role at this stage, and was there to answer any specific questions commanders had. When it came to giving advice and information, the second 'bridger' of law and practice seemed to be at the fore: a core team of accredited public order tactical advisors. These junior ranking officers (who were also public order command trainers) came equipped with a robust knowledge of the capabilities of various tactical options, the legal authorisations and policy guidance for using them, and the key public order legislation. The use of tactical advisors is encouraged by the PSNI's own policy, which requires commanders to consider the involvement of advisors at the outset of the planning stages for every operation that may present public order concerns, and where a decision is made *not* use them, the rationale must be documented by the commander (PSNI, 2013c: para 13.116). Once a tactical advisor has been requested, they must be involved in all relevant planning meetings, including at gold and silver levels.

A tactical advisor I interviewed described their role as providing a safety net in the heat of the command room, pointing out any errors or encouraging commanders to fully flesh out their rationale for a decision. As they explained, this is because "commanders say 'Get that done!' 'Get them moved!' and it might be the job of the tactical adviser to say, 'Well you've got this […] legislation, you can close the road'". I observed this first hand in the silver command room at a multi-unit training day, which brought together TSG units, police dog units, Attenuated Energy Projectile operators and Water Canon teams to practice riot scenarios. In a room equipped with sixteen screens offering a live feed to the mock-up village (where disorder was scheduled to build and then erupt), a newly minted silver commander was watched carefully by a tactical advisor, who pushed the commander to verbalise his rationale for decisions and make more explicit reference to the ECHR. Pulling him aside at the end of the session, the tactical advisor reminded the commander that decisions were being recorded live and could not be amended later, so legal authorisations for the use of force needed to be verbalised accurately and contemporaneously with the decision. It was through this process of appraisal and tactical support that commanders became well-versed and rehearsed in managing trouble, something we turn to in the following chapter.

Conclusion

In the conclusion of *Liberty and Order,* Waddington (1994) weighed in on the debate at the time over whether democratic rights should be elevated to codified, constitutional principles. His answer was a firm 'no'. Public protest was a political phenomenon, subject to political processes that were irreducible to a set of principles capable of universal application – and besides, the police had a widespread, albeit rarely articulated, commitment to liberal democratic values anyway (Waddington, 1994: 205). The last two decades have proven otherwise. Waddington's dismissal of codified rights now stands in stark contrast, firstly, to the introduction of HRA 1998, and, secondly, to the influential reports of statutory and parliamentary authorities in recent years, which have continued to call for human rights law to be at the core of public order policing in the face of critical findings (ICP, 1999; HMIC, 2009, 2011; JCHR, 2009). In this chapter, I began to examine the impact of this shift towards human rights within the operational context of N.Ireland's contentious parades and protests, looking specifically at how PSNI commanders come to engage with, and make sense of, human rights law.

Human rights have been heavily integrated into public order policing not through legislation or a regulatory scheme, but rather the PSNI's careful crafted command structure and planning process, albeit closely monitored by NIPB's human rights legal advisors. Police commanders make a determined effort to write human rights law standards and principles into the police 'script' governing the policing of parades and protests. These standards and principles were interpreted with the help of the PSNI's trainers, legal advisors and tactical advisors, who bridge law and operational practice. It is significant that commanders, especially silver and gold, were some of the best educated, well-resourced members of the organisation and had learnt from their own experiences about the operational benefits of human rights. This learning process captures how senior ranking officers re-learnt human rights as a more technical regime of legal principles, cases and authorities, moving beyond the 'common-sense' narratives expressed so strongly by the likes of the TSG (see Chapter 3). Likewise, through their specialist role and sets of responsibilities, commanders enjoyed support, training and advice that helped them to understand the relevance for the roles they performed, something notably absent in the roles and experiences of the junior officers in the Neighbourhood Teams we met in Chapter 4.

If this is how human rights came to be so embedded within the PSNI's approach to public order policing, with the police script being the material product of the structured police planning process, the question we might now ask ourselves is why. What function did a legalistic script, actively promoted through a distinct

operational hierarchy, play in the context of policing N.Ireland's contentious parades and protests? In other words, how did commanders use this script 'in action' and what kinds of institutional, political or cultural factors help to explain how decisions were made when it came to its performance? The answer to these questions lie in the chapter ahead, which explores how the script and its rights terminology were actively performed in public order operations and, most significantly, the audiences to which the script was presented to and the circumstances in which this took place.

Chapter 6.

The Script in Action: Participation and Performance

> John was tired. He had been the gold commander last night and was up early again this morning. He shrugged it off as we made our way down the back staircase and joined his staff officer, Nick, who would be driving the bulky five-door Skoda. We turned left out of Police HQ onto Knock Road. John checked Twitter for anymore chatter while directing Nick along his preferred route. We weaved our way across Belfast, then straight, through the city centre. The sun began to fall. Streets were empty and few cars were on the roads. I didn't recognise the places I knew well. We crossed the Queen's Bridge towards the Short Strand, a Nationalist enclave in predominantly Loyalist east Belfast, driving alongside the barricades and metal fences police had erected earlier that day. TSG units were positioned along the strip of road marking the boundary between the two communities which had, for a long time, been at war. John put down the window and exchanged words with a few TSG officers, dressed in their jump suits. It sounded as if the operation was rolling out as planned. Once we finished surveying the route that thousands of Loyalist band members had been funnelled along hours earlier that day, we made a speedy return to Police HQ. Reports came in of growing tensions in the north of the city. I had never been in Belfast on the night of the Twelfth of July before. (Field notes, 12.07.2015)

Usually born and bred in N.Ireland, the PSNI's public order commanders were acutely aware of the sensitivities surrounding parades and protests. The ghosts of public disorder past were also lodged in the PSNI's organisational memory (Mulcahy, 2006). Commanders spent much of the year with one eye on the public order operations that well-known loyalist or republican events would generate from Easter onwards. Scribbled down the side of a whiteboard that hung in Silver Commander Derek's office was a list of over twenty high-profile parades taking place in the coming months, next to which was a roughly sketched outline of the most contentious part of the parade route. He knew it took exactly 27 minutes, at marching pace, to pass by this volatile part. As he reminded me, such events were the PSNI's "bread and butter stuff". The aim was to police the Commission's determination with minimal disruption and casualties, all the while ensuring community expectations were carefully managed. As one Assistant Chief Constable publicly remarked: "We define success on the night [of the parade] as nobody gets hurt, everybody get home safely, no damage, and as limited disruption to the city as it humanely possible." (Public Session, NIPB, September 2014).

In this chapter, I examine how the public order script, explored in Chapter 5, was performed by commanders. At certain junctures in this performance, the

PSNI's script was exposed to the scrutiny of outside audiences. I begin by exploring how commanders sought to sell the script to one such audience: the parade and protest groups commanders sought to, in Waddington's (1994: 101) terms, "win over". If such groups could be won over with the PSNI's pitch, the likelihood of disorder was greatly diminished and commanders could better control the event. In some cases, however, the sales pitch proved unsuccessful; marchers and protestors proceeded with their own agendas. In such instances, commanders proved reluctant to intervene too forcefully, for reasons we will come to understand. In two high-profile instances, the police approach to disorder has led to legal challenges, both of which reached the UK's highest court. This introduces the second audience occasionally in receipt of the police script, the courts, which must assess the internal self-application of human rights law by police. As will become clear, though, the senior judiciary have proven relatively reluctant to interfere with police decision-making, a space respected as one of 'operational discretion'. In the final section, I ask what role human rights law has come to play in managing the kinds of 'trouble' that Waddington (1994) identified over two-decades ago as crucial to commanders decision-making. It is argued that human rights law, contained in the police script, has been skilfully deployed by commanders to manage 'in the job' trouble emanating from these external audiences.

Selling the Script: Community Engagement

The sales process was a year-round exercise in community engagement led by senior officers.[36] It was motivated by the same desire for control that the commanders in Waddington's (1994) study were so keen to exert over events that risked disorder or violence and the 'trouble' associated with it. The focus of the PSNI's Commanders was on the local level, as they tried to identify and strengthen ties with the "true voices" and "key influencers" in communities (Silver Commander Charley). This outreach was extensive, strategic and resource-intensive, as explained by Silver Commander Andrew: "when I formally start to engage formal planning meetings for that event, the starting point will be to look at all that information with a view to saying right who is that we need to engage with, what are the gaps?" Commanders described how a plethora of interests could be involved in just a single parade, requiring commanders to foster links with the Orange Order, local churches, as well as community representatives and residents' groups. This was "all

[36] On the role of senior officers in holding discussions and consultations with parade organisers in the lead up to big events, see also NIPB (2007: 123-142) and HMIC (2009: 77-79).

about this rich picture of what are the actual views and dynamics within the community at that given time", said Bronze Commander Daniel. With input from community representatives, Commanders sought to improve their knowledge of the groups involved, understand the groups' intentions and assess the likelihood of disorder. All of this factored into a police assessment of the "threat and risk" attached to the parade and how to best facilitate peaceful assembly and protest.

A central insight from interviews was how commanders connected the right to peaceful assembly under Articles 9-11 with Article 2 ECHR (the right to life). Article 2 imposes a positive obligation on the police to take all reasonable steps to avoid a real and immediate risk to life (*Osman v UK* (1998)) and to plan operations in such a way as to minimise the likelihood of recourse to lethal force (*McCann and others v UK* (1995)). When it came to contentious parades where the risk of disorder loomed large, Silver Commander Brian explained that Articles 9-11 and 2 were "two sides of the scales". First, if police could help marchers/protestors to exercise their right to peacefully assembly (in accordance with the Commission's determination) in a way that participants felt was appropriate and fair, then the likelihood of violence and disorder flaring up was greatly diminished. This, in turn, meant the positive obligation to intervene under Article 2 to protect marchers/protestors from seriously injuring or killing one another, or police officers, was less of a live issue. Second, on the other side of the scales, if there was intelligence suggesting a risk of serious violence at parades/protests (in some occasions due to paramilitary involvement) then, again, under Article 2, the police had to be prepared to intervene with tactical options to protect those marchers. In using these tactics and responding to the threat assessment, police might necessarily interfere with democratic rights of marchers/protestors.

The relationship between the risk of serious violence and the exercise of democratic rights is an important one recognised by the ECtHR in its Article 11 jurisprudence. The likelihood that a demonstration will provoke a violent response in others does not prevent the demonstration from being 'peaceful' per Article 11 (*Ziliberberg v Moldova* (2005)), and demonstrators have the right to participate without fearing they will be subjected to physical violence by opponents (*Plattform Ärzte v Austria* (1988)). Conversely, if organisers or participants do have violent intent, then this is relevant in determining whether their assembly is no longer 'peaceful' per Article 11 (*G v The Federal Republic of Germany* (1989)). During N.Ireland's most contentious parades/protests, violent clashes frequently occur between rival groups intent on seriously injuring one another and the PSNI officers standing between them. Commanders explained the best way to uphold their obligations under Articles 11 and 2 ECHR was sustained engagement with parade/protest organisers in the days and months leading up to the event.

With these types of human rights considerations written in the script, Commanders returned to communities to explain what the police operation would look like and to address community concerns or disagreement. In practical terms, commanders described meeting organisers with their iPads, showing them visual representations of where police units would be and explaining to them the thought process behind it. This approach, captured by the police mantra of "no surprises", is in the spirit of procedural fairness and seeks to give organisers a voice (HMIC, 2009; Orde, 2009; Stott et al., 2013). A special concern of community groups was how the Commission's determination had been interpreted[37]. In contrast to Waddington's (1994: 96) study, where the law was hardly ever mentioned for fear of alienating organisers, from PSNI commanders' accounts of their meetings, the issue of democratic rights and police powers was at the top of the agenda because of the restrictions often placed on parades/protests by the Commission. Organisers were keen to know how police would respect and protect their right to march/protest:

> The Parades Commission determination says basically the parade will not pass the end of that junction, so then you get right down into the microscopic detail of where exactly does the junction end… we've sat down the community and said, 'Well, actually, my view is that see this fencing, the line will run from there across this traffic island and then it will track the white line of the road to there, and that's where the police line is gonna be'… there's just a contest around where people think they're entitled to come to, and again, that has largely been avoided now because we've had that dialogue and engagement to say, 'Don't be surprised, we'll be on this line, we will give you as much as the determination says you're entitled to and we'll make sure you can see the parade', because that's actually what they're interested in. (Bronze Commander Daniel)

Event organisers generally understood the division of labour between the Commission and PSNI, according to Commanders. The main issue, noted in Chapter 5, was that organisers' anger and frustration at any restrictions the Commission had placed on events was quickly re-directed at the police as the organisation tasked with upholding them.

Commanders' primary concern was whether the "style and tone" of the police operation risked raising tensions or sparking disorder. Meetings with organisers provided important opportunities to test the water and see if police had got the "optics" right. The first police priority was to "appear neutral" in their deployment of resources. A common point raised by commanders was the direction that police Land Rovers or officers faced. Communities felt that if police officers or vehicles were facing them, then they had (unfairly) been identified as the trouble-makers. Based on this feedback and keen to avoid provocation, commanders deployed lines of police officers in alternate positions so they faced *both* communities. The second priority was to minimise the police "footprint" or "profile" so as to create the most

[37] The ambiguity in the wording of the Commission's determinations has been a major concern identified by the NIPB's legal advisors for some time (NIPB, 2005, 2006).

benign environment possible. The mere appearance of Water Canon or TSGs could be enough to enflame the situation. Efforts were made, therefore, to keep these tactical options close by, but out of sight. The situation was not always clear-cut, however. One year, police thought that deploying officers in ordinary, high visibility uniform to marshal a group of marchers past a contentious flashpoint would de-escalate the situation. Yet, in the eyes of the parade organisers, this signalled that the PSNI was ill-prepared to protect their marchers and they asked to be accompanied by officers in protective public order uniform.

What about situations where the police were unable to sell the script to malcontent protestors? How did this impact on the police response given the link commanders made between Articles 9-11 and Article 2? The scenario commanders feared was one where protestors refused to engage with them. Ignorant of the protestors intentions, the numbers involved or the likelihood of violence, Commanders feared "running blind" and "sailing into trouble". An apt example is the Anti-Internment League parade in Belfast, which involved groups suspected of being aligned to dissident Republicanism who refused to liaise directly with police. In these situations, commanders felt forced from their default position: "it is their event, we facilitate it. But if it becomes an unknown and from our intelligence we reckon it could lead to disorder, then we end up having to control it" (Silver Commander Derek). Not knowing what to expect, but fearing disorder, commanders prepared for the worst, often "over-policed" the event by deploying large numbers of TSG units in protective uniform. PSNI Chief Constable Sir Hugh Orde (2009: Ev.31) explained this well, in his typically pithy style: "If they choose to engage: great. If they do not, then you know what you are dealing with and you police in a different way, and you would certainly see a harder edge to policing.". This explanation chimes with Waddington's (1994) account of policing 'the opposition': organisers who refused to 'play the game' and acted outside the boundaries of peaceful protest were less predictable, less controllable and, in turn, more likely to confront a coercive style of policing.

Over-Facilitating (Un)peaceful Protest?

The most challenging situations for the PSNI have arisen where protestors have not only refused to negotiate with them, but have taken part in illegal parades with significant impact on the rights of residents and, potentially, the wider community. There have been two important cases to reach the House of Lords (UKHL) and Supreme Court (UKSC) in recent years, brought by community members who felt the PSNI had *over* facilitated the right to protest at the expense of their own rights.

Both cases throw into sharp relief how the PSNI balance competing rights and, specifically, whether they may justify a non-interventionist approach, or defensive approach, to disorder notwithstanding their positive duty to protect the rights of those in the vicinity who may be affected by parades /protests. These cases signal a shift in the site of human rights law determination from internal self-regulation by the police to external regulation by the judiciary. In this section, we explore how the courts have approached their review of the PSNI's performance of the police script and how commanders experienced this external intervention by the courts.

In the first case, which reached the UKHL in *E v Chief Constable* (2008) and the ECtHR in *Pf and Ef v UK* (2010), Catholic pupils and their parents were viciously attacked by a Loyalist mob over a two-month period in 2001 as they walked to and from Holy Cross primary school in an interface area of north Belfast. The school-children's parents refused to use an alternate route proposed by police that would have avoided the Loyalist housing estate. After attempts by senior police and local politicians to negotiate an end to the protest failed, the police settled for an approach that contained protestors and provided a safe passageway for school goers to walk through. At its climax, 400 officers and 100 soldiers were deployed to protect the children and their families, using tall shields to deflect missiles. 41 officers were injured. The mother of one pupil argued the police's defensive strategy had been insufficient. She sought a judicial review, claiming, *inter alia*, the police had failed to fulfil their positive duty under Article 3 ECHR (freedom from inhuman or degrading treatment). This duty requires the police to protect people from a real and immediate risk of harm. The argument was that police should have forced protestors back and made more arrests, which would have served as a deterrent and brought about a speedier end to the protest.

In responding to this legal challenge, the police's central argument was that their defensive approach, which the applicant's argued breached Article 3, was in fact justified because a more robust approach would have risked sparking serious disorder that could have threatened the lives of those in the vicinity and wider community. The issue before the UKHL and ECtHR was whether the police were entitled to consider risks to those in the wider community, as well as in the immediate vicinity, when deciding how to protect the applicants from illegal protests that were interfering with their rights. Both courts decided that the police they were entitled to do so.

The UKHL emphasised that the positive duty was neither absolute, nor did the statutory duty to prevent crime require police to intervene in every occasion where an offence was committed (*E* para 48). Both the UKHL and ECtHR extended to Article 3 the principle laid down in *Osman v UK* (1998) (concerning the positive duty under Article 2), in which the court stated:

> [B]earing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. (*Osman*, para 116)

In assessing how police responded to periods of disorder, both Courts placed great emphasis on the wide operational discretion that must be granted to police given their unique expertise, experience and the intelligence available to them (*E*, para 58).

How are we to make of these cases? Undoubtedly, they have served to legally galvanise the police's defensive approach to public disorder. They have also carved out a space for decision-making that is properly the preserve of the police under the banner of operational discretion and expertise. Within this space, the courts have empowered the police to apply their expert knowledge of tactical options and resources, alongside their growing awareness of the human rights standards attached to them, as outlined in the previous chapter.

The decisions of commanders, and the deference the courts are prepared to show them, became a live issue very recently in the case of *Re DB* (2017). The applicant was a resident of the Short Strand (a Nationalist enclave in predominantly Loyalist east Belfast) whose house was attacked by a Loyalist group involved in un-notified Flag Protests (introduced in Chapter 5). PSNI Commanders tried to persuade protestors to use the notification scheme under the Public Procession Act 1998 and even tried to encourage the Parades Commission to intervene and issue a determination (something they did not have the power to do). Both refused. Faced with un-notified, and thus unlawful, protests, the PSNI appeared unsure of the best course of action and whether they could, in law, prevent the parade from taking place or whether this was solely the preserve of the Parades Commission.[38] Ultimately, Commanders decided to allow the Loyalist protestors to travel in and out of the city centre via the Short Strand. Hundreds of officers were deployed to manage the protests and record evidence of offences taking place.

The protest lasted three months and over the course of several weekends protestors threw missiles at homes in the Short Strand as they returned from the City Hall. The applicant claimed, *inter alia*, that the failure of the police to actively intervene and stop the illegal protests violated their Article 8 right to private and family life, which the PSNI had a positive duty to protect. The PSNI's response was similar to that advanced in the *E v Chief Constable*: police non-intervention, and thus interference with Article 8 rights, was justified by their competing Article 2 duties

[38] As noted in Chapter 5, the police no longer have the power to impose restrictions on un-notified public processions or protest like those during the Flag Protests (see *Re DB* NICA 56, para 13 – 19).

to protect the lives of those in the vicinity. The argument went that if police responded more assertively (e.g., halting protestors, making arrests), there was a real risk this would have sparked serious disorder capable of threatening the lives of those in the vicinity and wider community. The thinking behind this was explained by Silver Commander Brian:

> They [Loyalist protestors] did it last week, they marched into the city centre and back out again and nothing happened and there was some disruption to the community in the city centre, so back to *Bukta,* back to *Plattform* – minor inconvenience has been tolerated and will continue to be tolerated, okay, so what are our alternatives? Well, it is an illegal parade and there is an argument to say look we can, we can stop it. […] Essentially your two options are: facilitate this march in the city centre or stop the march somewhere on the route. The primary place to stop it, bearing in mind your most likely conflict is likely to be around the Short Strand… the resources necessary to stop a march such as that – and I would suggest the likelihood of force meant that we would have had to have significant justification to do that, because we would have ended up fighting… arresting a lot of people, including police officers would have ended up getting injured… How does that make a resident of the Short Strand feel? I can't imagine it makes them feel great and this comes back to this issue of even in an effective rights-based decision, it's always going to struggle because in Northern Ireland article 2 is always going to be a factor on our paper.

We can see here how illegal protests were initially facilitated with Article 11 in mind (protestors' right to peaceful assembly, even in the absence of notification – see further below) but they were ultimately allowed to continue due to a fear of the potentially lethal consequences of stopping the protest, raising the issue of Article 2.

The High Court (*Re DB* (2014)) was highly critical of the PSNI's handling of the protest. Justice Treacy held that the PSNI's failure to intervene and stop the protests was a result of their failure to grasp their powers: the un-notified status of the parade meant it was a criminal offence and thus police had the power to stop the protestors, a position senior Commanders seemed unsure about. This PSNI's failure to intervene had the effect of undermining the Public Procession Act 1998 (which distinguished between legal and illegal parades) and the PSNI's duty under section 32 Police (NI) Act 2000 (to prevent crime), and violated the applicant's Article 8 rights. As the un-notified parades were unlawful and outside the protections of Article 11, the court "required the clearest possible explanation and justification for not taking appropriate measures" (*Re DB* (2014, HC) para 137), which the PSNI could not provide. Treacy J was sceptical that the fear of serious disorder was the true rationale for the police reluctance to intervene, suspecting it was really to allow protestors to "vent anger" outside the City Hall. Treacy J questioned whether there was sufficient evidence to substantiate the PSNI's claim that an Article 2 risk persisted at the time of the protests affecting the applicant, given they took place a month after the worst of the disorder (*Re DB* (2014, HC) para 122).

The case provoked concern amongst the PSNI's chief officers. Shortly after the High Court handed down its judgment, the then Chief Constable Matt Baggott

explained at a public session of the NIPB that he would appeal the judgment. This was "essential", he insisted, because, if left to stand, "it may constrain our operational flexibility in the future". Baggott continued: "We have to appeal this. I cannot have the expectation or implication that the police will always be able to take immediate and forceful action. It would require a far greater reliance on force and an uplift of resources to deal, there and then, with large crowds […] it's not a merely technical matter." (Public Session, NIPB, May 2014). The PSNI was concerned about the resource implications of being required, by law, to forcefully intervene, disperse crowds and make arrests in future situations where the rights of local residents were engaged by those taking part in un-notified protests. But the question for the appellate courts was whether the PSNI's failure to act more assertively had unlawfully infringed the rights of others under Article 8 to a peaceful existence in their home, free from violence and intimidation.

The Northern Ireland Court of Appeal (NICA) allowed the PSNI's appeal (*Re DB* (2014, NICA)). Giving judgment for the court, Lord Chief Justice Morgan relied heavily on the principles established in *E*, underscoring the wide area of discretionary judgment given to police. Accepting that Article 2 considerations to the wider community fell within this discretionary space, the issue became an evidentiary one: that is, in making decisions about how to deal with the un-notified parades, had the PSNI actually taken into account of the possibility of violence and disorder giving rise to Article 2 risks? (*Re DB* (2014, NICA) para 34. Morgan LCJ reviewed the transcript of the Gold Commander's *Irish News* interview, as well as the criminal justice strategy and the events policy book "in the kind of detail which was not opened to the learned trial judge" *Re DB* (2014, NICA) para 52). Based on this evidence, the NICA was content that the PSNI had not, in fact, felt inhibited by the Public Procession Act 1998; they were aware of the powers open to them to intervene in the illegal protests; and they demonstrated a clear commitment to gathering evidence against the worst offenders. In his short conclusion, which did not appear to apply the proportionality test under Article 8,[39] Morgan LCJ stated that in this "difficult situation", which had "left the police to manage such parades using public order powers rather than providing a tailored legislative scheme" *Re DB* (2014, NICA para 54), the PSNI had taken proportionate steps to protect the Article 8 rights of the applicant.

The NICA's judgment was handed down shortly before I began the fieldwork and was still fresh on commanders' minds. Some agreed that the Flag Protests could have been handled better, but, in their eyes, the NICA had rightly overturned the High Court decision and endorsed the PSNI's pragmatic approach "dictated

[39] The proportionality test is used to determine whether interference with a right can, nonetheless, be justified on the basis that is responds to a pressing social need and the measures adopted are proportionate to the legitimate aim being pursued.

by operational resilience and the realities" (Bronze Commander Daniel) in what was "new territory for us" (Silver Commander Derek). They emphasised the importance of protecting their operational discretion to act in such difficult scenarios. The commanders I spoke with expressed in similar terms the importance of the successful appeal in protecting police discretion: "Ultimately had we lost that appeal it would have put us in a very difficult position, practically in all sorts of ways" (Silver Commander Andrew) and "[w]e'll appeal it all the way to Europe if we have to, it's that important to us" (Silver Commander Edwin). This was a similar finding in Waddington's study (1994), in which commanders feared legal challenges could result in rulings that would constrain their operational discretion

How did Commanders think the NICA's decision had impacted on their ability to sell the police script? Whilst relieved the Court had safeguarded their operational discretion, they remained concerned that the legality of their defensive approach and the weight police attached to Article 2 meant little, if anything, to the groups they would have to negotiate with in the case of future un-notified parades. As Silver Commander Andrew explains:

> Yes, it [NICA in *Re DB*] did show that the way in which we go about things and make decisions set against human rights and all the rest of it, we weren't a million miles away and the Judge bore [sic] that out […]. So it was important we came out of that period and ultimately it was important that we won that appeal, but I think bottom line, practically, I'm dealing with some of the most sensitive parades in the country, issues which haven't gone away and issues which will continue to raise their head… and that decision of the court ultimately won't mean much – it means something to me because at the end of the day it vindicated a certain approach which will come to the fore again no doubt, but in terms of the communities most involved that doesn't mean an awful lot. Policing is what they see and feel on the street at the time.

In response to the PSNI's heavy use of human rights to explain their approach to the Flag Protests, the Committee on the Administration of Justice, a prominent local human rights NGO, published an information booklet (CAJ, 2016). Written for a general audience, it outlined the human rights standards relevant to public order policing and the PSNI's policies and procedures. Commanders were sceptical whether improved knowledge could overcome the cultural prejudices and divisions that had made agreement between the two communities so hard for so long. For instance, Silver Commander Brian contended that "anybody can teach somebody human rights, what you can't teach is an understanding that human rights are universal, so I hear a lot from people about their rights, I don't hear a lot from people about their understanding of the rights of others". In this way, Commanders were not immune from the ethno-political dynamics of rights talk, examined in Chapter 2, which presented one community's interests as irreconcilable with claims of their adversaries in the 'other' community (see also Curtis, 2014).

The story did not end with the NICA judgment, however. In February 2017, the applicant successfully appealed this decision before the UKSC, which found in

favour of the resident based on similar reasons as Treacy J in the High Court. The argument before the highest court shifted away from the Article 2 justification for police non-intervention in the protest (and the proportionality of the interference with Article 8) and back to whether the PSNI really *had* grasped the scope of their legal powers under the Public Procession Act 1998 in the first place. Giving judgment for the UKSC, Lord Kerr held that the Gold Commander had, in fact, failed, to comprehend that because of the illegality of the parade under the Public Procession Act 1998, the police had the power to intervene and stop it from taking place. As a result of this misapprehension, the PSNI had never meaningfully considered stopping the parade. This misapprehension alone was sufficient grounds to allow the appeal (*Re DB* (2017) para 70).

The judgment is significant in so far as it clarifies what precisely the police powers have to prevent parades where organisers fail to notify the Commission. The question that remains unanswered, however, is whether the PSNI was justified in the balance they struck between the resident's Article 8 rights and the Article 2 rights of those in the vicinity and wider community if violence erupted as a consequence of police intervention. In his judgment, Lord Kerr stated there would be "something of an air of unreality" (*Re DB* (2017) para 74) about discussing the PSNI's operational decision-making and the proportionality of its actions under Article 8 given the PSNI had wrongly construed their powers in the first place: "proportionality depends on context and the PSNI had set themselves the wrong context in which to make decisions" (*Re DB* (2017) para 74). But the UKSC was obviously sympathetic to what they described as the "enormous, almost impossible, difficulties" the PSNI faced. Whilst recognising that police operational discretion was not absolute, Lord Kerr gestured at the sentiments expressed by the UKHL in *E*:

> A definite area of discretionary judgment must be allowed the police. And a judgment on what is proportionate should not be informed by hindsight. *Difficulties in making policing decisions should not be underestimated, especially since these frequently require to be made in fraught circumstances.* (*Re DB* (2017) para 76; my emphasis)

If we conceptualise judges and police as interpreters and appliers of human rights law, the court was in no doubt as to who was the authoritative voice on the law. Indeed, Lord Kerr quickly corrected the Gold Commander's inaccurate interpretation of the scope of Article 11 (freedom of assembly, as mentioned by the Silver Commander Brian in the extract above). Senior PSNI Commanders, despite their specialist training and advice from 'bridgers', misunderstood that whilst Article 11 requires police to facilitate un-notified protests, this is only in 'exceptional circumstances', such as spontaneous events – something the two-month period of protests and parades in Belfast clearly was not (*Re DB* (2017) para 58-61).

In summary, these cases illustrate the deference courts will grant police when reviewing operational decisions like whether to intervene in situations of disorder, how to protect the rights of those involved and how the balance ought to be struck between competing rights of protestors, residents and the wider community. This operational discretion commanders enjoy in law is intimately linked to the practice of policing. As Kerr LCJ, as he was then, stated in the High Court judgment in *E* at para 46:

> It is precisely because the Police Service is better equipped to appreciate and evaluate the dangers of such secondary protests and disturbances that an area of discretionary judgment must be allowed them, particularly in the realm of operational decisions.

This viewpoint signals the importance of better understanding how officers learnt about and applied the law, which was the focus of the previous chapter's analysis. So too does it encourage us to think more deeply about the kinds of considerations, pressures and motivations that animate Commanders' decision-making within this realm of discretion. This is a key issue I explore further in the following section, using the decision whether to authorise use of force as such an example.

Performing the Script: Managing the Use of Force

The Holy Cross case and Flag Protests are a stark illustration of how Commanders' efforts to devise and sell the police script did not always result in peaceful parades or protests. In such situations, where Commanders feared provoking outbreaks of large scale disorder they could not control, there was minimal intervention and use of force. However, when isolated incidents of rioting erupted in the immediate aftermath of contentious parades and serious violence was directed at police, commanders have tended to resort more readily to force to push trouble-makers away from police lines, back in the direction of their own neighbourhoods. Figures released by the PSNI give an example of the range of options used to quell public disorder during the 2009 marching season: batons were drawn and used 91 times, CS spray was drawn and sprayed on 65 occasions, police dogs were used on seven occasions, 30 Attenuated Energy Projectiles (baton rounds) were fired, and Water Canon activated five times (NIPB, 2009: 101). The broader trend for the deployment and use of AEP and Water Canon – two tactics used almost exclusively for public disorder – is shown in Figures 7.1 and 7.2, which illustrate how higher levels of force remain a central feature of the PSNI's operational response to violent protest.

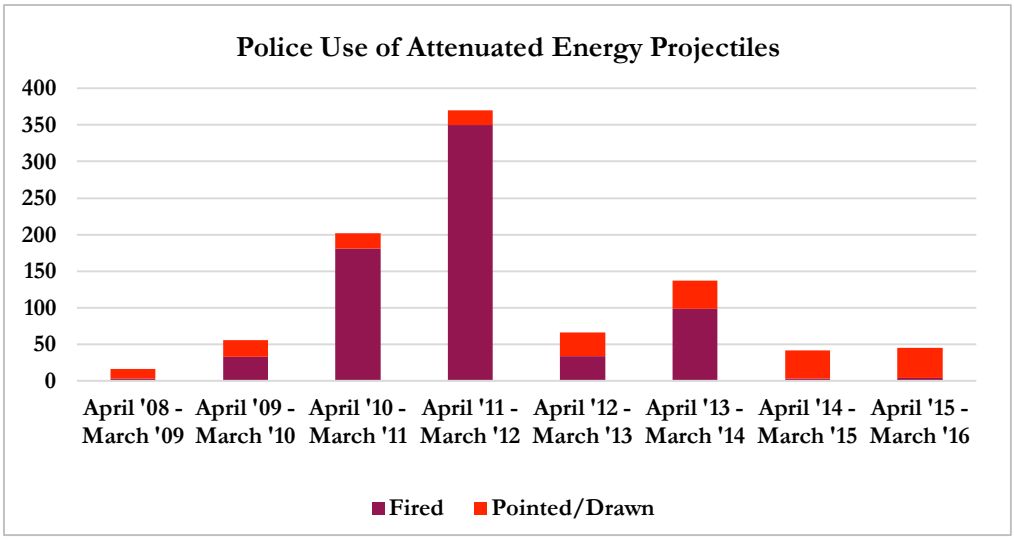

Figure 6.1 - based on PSNI use of force data 2008-16

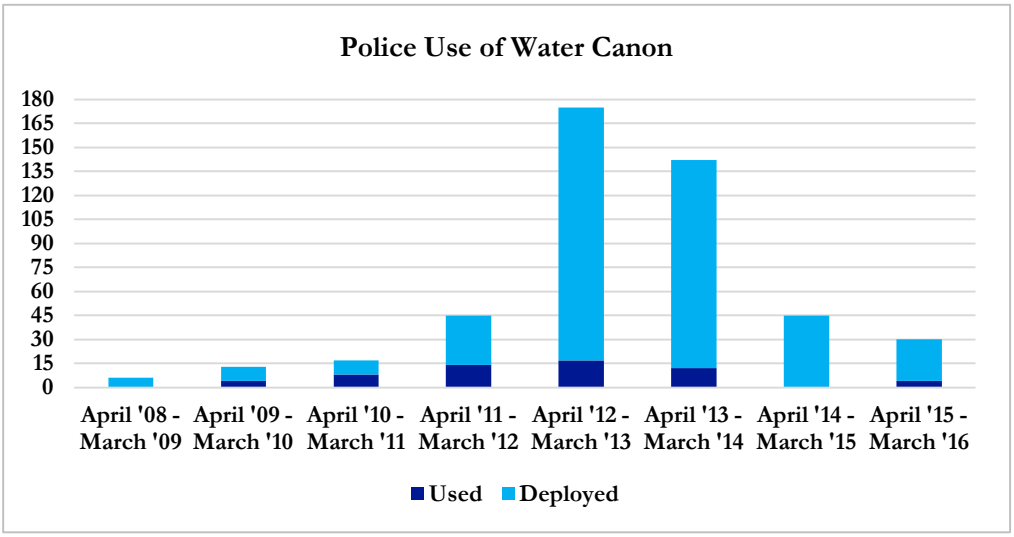

Figure 6.2 - based on PSNI use of force data 2008-16

Managing civil disorder poses a dilemma for police in liberal democracies because it challenges the twin bases of their legitimacy: impartiality and restrained use of force (Waddington, 1987). Forceful intervention against protestors invites allegations of police bias and brutality. Such complaints were levelled at the RUC throughout the conflict and remain a powerful oppositional discourse that adds to the sensitivity of police use of force today (Mulcahy, 2006). For Commanders, the decision to use force also throws up risks of professional 'trouble' associated with accountability inside and outside the police (Waddington, 1994). One PSNI Commander remarked how it was "the easiest thing in the world to make the decision to send in the troops and quell the violence". He continued that a good Commander would, however, opt for the "tougher decision" and restore order in a way that did not alienate communities but instead respected protestors' rights and withstood scrutiny. In this section, I explore the operational and organisational tensions that Commanders and frontline officers confronted in self-regulating the use of

force and interpreting ECHR standards. In doing so, I critically engage with Waddington's (1994) analysis of the role of law in the policing of protests.

The authorisation process

The authorisation of higher levels of police force is subject to a strict hierarchy governed by the gold, silver, bronze command structure described in Chapter 5. Taking the use of AEP as our example, for the most contentious parades/protests, the gold commander exercised their power to authorise AEP to be carried by TSG units, meaning it would be locked in a secure compartment of the Land Rover ('authorisation for carriage'). The police script on the use of potentially lethal tactical options was clear: although operationally available, AEP was not to be used unless it was absolutely necessary to protect life, as per the requirements under Article 2 ECHR. This criterion was explicitly stated in tactical and deployment plans, as well as the operational orders and use of force briefings. It was the job of Silver (situated in a command room) and Bronze (based with units on the ground) Commanders to determine whether it *was* absolutely necessary, depending on the level of violence meted out by rival groups and the injuries sustained by officers.

In interviews, commanders explained their distinct roles in the authorisation process, emphasising their reliance on the input and assessment of one another. The bronze commander's role was to provide a first-hand account of the crowd dynamics and officers' wellbeing and, if they felt it necessary, initiate requests for AEP. Having done so, it was the job of the silver commander to decide firstly, whether to permit officers to be armed with AEP ('authorisation to deploy') and secondly, whether to allow them to fire AEP rounds ('authorisation to use'). In essence, this was a process of self-regulation, whereby commanders asked their more senior colleagues whether the legal threshold for use force had been met. It was apparent that commanders could work together to make the authorisation process smoother and less vulnerable to external scrutiny from official oversight bodies. Bronze commanders described how they knew to use certain terms in their radio communications to "paint a picture" that could provide the silver with the information needed to "tick the boxes" of absolute necessity. In fact, three phrases had been taught to commanders after concerns authorisations were taking too long, something I experienced first-hand at the bronze command course:

> [T]hese boxes are [clicks finger several times] – we're not asking you to write it in triplicate and come along with a blood sample, we're asking you to justify the criteria… the Bronze Commander is asking the Silver Commander to trust them but the Silver Commander can't trust them if they're not getting the information. So you might come on and say: 'Eh, Silver, *serious risk of injury*, *I cannot withdraw*, *no other tactical options available*, request for AEP immediately' 'AEP approved'. But if you come on and say: 'We're getting it a bit tight here, I

> need plastic, I need plastic, I need plastic!' That's not giving you the picture. (Public Order Trainer; emphasis added)

From the relative calm of the control room, silver commanders underscored the need for this carefully sketched picture when devising their rationale for decision making. Silver Commander Derek explained that if signs of disorder appeared on the monitors and their bronze commanders seemed to be under stress, they would sometimes prompt them to describe on the radio the most relevant information with the justification for use of force in mind: "How do you feel? Are you taking missiles? How is it impacting on officers? How is it impacting on people's property? How big is the crowd?"

Given the well-known features of police culture– group solidarity, shared sense of mission, willingness to use force (Reiner, 2010: 118-332) – we might have expected a permissive approach to authorisations. That is to say, Silver Commanders would have trusted the assessments of their Bronze Commanders implicitly and been eager to arm junior colleagues under attack. Yet, despite the shared phraseology just mentioned, such solidarity was not something described as happening often in the context of authorisations for use of force. In fact, authorisation was a bone of contention between the Silver script-writer and police officers on the shield line. There were rumblings of discontent from TSG officers over the "marked reluctance" of their Silver Commanders to authorise Bronzes' requests for AEP. Many recalled experiences of being violently attacked on shield lines by rioters armed with bricks, bottles, petrol bombs etc., but still the use of AEP was refused or only permitted after delay. As summed up by TSG Sergeant David:

> It comes down to the silver commander making a decision that wow behold a rioter getting injured or killed and it's the police's fault, then it all looks on him, all the inquiries look at him as to why he didn't make this decision or that decision, they're happy just to hold the line, let the police take a beating, get this parade past or whatever it is and then soak away, just sort of withdraw.

Some TSG officers even believed there was an acceptable level of injury to public order units that Silver Commanders would tolerate before granting authorisations for the use of force. In the aftermath of particularly violent disorder, such as in 2014 when one in four public order officers reportedly sustained injuries, the Police Federation was quick to criticise Commanders, citing delayed authorisation for AEP as a "major reason" for the injury toll (McDonald, 2014). Interestingly, the TSG rarely felt confident enough to 'self-authorise' the use of AEP, batons or CS spray – an option available to them if they feared they or their colleagues were in serious danger. This option was described as "career suicide" because of the difficulty of justifying using potentially lethal force to accountability bodies and their own bosses (field notes, 04.12.15). As explained by TSG Sergeant Adam:

> Now you can under extreme circumstances self-authorise, which means if you believe that somebody's life is in danger you can fire, but in reality, for the officer standing in the line, and me as a supervisor behind them, it takes a lot of guts to self-authorise and fire. Normally you've to go through – and I can understand the commanders sitting in the stations, the famous picture has to be painted for them, as in why do you want to use this? Cause it is really a last resort, so you know that can be frustrating.

Silver Commanders were aware of these concerns but explained that AEP was a significant use of force they would not authorise lightly or without going through the requisite checks. There were stories of Silver Commanders using CCTV cameras to zoom in on incidents to examine for themselves whether the situation described to them by bronze commanders really justified AEP. Silvers emphasised the importance of demonstrating a "graduated response" that did not rise up the use of force continuum unless things "really did go from flash-to-bang" (Silver Commander Derek). They were confident officers on shield lines were sufficiently equipped to absorb a degree of riotous behaviour before AEP was necessary. Likewise, from their planning meetings and briefings, bronzes ought to know the contingency plans before resorting to AEP. In the mock command room, I observed as part of training how the Silver refused the bronze's requests for AEP on multiple occasions. It was explained to the Bronze over the radio that the use of police dogs and Water Canon would be deployed first. Further requests for AEP were made after reports came in of masonry being thrown at officers, but it was only when the jets of the Water Canon failed to quell the rioters that AEP was eventually authorised by the silver. This practice seemed to be the graduated response inspired by proportionality. For front-line officers, this style of approach was described in interviews as a "very defensive role… We're basically providing a focus for the rioters to tire themselves out" (TSG Constable Kevin).

The situation described by officers raises the question of why, at different levels of the police hierarchy, officers faced with the same public disorder, arrived at quite different conclusions on the justifiability of using higher levels of force. TSG officers and Bronze Commanders seemed to think the absolute necessity threshold for use of force per Article 2 had been met more often than Silver Commanders. Indeed, they thought that requests for AEP were received by Silver Commanders with some hesitation, even scepticism. How might we explain these differing assessments? And what does it mean for the application and function of human rights law in such circumstances? Most obviously, front-line officers, squinting through their protective visors at angry mobs of rioters, might perceive a greater sense of threat and thus stress the need for the relief that AEP could provide. Silver Commanders, after all, were in the comfort and safety of command rooms in police stations some miles away, or in the "ivory towers of the control room" as one TSG Constable described it. Moreover, Silver Commanders had better access to intelligence as well as legal and tactical advice, which allowed them to critically

evaluate Bronze Commanders' assessments. Although such explanations were noted by some junior officers, I found that the clearest explanation for the differing assessments of junior officers and senior commanders lay in their perceptions of the 'trouble' associated with particular tactical decisions.

Avoiding 'Trouble'?

The avoidance of confrontation with protestors was a central finding of Waddington's (1994) study. Confrontation was to be avoided because it risked disorder and increased the likelihood of police use of force which, in turn, created considerable 'trouble'. Such trouble was 'on the job' (legal challenges, political pressure) but also 'in the job' (promotion prospects, disquiet from junior officers) (Chatterton, 1979). This insight – "perhaps one of Waddington's most important contributions" to policing scholarship according to Stott (2016: 116) – has been explored further in two small-scale studies by Cronin and Reicher (2006, 2009). They found that commanders were "constantly aware of how, in a crowd event, others would judge their actions, and of the consequences these judgments would have for their future as police officers" (Cronin and Reicher, 2006: 190). It was only in situations of violent disorder that commanders perceived internal resistance and external critique of police use of force as sufficiently diminished to empower them to act. Furthermore, junior and senior officers were affected by audiences in different ways, depending on the real or imagined pressures they associated with them. Junior officers, less concerned with pressure from politicians, media or lawyers, were eager to intervene against aggressive acts by crowd members and were sceptical of the restraint imposed by senior commanders, who were far warier of the consequences of intervention (Cronin and Reicher, 2009).

The picture to emerge from my fieldwork provides strong support for these findings and offers insight into how officers perceived human rights law within the highly sensitive context of policing parades and protests. When it came to Silver Commanders' decision-making, TSG officers had a strongly held suspicion that two main sources of 'trouble' could explain their reluctance to authorise higher levels of force, neither of which were regulated by human rights law. The first source was community leaders and local politicians, who could be costly for commanders because they were often the same "key influencers" senior officers relied upon for co-operation and support with local policing issues in communities, from drug dealing to paramilitary attacks (see Chapter 4). The strongly felt views of TSG Constable Larry reflected those of many of his colleagues:

> They're trying to appease communities from the past. They're trying to appease these scrutinising bodies rather than trying to get on with the job and you can just get on with the job within the guidelines set out by the human rights, but they're too busy worrying about

> how it's going to look on the media or how Sinn Féin or the DUP or whatever political department are going to come on the news and show footage of people getting hit with a public order baton.

According to officers, this situation was especially evident when it came to using AEP against Nationalist/Republican groups due to the extensive and disproportionate use of plastic bullets by the RUC against these communities during the conflict.

Convinced Commanders were "scared of upsetting the wrong people" (TSG Constable Pauline) and "political backlash" (TSG Constable Owen), some officers described, with great frustration, how commanders were unduly influenced by requests, even demands, from community leaders. As TSG Constable Jay observed, "there's obviously a lot of stuff that goes on behind the scenes […] 'Well, if you move your line back to the junction of such and such a street, we'll get the boys to stop throwing stones and petrol bobs'". Officers were giving voice to Waddington's (2012: 472) insight that "the use of force in riot-control is as much a battle for legitimacy as it is for control of the streets". There was a strong belief within the TSG that threats to their safety were the cost of maintaining relative peace in communities. This sentiment was commonly expressed as the elevation of others' rights at the expense of police officers. During one focus group, an officer explained that "[i]t's all human rights going one way again. If anyone's human rights are being breached a lot, it comes down to ours. The conditions we have to work in and the big parades, that's the last thing on the bosses' minds, they don't care" (TSG Focus Group 4). Although undoubtedly annoyed by their sense they were "just small pawns in a big chess game" (TSG Focus Group 3), most officers acknowledged the pressure commanders faced in trying to appease communities, enforce Commission determinations and protect officers.

There was less understanding, however, when it came the second source of trouble TSG officers felt commanders had succumbed to: professional self-interest. They explained how authorising the use of force against rioters could be damaging for commanders in the eyes of their senior peers, especially when it came to promotion prospects. No commander wanted to be the one that authorised AEP or Water Canon in case it injured, even killed, a protestor. This would attract notoriety and hamper career progression. Officers in one focus group were very praising of a Bronze Commander who had been especially good at "painting the picture" and making firm requests AEP when officers were coming under attack from rioters. The officers explained, however, that such proactivity meant the commander was "[a]ccused by community leaders of being heavy handed, breaching their human rights and all when he wasn't, he was acting well within the law, but the people in charge moved him aside… the public didn't like him, which meant the bosses in turn didn't like him, which meant he got shifted out." (TSG

Focus Group 2). In this instance, the two types of trouble – community perceptions and professional status – became intertwined, creating conditions which officers thought their senior commanders were keen to avoid.

How did the views of junior officers compare with their senior counterparts? Silver Commanders did mention, albeit in more coded terms, that they were mindful of the impact their decisions had on communities. However, the primary source of trouble Silver Commanders sensed arose from being subject to the watchful eye of oversight bodies and legal authorities. At the top of the list was the Police Ombudsman. They knew that the use of AEP or Water Canon would automatically trigger a formal Ombudsman investigation.[40] Commanders described how they would have to hand over their policy and decision logs to the Ombudsman after they clocked off in the command room, and could be interviewed months later about the authorisations they made. The NIPB was the other external audience that commanders knew could create trouble. If AEP were discharged, the commander would have to submit a use of force form to the NIPB, alongside a public disorder incident form providing an overview of the relevant details. This was not purely an academic exercise. In 2011 an increase in the use of AEP (in the face of widespread disorder in Belfast and surrounding areas) provoked concern from some on the NIPB. Notwithstanding the positive reports from the Ombudsman's investigations, the Board determined that the need remained for a "discrete and careful analysis", with a renewed focus on the training and briefing on the legal test for the lawful deployment and use of AEP (NIPB, 2011: 64).

The wariness of external scrutiny was clear during the Bronze Commander course I observed. The tone was set by the Silver Commander who, opening the course, cautioned trainees of their new responsibilities and the need to be confident in their decision-making, "keeping one eye on the Ombudsman or God forbid the coroner's inquest". Throughout the course, commanders were reminded how a decision might "not look good in court" and asked: "Will that option stand up to scrutiny if examined?" A stark warning came on the penultimate day, when a commander came to share their experiences of being subject to a lengthy investigation by the Health and Safety Executive after a rioter had been injured following the use of Water Canon. Commanders were trained to anticipate and negotiate this sort of legal accountability during a session devoted to decision logs and audit trails. They were taught to produce clear, thorough rationales for their decision-making,

[40] Under section 55 of the Police (Northern Ireland) Act 1998, any incident involving the use of force is subject to a Police Ombudsman investigation, regardless of whether a complaint is made.

which they could then rely on further later on if they were subject to an investigation or inquiry. As Silver Commander Derek commented, "if it's not written down, it didn't happen. Isn't that what MacPherson[41] said!?"

In previous courses, trainers went as far as to hire lawyers to create a mock scenario to test trainees in a fashion akin to a cross-examination in court, followed by a detailed de-brief on their performance. As a trainer described: "we had proper barristers coming in and saying this is what you will be asked in court, this is how you need to protect yourself, write down the key points why you authorised, when you authorised, for how long you authorised it for, any supporting rationale". The potential chilling effect that fear of an impending investigation could have on commanders was acknowledged most explicitly by Gold Commander Alex:

> I would be wrong if I said that I didn't believe that across the service there are some people who are just completely and utterly fed up with the level and volume of scrutiny that takes place and that there is a sense amongst many that they're just out to get us, and that feeling can actually lead to some despondency and some morale problems but also could actually lead to some risk averse activity, when I would expect someone to put their foot forward, use force, take a course of action and they maybe are reticent of doing the right thing because they're frightened because 'the police ombudsman will come and investigate me' or 'I might be arrested or interviewed'.

This issue of risk aversion has been hinted at publicly by the Chief Constable when speaking at the launch of the NIPB's Annual Human Rights Report in 2016. Responding to a question about how commanders approached public disorder, and why the public should have confidence in the police, he described how all senior commanders had, at some point, faced events that ended up "looking really messy" and required "impossible dilemmas" to be addressed as best they could (Field notes, 07.09.16). To do so, Chief Constable Hamilton explained, meant senior commanders needed to try to set aside their fears of accountability 'trouble': "we will hold each other to account, we have the Ombudsman's investigations, we have the oversight of the Board, but actually I want to empower public order commanders to actually make decisions without looking over their shoulder" (Field notes, 07.09.16).

Human Rights Law in the Face of 'Trouble'

In this final section, I pull together the strands of analysis to demonstrate the indirect, but nonetheless significant, impact of external legal audiences on the self-regulatory behaviours of commanders. In so doing, I draw a significant distinction from Waddington's (1994) findings and my own regarding the relationship between law and 'trouble'. It will be recalled that Waddington observed a marked

[41] Referring to the public inquiry, conducted by Sir William MacPherson, into the Metropolitan Police's infamous handling of the murder of black teenager Stephen Lawrence in London in 1999.

reluctance on the part of commanders to engage with the Public Order Act 1986 because they lacked confidence in determining their actual powers. Officers feared interpreting the Act incorrectly and thus possibly attracting unfavourable judiciary commentary on top of the embarrassment of getting it wrong. This wariness of the law was, ironically, compounded by a cultural expectation that experienced officers were cognisant of legal parameters and that explicit reference to the law was "gauche and a sign of amateurism" (Waddington, 1994: 80). In sharp contrast to Waddington, I found that (human rights) law was seen a resource for managing trouble rather than a source of trouble itself.

It was strikingly apparent that commanders saw the application of human rights law, and careful reference to the ECHR throughout the script, as a most effective means of managing potential trouble arising from external accountability bodies. By using human rights, they could articulate police operational concerns in a way that was receptive, even convincing, to legal audiences like the courts or Ombudsman. Human rights law provided an objective standard they could reference in strong support of decisions they had made. Silver Commander Andrew explained:

> Because of the scrutiny and accountability we're under, for a large part of this we understand we need to be able to show, audit and reflect on our decision-making and thinking, so waiting for the challenge after the fact, not least the legal challenge, are you with me? So all that sort of [human rights] language, we capture that and we document it. As I say, my log, I can show you where I've taken legal advice from [human right lawyer] and factored that in, but that's there in many respects for the safety net after the fact.

Likewise, when it came to contentious events, decision-making could be "copper fastened" by going to the PSNI's human rights lawyer:

> It just makes you feel like you're going to be more sure-footed in terms of the decision-making down the line. Because quite often you're thinking about the hypothetical situation that may or may not arise, and really, it is genuinely just about give them the kind of forethought and knowing what exactly your position is 'cause sometimes its, eh, there's no good decision, no good outcomes, it's just shades of bad. (Bronze Commander Daniel)

Despite the self-regulatory nature of planning and decision-making, it remains in the shadow of the courts as the authoritative adjudicators. When assessing the proportionality of the police measures on the basis of the HRA 1998, the court will examine the balance the decision-maker has struck, not just whether it is within the range of reasonable decisions, but also the relative weight the public authority has accorded to interests and considerations (*Ex p Daly* (2001) per Lord Steyn, para 27). As noted earlier, when it came to assessing the police decision-making in *Re DB*, the supply of well-documented records, specifically the post-event criminal justice strategy, helped the PSNI demonstrate to the NICA that they had fulfilled their legal duties.

Human rights language was further embedded in the formal record of events through the live decision-making logs of Silver and Gold commanders. Silver Commander Charley gave an example: "Say I need to move the crowd from A to B that will be recorded as a decision in CLIO. I will then to say the loggist 'That's because – ', and then I'll rattle off articles 9, 10, 11. The longer entries [on CLIO] with regards to human rights will be around the planning piece that's been done in advance of the event". This explicit framing of decision-making using the ECHR was a striking feature of the PSNI's public discourse and legal arguments during the Flag Protests. Commanders couched their concerns around public safety and high levels of force in the language of Article 2, while also aligning the tricky decision to facilitate the initial, unlawful protests with the positive duty to facilitate protest under Article 11. Whilst this was received with scepticism by the High Court, which questioned whether such language could really account for police decision-making, the Article 2 explanation translated well in the NICA, opening up the wide area of operational discretion granted to police. Moreover, by refusing to endorse the High Court's suggestion that because the Gold Commander had sought legal advice they must have misunderstood the legal position, the NICA safeguarded the "copper fastening" (Bronze Commander Daniel) potential of commanders' legal advice.

Although the courts and Ombudsman stood at the end of the line when it came to 'trouble', a different audience member, one whom commanders had grown keen to welcome aboard, was the NIPB's human rights legal advisor. As mentioned earlier, the advisor is present throughout public order operations, after the agreement first stuck between Sir Keir Starmer and Chief Constable Sir Hugh Orde (see Chapter 1). The level of access granted has been extensive from the very beginning, as Starmer described in an early annual report:

> [W]e attended all planning meetings and briefings at all levels: Gold, Silver and Bronze… On the 12th July, itself, we observed the policing operation on the ground, attending at the Ardoyne shop fronts when the parades passed through the area on the way out in the morning and when the police and military deployed in preparation for the return parades in the evening. The rest of the time, we either attended on-going planning meetings or observed events and decision-making in the Gold and Silver Command rooms. Subsequently, we examined the records made during the course of the policing operation, including the contemporaneous logs generated by Gold and Silver command. (NIPB, 2006: 60)

The arrival of Starmer in the PSNI's planning meetings and command rooms was something commanders remembered as rather unnerving. As noted by Waddington (1994: 118-20), lawyers pose a particular kind of threat by virtue of their knowledge of the law and ability to spot the working rules of police that might run contrary to it. Silver Commander Edwin recalled staffing the gold command room during one of the worst periods of disorder, just after Starmer began his role as advisor to the Board:

> That was first time anyone of us had really seen a QC in a command room. I mean, lawyers and police command rooms don't always go together whether they are working for you or not, and this one wasn't working for us, I mean, he was employed by the Board, he was there in an oversight capacity and he was able to see and listen to everything the Gold Commander is seeing and listening to. And sometimes that got really ugly, you had Gold Commanders showing less than perfect composure at times, you had stuff said on the radio that makes your toes curl a little bit and yet we exposed ourselves completely and utterly to someone of Keir Starmer's quality […]. Lots in policing say 'Oh, it's a lonely place when you're in the witness box at the public inquiry' and of course very few of us get near a public fucking inquiry, they're that rare! But the reality is we have quasi-judicial interventions almost all the time, and it's not worrying about the public inquiry, it's worrying about what the Policing Board lawyers will say because they have unfettered access.

Some commanders thought such exposure helped them to ensure they were achieving the standards now expected of them as the police reform process unfolded. This was particularly so in 2004 and 2005, when Starmer undertook post-event examinations of commanders' decision-making, working through video footage, breaking it down frame by frame and asking commanders to account for their operational decisions (NIPB, 2004, 2005).

In the twelve years since, the NIPB's human rights advisors have not been refused access to public order planning, briefings or command rooms, even for the highest profile events. By now, commanders described being un-phased by the presence of the advisors, most endorsing their work using the language of accountability heard in the official police voice (see also Waddington, 1994: 120). Several commanders even expressed the confidence they derived from having an independent advisor who could report back on their performance. Commanders knew if they successfully followed their training, tactical advice, policy and intelligence assessments, the Board's advisor could be an influential, impartial voice who could vouch for them in the Annual Human Rights Report and answer the concerns of certain Board members. Indeed, the legal advisors have consistently praised Silver Commanders, as reflected in one of many possible examples:

> I can record that the Silver Commander showed exemplary knowledge, understanding and practical application of human rights principles […]. During what was a long and extremely challenging process he displayed an instinctive understanding of the legal framework and his ultimate objective. He demonstrated that he clearly understood not simply what the Human Rights Act required of him, but how that knowledge needed to be translated into practice. (NIPB, 2009: 98)

Such accounts suggest the strong internalisation of human rights amongst commanders, who proved able to apply legal standards to the situations before them. Given their command training, assistance from 'bridgers' and exposure to exacting oversight arrangements for over a decade, it is unsurprising that commanders were well-versed in rights standards and using them to make decisions. Moreover, in the face of pressing accountability, which they knew revolved around rights standards,

commanders were undoubtedly aware it was in their professional interest to explicitly frame planning and tactical decisions in such terms. Even if rights-based considerations did inform their decision-making, to avoid accountability trouble, oversight bodies had to be able to see and hear it.

Conclusion

In Chapters 5 and 6 I have traversed the length of public order policing, from specialist training to officers' accounts of the planning stages to how operations were carried out. The police script was produced internally by commanders, who strongly narrated the events they policed using ECHR terms and legal standards. Building on the preceding analysis of how human rights law is interpreted and applied by commanders in Chapter 6, the focus here was to make sense of how the script was performed in action and what this might tell us about the function of human rights law in this highly-contested area of policing. Commanders exposed the script to different audiences, at different times, for different reasons. It was presented to parade and protest organisers in the run up to events for the same reasons public order commanders in Waddington's (1994) study invited protest organisers into their offices to 'win them over'. The aim of PSNI commanders was to convey to organisers that the police knew their responsibilities and would respect the democratic rights of those involved, within the limits set by the Parades Commission. In turn, commanders hoped that this 'no surprises' approach would improve relations with community leaders, reduce the likelihood of disorder and better enable the police to maintain control of the event. At times, however, rights-discourse could cause friction and misunderstanding, arising from the histories, agendas and associations discussed at length in Chapter 2.

If communities were an audience from which commanders actively sought endorsement, then so were the courts, albeit in a different way. Commanders were acutely aware of the ramifications their decision-making had for the parties involved, as well as their own professional standing. As illustrated by the Holycross and Flag Protests, tricky balances had to be struck between competing rights in different situations. In some situations, legal standards are prescriptive and make clear where the outer limits lie (as with Article 11 and un-notified protests), but in others human rights law can structure, but not definitively answer, how competing interests should be resolved. In these cases, all that can be expected of decision-makers is that they are mindful of competing rights, and apply the proportionality test carefully and with evidence to support their conclusions. The senior courts in

E, and to an extent in *Re DB*, have affirmed that whilst the judiciary are the authoritative voice in determining how the balance must ultimately be struck, they will grant the police significant discretionary space to make these difficult, and often contested, operational decisions.

Within this discretionary space, commanders operated in the shadow of the courts: they took instruction from their human rights lawyer, they incorporated case law and ECHR standards into their script, and they articulated the decisions they made in human rights law terminology. As *Re DB* demonstrates, the PSNI did not always get the law right within this space, but there can be no doubt they felt the regulatory force of human rights law. In understanding why this was so, Waddington's (1994) account of 'trouble' surely seems as salient now as it did two decades ago. In this chapter, police use of force revealed how self-regulation of police power was permeated by a wariness of not just the political contestation over parades and protests, but also lawyers, oversight bodies and ultimately courts. These external audiences used human rights as the standard with which to assess police decision-making and thus rights-based decision-making was the rubric that commanders knew they needed to operate within and appeal to. To be clear, then, human rights law was not seen as a source of trouble, but rather a way of talking, thinking about and justifying actions to avoid the trouble arising from negative reporting by the NIPB human rights advisor or Police Ombudsman and legal challenges brought before the courts. The NIPB's legal advisor was thus a crucial ally – indeed, another kind of audience – who could vouch for the rights-based decision-making of commanders and defend them from critique.

In sharp contrast to the publicly discussed, highly scripted and strictly enforced modes of policing just explored, is the area of police custody. Tucked away, a world of its own, custody is animated by routine interactions between junior officers (constables and sergeants) responsible for making and receiving arrests. Holdaway (1983) describes this "backstage" nature of custody, hidden from public view, while Hillyard and Gordon (1999: 516) refer to it as a "closed site" with "its own rules and procedures where justice cannot be seen to be done". The types of senior officers we met in this chapter (inspector rank and above) appeared in custody only infrequently. Custody inspectors worked outside the suite, discovering its goings on remotely, either through CCTV feeds or over phone calls with staff. Custody officers described it as "their" suite, they controlled who came in and when, where officers should stand and how they should conduct themselves. It is this markedly different arena of policing to which we now turn to further examine the role human rights play in regulating officers' decision-making and self-conceptions of their work.

PART IV

Police Custody: The Rights of Suspects

Chapter 7.

'Arrest, Arrest, Arrest': Statutory Safeguards Under Pressure

Most of us are fortunate enough not to have been the subject of police powers of arrest and detention, but for the nearly 25,000 people each year in N.Ireland that have, it is no doubt a stressful and troubling experience, regardless of the offence they are suspected of committing. For some, arrest and detention may even be a regular feature of their lives, or lifestyles, they have come to lead or inherit. Hillyard and Gordon (1999: 505) remind us of how:

> arrest involves taking a person into custody, physically detaining him or her, and carrying out a range of detailed procedures. The person loses his or her freedom for a period of time, suffers varying degrees of public and private opprobrium, embarrassment, and perhaps significant direct and indirect costs.

The vast majority of people who are arrested end up in custody suites located in local police stations. Many rights are at stake at this point, as the criminal justice process opens up and the coercive investigative powers of the police become acutely felt. Police custody, and the particular role of the custody officer as the statutory guardian of suspects' rights, thus emerges as an important avenue of enquiry for this thesis to deepen our understanding of the impact human rights law has on modern policing.

Police custody has long provided a rich arena in which to assess the regulatory potential of the law. The introduction of the Police and Criminal Evidence Act (PACE) 1984 – a scheme designed to circumscribe police discretion and protect suspects' rights – triggered an explosion of studies in the late 1980s and early 1990s. These works examined a number of issues, including the protection of suspects' rights in custody as well as the right to legal advice; the appropriate adult scheme; the authorisation of detention; and the length of time suspects spent in custody (Maguire, 1988; Bottomley et al., 1990; Dixon et al., 1990; McConville et al., 1991; Brown, 1997). By the late 1990s, however, interest in custody had all but dwindled. As Dixon (2012: 279) observes, there has been "a long drought in empirical research on the detention of suspects in custody". Some recent insight has been provided, however, by researchers who are venturing back into police custody to consider issues like legal advice (Skinns, 2009a, 2009b; Kemp and Balmer, 2010), vulnerability (Dehaghani, 2016), immigration (Parmar, 2018) and performance management (Kemp, 2014; Dehaghani, 2017). Explaining this resurgence, Skinns

(2011: 13-14) boldly asserts that "[u]ndeniably the socio-political context of police custody process has altered", with managerialism and privatisation having left an "indelible mark" that warrants re-appraisal of earlier works.[42]

For the purposes of this thesis's examination of human rights and policing, the attraction of custody as a research site is both old and new. This part of policing remains significant for the same reason it always has: it is a busy site of everyday interpretation and application of the law by rank-and-file officers which impacts heavily on individuals' rights. Its renewed attraction is two-fold. First, the well-established PACE safeguards now sit within a PSNI culture that purports to place great value on human rights. Has this strengthened the PACE safeguards? Has it empowered custody officers to stand up for the rights of those arrested by their colleagues? Second, arrest powers underwent a significant overhaul in 2005, when a general power of arrest was created. The statutory safeguards designed to temper this power have been subject to recent judicial interpretation, including important cases decided by the N.Irish courts. These cases raise pertinent issues for suspects' right to liberty in light of routine police practices and whether judicial interpretation has been rigorous enough under Article 5 of the ECHR (the right to liberty and security).

The focus of Part IV's empirical account of human rights is on the suspect's right to liberty in police custody. In keeping with the style adopted in previous parts of this thesis, Chapters 7 and 8 are devoted to closely analysing how particular aspects of police practices and decision-making interact with human rights standards and the PSNI's official rights narratives. Material is marshalled from several sources. The primary source is qualitative data drawn from interviews I conducted with PSNI custody officers (fifteen) and Civilian Detention Officers (CDOs)[43] (eight) from six of the nine custody suites in N.Ireland, as well as custody inspectors (two) and superintendents (two). Given the small proportion of policemen and women that perform the role of custody officer, this small interview sample does, in fact, constitute nearly one quarter of full-time custody officers in the PSNI. To compliment this interview material and corroborate officers' personal accounts, I draw upon nationwide custody data I obtained from the PSNI through freedom

[42] Skinns (2011: 24) swiftly casts aside the HRA 1998 as a framework for exploring custody, noting that "human rights language has yet to percolate through to PACE and the associated Codes of Practice" and "there are no explicit mentions of human rights in the 2008 Codes of Practice". This analysis seems misguided, especially in N.Ireland, as the principles of the HRA 1998 *are* in PACE and its Codes – we need look no further than the concepts of necessity and proportionality. Moreover, the courts have made clear the reasonableness standard in section 24(6) of PACE is central in ensuring compliance with Article 5(1)(c) ECHR. In N.Ireland explicit mention of the HRA 1998 is found in the PSNI Code of Ethics and custody training documents.

[43] These staff perform what used to be the police role police jailor. They are responsible for various tasks, including searching the detained person, obtaining evidential samples, monitoring their well-being whilst in custody, providing them with meals and transporting them around the custody suite.

of information requests. The salient statistics and observations contained in recent reports produced by the Criminal Justice Inspectorate N.Ireland and the NIPB have also proven valuable.

In this chapter, my principal interest is how the three statutory safeguards provided for in PACE to protect suspects' right to liberty have fared in the face of organisational pressure to detect and 'clear up' crime. This context requires an initial examination of the regulatory scheme and legal standards devised under PACE 1984, including how it has been impacted by the 2005 legislation. Using each of these purported safeguards to form a framework for this chapter's analysis, the task carried out under each of these sections is one of exploring how officers apply, dismiss, interpret and re-construct these legal, rights-based standards in their everyday work. Once again, the richness of this analysis, specifically its appreciation for how law and practice do (or do not) interact, is enhanced by this chapter's attention to the recent case law which has watered down the legal standards officer must apply. The following analysis of the case law is based on recent judgments from the High Court and Divisional Court of N.Ireland, as well as from the appellate courts of England and Wales.

The story that emerges across this chapter and the next is as follows. Custody officers believed their supervisory role to be more expansive than it was, given how the courts have interpreted PACE 1984. Officers described being routinely presented with arrests that fell short of the (judicially watered down) statutory standards designed to protect individuals' rights. This scenario caused custody officers considerable frustration. Whilst appreciating the daily pressures their colleagues faced to achieve performance targets, custody officers lamented their colleagues' limited knowledge of PACE. The management-led drive to, in the words of one custody officer, "arrest, arrest, arrest", was cited as the greatest threat to individuals' rights. In the next chapter, these organisational pressures, especially the cultural allegiance amongst junior officers, are thrown into sharper relief, as we examine the custody officer's role in the 'booking-in' process as suspects arrive at the station. Recognising that they authorised detentions that they earlier admitted were problematic, custody officers experienced a kind of cognitive dissonance. The next chapter explains how and why this dissonance arose by accounting for the cultural and organisational conditions described as animating social interactions between police, solicitors and lay visitors in custody.

Statutory Safeguards Protecting the Right to Liberty

Until as recently as the mid-twentieth century, arrest was merely a mechanism for bringing offenders to court at the end of an investigation, once the case for prosecution was ready to be brought before a magistrate (Sanders et al., 2010: 137-138). But in today's practice, arrest has shifted to the early stages of the investigation, used as a tool to facilitate evidence gathering at the police station. Arrest, followed by detention at police custody, now marks the gateway into deeper parts of the criminal justice system. Its significance lies, most obviously, in the fact of a person's confinement in a small cell for up to 36 hours, but also because of the array of investigative powers it triggers. These powers interfere with the individual's right to private and family life and the right to property. For example, the power to search the person's home and to seize relevant items of property, as well as the power to obtain and retain DNA sample and fingerprints for three to five years, regardless of whether the person is released without charge or acquitted (Protection of Freedoms Act 2012).

We should properly be wary of such interferences with suspects' rights, especially because we know that arrest powers are often used for dubious purposes, such as securing evidence for offences unrelated to those for which the person is arrested (Sanders et al., 2010: 132-140) and extracting deference from subordinated groups (Choongh, 1997; Hillyard and Gordon, 1999). Indeed, ill-founded prejudices and stereotypes that animate the 'working rules' which inform police use of discretion have long been recognised, and continue to be warned of (Ericson, 1981; Brewer and Magee, 1990; McConville et al., 1991; Reiner, 2010; O'Brien-Olinger, 2016; Parmar, 2018). Yet there is, of course, a balance that must be struck in this area of policing, as in almost all others. Resting heavily on the other side of the scales is the importance of the power of arrest in ensuring the rights and freedoms of the general population in their everyday lives. The criminal law must be sufficiently enforced in order to ensure a peaceful, prosperous and safe society. The use of arrest powers helps to detect and disrupt crime, maintain public order and protect individuals from intimidation, violence and theft (Murdoch and Roche, 2013).

The balance to be struck between the enforcement of the criminal law and the rights of suspects confronted with the state's criminal justice apparatus is reflected in the qualified nature of Article 5 ECHR (the right to liberty and security of the person). This provision protects against arbitrary arrest and detention, while still allowing police to lawfully detain those who they suspect of breaking the law by virtue of the list of exceptions set out in Article 5(1)(a) to (f). Most relevant for this chapter is Article 5(1)(c), which states:

> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> […]
>
> (c) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence […].

The judicial interpretation of Article 5(1)(c) and its impact on due process rights in domestic law will be examined below as part of the exploration of custody officers' experience and understanding of being the guardian of rights in custody.

The proper starting point is the statutory safeguards in domestic law that govern the arrest and detention of suspects. These standards are supposed to determine police decision-making and form the domestic law that courts must consider when assessing compliance with Article 5(1)(c) under the HRA 1998, as understood in light of the relevant Strasbourg jurisprudence. The power of arrest in the UK was traditionally bifurcated by the distinction between 'arrestable' offences and the residue of offences known as 'non-arrestable'. After concerns over the messiness and confusion this distinction caused, arrest powers were reformed by the Labour government in 2005. Parliament introduced a single code of arrest powers, thus extending the power of arrest to all offences, regardless of how trivial the offence is (s.15 PACE (Amendment) (N.Ireland) Order 2007). A police constable now has the power to arrest anyone whom they have (i) reasonable suspicion has committed, is about to commit, or is in the acting of committing, an offence (s.26(2) PACE (NI) Order) and (ii) reasonable grounds for believing it is necessary to arrest for at least one of a set list of reasons (s.26(3) PACE (NI) Order 1989).

The first statutory safeguard for suspects comes in the form of the reasonableness standard attached to an officer's suspicion under s.26 PACE. The courts have made clear in their interpretation of earlier versions of this provision that reasonableness depends not only on the subjective, honestly held belief of the arresting officer, the officer must also demonstrate an objective, factual basis for their belief that the court too would consider reasonable (*Castorina v CC of Surrey* (1996)). As stated by Lord Hope in *O'Hara v CC of the RUC* (2001), "the protection of the subject lies in the nature of the [objective] test". Indeed, for the purposes of ensuring domestic law complies with Article 5(1)(c), the ECtHR has deemed this objective standard to be integral, as stated in *Fox, Campbell and Hartley v UK* (1990):

> The 'reasonableness' of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in article 5(1)(c) […] [H]aving a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.

This first safeguard is bolstered by the second: the officer must also have reasonable grounds for believing arrest is 'necessary' for at least one of reasons listed

in s.26(5) PACE[44]. Whereas this requirement formerly applied only to arrestable offences, by abolishing the arrestable/non-arrestable distinction, the Labour reforms extended the necessity criterion to all offences. This criterion was designed to maintain "the crucial balance between the powers of the police and their rights of the individual" and "places the emphasis on the need for arrest" (Home Office, 2004: 2, 5). The Court of Appeal of England and Wales (CAEW) have confirmed that the single code of arrest powers tightened officers' accountability and compliance with Article 5(1) because all arrests are now subject to the necessity criterion (*Shields v CC of Merseyside* (2010)). This necessity criterion is a two-stage test: (i) the constable must actually believe the arrest is necessary (subjective) and (ii) objectively assessed on the information known at the time, the decision was made on reasonable grounds (objective) (*Hayes v CC of Merseyside* (2011), para 40-42). According to Lord Chief Justice Thomas, the objective stage of the test[45] will attract "careful scrutiny by the court" and "therefore amply protects the liberty of the subject" (*B and others v CC of PSNI* (2015), para 18).

The third statutory element in place to protect suspects' rights arises after arrest, when the suspect is presented before the custody officer at the police station by the arresting officer. In an approach labelled 'authorise and regulate' (Dixon, 2008), the custody officer must adopt an impartial role and filter out arrests brought in by colleagues that fail the necessity to detain standard. Unlike the power of arrest, the threshold for detention is unchanged by the statutory reforms of the Labour government in 2005. It remains the case under section 38 PACE that the custody officer must decide if there is sufficient evidence to charge the person. If there is, the charge decision must be made (i.e., the person must be charged or released). If there is not, the person must be released unless the custody sergeant has reasonable grounds for believing that detention is necessary to secure or preserve evidence or to obtain evidence by way of questioning. Once again, the principle of necessity is at the core of this provision. As stated by the then Home Secretary Douglas Hurd during the legislative passage of the PACE bill, the question is whether detention is "necessary – not desirable, convenient or a good idea, but necessary" (quoted in Sanders et al., 2010: 216).

[44] Including: to enable the name or address of the person to be ascertained; to prevent the person causing injury to themselves or others; to protect a child or other vulnerable person; to allow a prompt and effective investigation.

[45] It remains unclear how 'Wednesbury' review fits within this formulation. In *Fitzpatrick and Others v the Met* (2012) and *B and others,* the High Court stated Wednesbury is subsumed within the concept of reasonable, but in the more recent case of *Parker* (2017), the High Court has re-identified Wednesbury as a distinct test that remains after consideration of the 'reasonableness' of officers' suspicion and necessity.

Sanders et al. (2010: 143-144) argue that the arrest provisions in the 2005 reforms are merely enabling rules that prioritise police efficiency over suspects' interests and that "eschews even rough context sensitivity in favour of naked crime control". Given that police regularly arrest with a view to detaining suspects to secure evidence through questioning, Sanders et al. assert that the updated statutory safeguards likely play a purely presentational role, appearing to promote due process but failing to promote their substance. Moreover, Sanders et al. (2010) argue that the traditional reluctance of the court to interfere with the operational practices of officers makes it unlikely the court will interpret the statutory tests of reasonableness or necessity in such a manner as to strengthen suspects' rights. These two predictions are tested in the following sections, relying on accounts of police practice given to me in interviews by custody officers, as well as the recent case law on PACE. The story that emerges is one that largely supports Sanders et al.'s scepticism of the ability the statutory safeguards, interpreted by the courts and applied by police custody officers, to ensure detention really is the last resort used only when other, less intrusive options have been considered.

Processing Pressure: Receiving arrests and detaining suspects

I asked custody officers and CDOs in interviews to guide me through what happens when arresting officers arrived in custody with arrestees and the types of exchanges that took place during this initial encounter. Officers described to me in detail the 'booking-in process' that the suspect's arrival triggered. This process was a highly formulaic, bureaucratic task performed by the custody officer. Their questioning of the arresting officer was tightly structured to provide answers to the proforma custody log that was administered through a software package that flickered on the computer screens at the custody desk. The statutory safeguards had been subsumed within a digital format. Guided by each field that needed to be populated, custody officers described asking arresting officers for their grounds for arrest, including the offences the suspect had been arrested for, the relevant circumstances (e.g., time, location), and the necessity to arrest requirement that had been satisfied. Once the grounds for arrest had been recorded, the custody officer then completed their section of the form in which they documented their decision and supporting rationale as why it was (or was not) necessary to detain the suspect in custody.

The role of the custody officer has rightly been described as "the linchpin of the whole system of safeguards" (Morgan et al., 1991 quoted in Brown, 1997: 73). In addition to making the crucial decision as to whether to detain the person or

not, the custody officer is responsible for looking after all aspects of the detained person's welfare, ensuring they are aware of their rights and that they receive the procedural protections afforded to them by PACE, including access to a solicitor and, where relevant, an appropriate adult, interpreter or doctor. This regulatory scheme places great trust in the custody officer to approach the task with independence and impartiality. It was apparent in interviews with custody officers that they were acutely aware of their role under PACE and the attitude they ought to adopt during the booking-in process. They described how they had to be "impartial", "neutral" and "in the middle". Ultimately, though, the custody officer's role as independent guardian of suspects' rights soon emerged as one that was heavily undermined by organisational pressures that manifested during the booking-in process. This processing pressure was felt most acutely, and is thus best analysed, in relation to the three statutory safeguards outlined above. Let us take each in turn.

i. Reasonable Suspicion of an Offence

It will be recalled that suspicion of whether an offence has been committed and the reasonable grounds for arrest must be formed by the arresting officer; the custody officer is there to receive the arrest at the police station and determine detention under the rules set out in s.37 PACE. The issue of whether a custody officer must *also* satisfy themselves that the arrest is lawful before they can hold a person in lawful custody arose in the case of *DPP v L &S* (1998). The High Court held there was no express or implied requirement in either PACE or the Codes of Practice that places a duty on a custody officer to enquire into the legality of the arrest brought before them. This decision was confirmed by the EWCA in *Al Fayed and Others v Commissioner of Police of the Metropolis* (2004), in which the applicant complained that the custody officer had simply 'booked in' the suspects without actively considering the grounds for arrest. The EWCA held that whilst the custody officer's function was to introduce "an independent filter" in determining whether detention is necessary, the custody officer "is not required to inquire into the legality of the arrest and he is entitled to assume that it was lawful" (*Al Fayed,* para 101).

In contrast to this judicial interpretation of s.37 PACE, almost all custody officers thought their role required them to not only review the necessity of detention, but also the legality of the arrest. In fact, several custody officers admitted refusing to authorise detention on the basis that they were not satisfied with the circumstances of the arrest. Given this (mis)understanding, it made sense why custody officers complained at length about arresting officers' dubious grounds for

arrest. Although plenty of their colleagues did "book in well", many others, especially less experienced officers, struggled. Interviewees described with frustration situations where officers arrived in police custody without a clear or convincing grasp of the grounds for which they had arrested a person or even the circumstances that could satisfy an objective observer that the arrest was reasonable. They detailed how arresting officers readily admitted that a complaint had not been made against the suspect either by the victim or a witness to the alleged offence, nor was a future complaint likely to arise. In other cases, arresting officers simply stated that they arrested a person for assault, without specifying which of the various categories of assault they suspected the person had committed. These rationales were in sharp contrast to what custody officers hoped to hear: a succinct set of circumstances clearly setting out the officers' suspicion and grounds for arrest.

Several more seasoned custody officers, who had policed for decades under the array of arrestable offences, felt the new single arrest power introduced in 2005 had, contrary to the reformers' intentions, served to diminish officers' knowledge of the law and increase their over-eagerness to arrest. Under the previous arrest regime, officers explained how they were forced to think more carefully about the situations to which they were responding in order to discern whether it was an offence that had an arrest power attached to it. As Custody Officer Mike explained:

> [B]efore they brought in the latest version of PACE, offences like common assault, unless it happened in your view, you didn't have power of arrest for it, so you had to think: 'Now, that offence, do I actually have the power of arrest for it.' There was set offences that had powers of arrest and a lot of offences didn't.

Most custody officers, however, attributed the lack of demonstrable suspicion to arresting officers' assumption that custody staff would take a laissez-faire attitude to the booking-in process – a belief that enabled arresting officers' apparently poor knowledge of criminal offences and thus the types of behaviour that would amount to reasonable suspicion. Custody Officer Louise, for instance, expressed such concerns in the following way:

> I find that the younger officers coming in are arresting because they're frightened of making decisions. There's a number of options that are open to the officers and that their knowledge of the legislation and law within the past ten years is very poor... we're standing there and even though we're independent, we're telling the officer 'Do you know why you've arrested this person? Do you know the law? Do you know the legislation?' And whenever you're getting quite a substantial amount coming through that don't even know what the offence is that begs the question of what is going wrong with this organisation?

This lack of engagement with the requisite elements of criminal offences was felt to be facilitated to some extent by the PSNI's volume crime team which took over the investigation early in the case so arresting officers could return to front-line duties (similar to the 'police review teams' reported by Kemp (2014)). In the eyes

of some custody officers, this allowed arresting officers to abdicate responsibility and prevented them from better understanding the types of evidence required to progress certain types of offences and offenders.

The requirement that the arresting officer – not their supervisors or any other officer – must have formed the requisite suspicion to justify the person's arrest is a central issue that has arisen before the courts, as well as in my research interviews. The courts willingness to grant significant operational leeway to police is apparent in the leading case of *O'Hara v RUC* (1996). Mr O'Hara is a prominent member of Sinn Féin; in fact, he now sits as a political member on the NIPB and was quoted in Chapter 2. In 1985, O'Hara was arrested by an RUC constable who had been briefed by a superior officer and instructed to arrest O'Hara over his suspected involvement in a murder. At trial, the constable stated his reasonable grounds for suspecting O'Hara's involvement were based on the briefing he had been given, the details of which were not subject to examination at trial, nor was the officer who gave the briefing called to give evidence. The trial judge held that although he had heard only "scanty evidence" of the matters disclosed at the briefing, he was satisfied that a briefing officially given by a superior officer would give reasonable grounds for suspicion.

On appeal to the UKHL, the issue was whether the judge was entitled to hold that the constable had reasonable grounds for his suspicion based on such limited evidence given by the officer who briefed him. For "obvious practical reasons", the UKHL insisted that officers must rely upon each other in making decisions to arrest. Establishing a low threshold, the UKHL held that powers of arrest do not require the arresting officer to be in possession of all the information leading to a decision. The officer need only have "equipped himself with sufficient information so that he has reasonable cause to suspect". In his speech, Lord Steyn added that a mere request to arrest without further information would be incapable of amounting to reasonable suspicion, even if the request was made by a superior officer. Concerning the risk that the information briefed to the arresting offer may later prove to be false, Lord Hope made clear that this is not determinative of the reasonableness of the suspicion; more salient is the source of the information and the context in which it is given (para 298C-e).

This decision was challenged before the ECtHR in *O'Hara v UK* (2001) on the basis that the approach of the courts violated Article 5(1)(c). The ECtHR rejected the appeal 6-1 and held that it was compatible with Article 5(1)(c) for the trial judge to infer the existence of grounds of suspicion based on the sparse materials before him. O'Hara had been given the opportunity to cross-examine the arresting officer and make requests for discovery regarding the documentary evidence concerning the arrest. The approach adopted by the court in *O'Hara,* as approved by the EC-tHR, offers considerable leeway to the arresting officer, with the court willing to

accept only scant evidence from the arresting officer to evidence the briefing he had been given prior to arrest. In his strong dissent in *O'Hara v UK*, Justice Loucaides warned of the weakness of this approach. The trial court had not been searching enough in its assessment of the briefing given to the arresting officer. It had assumed too easily that the mere fact that a briefing took place meant that the substance of this briefing must have given further details to the arresting officer relating to the reasonableness of the suspicion.

In the more recent case of *Alford v CC of Cambridgeshire* (2009), a senior police officer had failed to provide the arresting officer with a report salient to the case against the arrested person which would have undermined the basis for the arrest. The EWCA held that where the failure was not deliberate, the omission of relevant material could not render the briefing officer liable for wrongful arrest. Provided the arresting officer had genuine and reasonable grounds for suspicion, the arrest was not an unlawful decision which the briefing officer could be liable for (para 38). Both cases, as noted by Stuart-Smith J in *Parker*, have "very wide implications for the liberty of the subject", yet they must "be taken as forming part of the balance struck and compromise that exists between the rights of the public and the rights of the individual" (para 24). Whether this balance is struck appropriately in favour of the rights of the individual is questionable. In *Castorina,* the EWCA held that the failure to follow an obvious course of action or line of enquiry may, in exceptional circumstances, be grounds for finding the exercise of discretion was 'Wednesbury unreasonable'[46].

The reluctance of the courts to meaningfully scrutinise police briefing practices arose again in the recent case of *Salmon v CC of PSNI* (2013). Salmon was struck across his head with a gun by Loyalist paramilitaries trying to intimidate him out of his home in a Protestant housing estate because he was Catholic. He reported the incident to the PSNI and made a formal complaint. Later that year, the same gun used to assault Salmon was discovered as part of a Loyalist arms dump. Salmon's hair was found on the gun and, for this reason, he was arrested and interviewed. The detective tasked with the pre-arrest research had failed to check the relevant police database that would have linked Salmon to the earlier assault. Salmon claimed his arrest was unlawful because the police had failed to diligently investigate pre-arrest – if they had, they would have seen his hair was on the gun because of the earlier assault. Dismissing the appeal, Weatherup J re-affirmed "the fact that there were other things that might have been done does not make that which was done an unreasonable exercise of power of arrest, provided the arrest

[46] That is to say, it was so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948))

was within the range of reasonable choices available" (para 19). Weatherup J insisted that interference with Article 5(1)(c) was properly safeguarded by the requirement of honest and reasonable grounds for suspicion. Ultimately, the careless briefing of an arresting officer that omits relevant information (without malice) is insufficient to render the arrest unlawful.[47]

The relaxed approach of the courts to briefings and prior investigations preceding arrest sits in curious contrast to custody officers' own concerns about how regularly their police colleagues made arrests based on inadequate briefings by other officers. In fact, custody officers were well-aware of the standard set down in *O'Hara* (though none mentioned the case name itself) and described their first-hand experience of officers failing to fulfil even the "sufficient information" standard:

> If the inspector just came in and said, 'You go out and arrest that person' and you went out and said, 'Right you're under arrest', and then bring them into custody and I ask and say, 'Well, what did you arrest him for?' and you say, 'Well, the Inspector told me'. Take them away because that's not grounds for arrest. So, you have to be fully briefed and unfortunately the police are well stretched and they're doing things like that sometimes, where they're not fully briefed. You get a phone call from somebody saying, 'Can I email you the circumstances?' I would say okay, but then technically that's not right because the person coming in should be giving you the circumstances they have, not just, 'Oh, I was told they were going to email the circumstances and I've arrested this person.' (Custody Officer Ken)

Some response officers were even described as having called up a custody officer when they were outside a suspect's house to ask if they would accept the arrest if they brought the person into custody. At the most extreme, constables had apparently admitted to custody officers that they did not think the arrest should have been made but they had been told to do so by their supervisor. Such scenarios were compounded in some cases by arresting officers' over-reliance on pro-arrest policies to justify arrest decisions rather than determine the circumstances giving rise to reasonable suspicion that an offence was committed in that particular case. These stories recounted by custody officers reinforced their view that police lacked confidence in using their powers of arrest properly and relied on custody staff to remedy defects.

ii. The Necessity to Arrest

The second statutory safeguard is anchored in the requirement that the officer has reasonable grounds for believing arrest is 'necessary' for at least one of the grounds listed under s.26(5) PACE. The interpretation of necessity, specifically the degree

[47] However, see *Armstrong v CC of West Yorkshire* (2008) per Hallett LJ, para 14: "There may be circumstances, provided there is no urgency, which makes it incumbent upon an officer to make further enquiries before "suspicion could properly crystallise"".

of consideration arresting officers must give to options other than arrest, has been at the centre of several recent and important cases. The first of these was in *Re Alexander and Others* (2009) before the N.Ireland Divisional Court. The applicants claimed to have been wrongfully arrested because the arresting officer failed to consider whether it was necessary to arrest, or the arrest was made without sufficient grounds for necessity. In defining necessity, the Divisional Court heavily watered down the statutory safeguard, understanding necessity to mean that arrest was merely "the practical and sensible option". Giving judgment for the court, Lord Kerr CJ continued:

> The decision whether a particular course is necessary involves, we believe, at least some thought about the different options. In many instances, this will require no more than a cursory consideration but it is difficult to envisage how it could be said that a constable has reasonable grounds for believing it necessary to arrest, if he does not make at least some evaluation as to whether voluntary attendance would achieve the objective that he wishes to secure. (*Alexander*, para 19)

The interpretation of necessity arose again in *Hayes v CC of Merseyside* (2011). The applicant argued for a more rigorous interpretation of necessity, which would require the officer to actively consider all possible alternatives to arrest, and take into account all relevant considerations and exclude all irrelevant ones. Giving judgment for the EWCA, Lord Justice Hughes endorsed the approach of the court in *Re Alexander,* but in clarifying Lord Kerr CJ's definition, weakened the criterion even further. Lord Kerr CJ clearly stated that the necessity criterion involves some thought of the alternatives to arrest, which would make it a pre-condition to the legality of arrest. Hughes LJ placed emphasis on the second sentence of Lord Kerr CJ's statement (above) to insist that consideration of other alternatives is *not* a pre-condition of the legality of the arrest but rather a feature that might be expected in demonstrating reasonable grounds for necessity: "[t]he officer ought to apply his mind to alternatives short of arrest, and if he does not do so he is open to challenge" (para 39). Most recently in *B and others* (2015), Lord Thomas CJ referred to a slightly higher threshold, stating that necessity "plainly requires more than merely desirable or more convenient to the arresting authority" (para 26). How much more is unclear.

The judicial interpretation of necessity has, I think, rendered the term devoid of much of its regulatory potential. This approach of the courts sits uncomfortably with the necessity standard as set out in PACE Code G, which requires consideration be given to whether "necessary objectives can be met by other, less intrusive means" (para 1.3) and that "the officer should consider that arrest is the practical, sensible and *proportionate* option in all the circumstances" (para 2C). But the court in *Hayes* had little difficulty playing down the Code's significance. Hughes LJ reiterated that failure to comply with the Code did not render the officer liable to

criminal or civil proceeding, it simply provided officers with "a sensible warning" that if they do not apply their minds to other options they are open to challenge. It was apparent that CA wanted to avoid imposing a "full blown public law reasons challenge" on police for fear of the operational pressure it would place on officers:

> To require of a policeman that he pass through particular thought processes each time he considers an arrest, and in all circumstances no matter what urgency or danger may attend the decision, and to subject that decision to the test of whether he has considered every material matter and excluded every immaterial matter, is to impose an unrealistic and unattainable burden. Nor is it necessary. The liberty of the subject is amply safeguarded [by the requirement of honest and reasonable grounds for necessity]. (Hughes LJ, *Hayes*, para 40)

Anticipating some years ago that this approach might be adopted by the court, Cape (2008) argued that it would render worthless the due process protection the necessity criterion was designed to provide. I agree. Even if one accepts operational demands on policing make the standard of public law reasons simply unfeasible, there is a happy medium to be found in a slightly stricter version of the standard laid out by the court in *Re Alexander*. This, for instance, could require officers to *meaningfully consider* options other than arrest as a pre-condition of necessity *per* s.24 of PACE, without imposing the burdensome duty to account for all relevant considerations and dismiss all irrelevant considerations, as required by a public law reasons requirement.

What is striking, again, is how the courts in these cases seem to be detached from the routine practices of policing, which arguably call for a judicial response that tightens the definition of necessity if this statutory safeguard is to achieve its purpose of protecting suspects' rights. Returning to the experiences of police practice retold by custody officers in interviews, the consensus was that there were far too many arrests being made that were not necessary and that officers were failing to actively consider the necessity requirement or do so in a meaningful way. Custody Officer Alan went as far as to suggest that in seven-tenths of the cases he was seeing in custody the suspect could have been dealt with without arrest, while his colleague, Custody Officer Harold, thought this was true in about six-tenths of the cases he dealt with. In interviews, custody officers shared recent experiences of suspects who had been arrested in situations where it was difficult to see how arrest could possibly be deemed necessary, even under the broad list of factors listed in section 26 of PACE. Custody Officer Harold recounted a situation that for him epitomised constables' failure to grasp the necessity requirement:

> I've had people [constables], sending them [arrestees] to Omagh [custody suite]: Omagh's full. Then send them to Londonderry: full. And then they go, 'When you will be free?' and I go, 'Well, it'll not be until about 12 o'clock tomorrow', okay and they don't make the arrest. And then they make the arrest at 12 o'clock and you're going, 'Where's the necessity? If you needed to make the arrest is shouldn't have mattered if there was a custody suite available or not! Why did you not make the arrest last night?'

> 'Oh, you's were too busy last night, we'd have had to go to Musgrave Street [a custody suite some distance away]. What!? You've just said you made this arrest on Sunday afternoon because on Saturday night we were full and you would have had to go to Musgrave Street? And I'm going 'Where's your necessity!?'

In another case, Custody Officer Eddie could not fathom the actions of officers who had caught a 14-year-old boy drinking in a forest with friends after he had tried to run away from police. The boy refused to tell officers his name and was, consequently, arrested. En route to custody, the boy did tell officers his name, yet the officers proceeded to custody to have him detained. Custody Officer Mike was equally baffled by a lady in her late 70s, with a string of health problems, who had been arrested and brought to custody on a minor assault charge. This arrest was justified on the basis that it was necessary to achieve a prompt and effective investigation and protect a vulnerable witness, but the arresting officers had not even gathered CCTV evidence or statements from the named witnesses. The lady ended up spending seven hours in custody, with no evidence to put to her in interview, before being released on bail.

It was striking how custody officers held higher expectations of what necessity should require of officers than the courts. Custody officers often interpreted necessity far more strictly. Some insisted that arrest ought to be "absolutely necessary" (Custody Officer Barry), it "should really be your last line of defence" (Custody Officer Owen) and "last option basically" (Custody Officer Dave). It was almost universally expected that arresting officers should have surveyed the range of options available to them, such as notebook interviews, on-the-spot fines or fixed penalty notices, or simply asking the person to attend the police station voluntarily for interview at an agreed place and time (a power provided for by section 31 PACE (NI) Order). As such, custody officers seemed to desire much more than the "cursory consideration" accepted by the court in *Re Alexander*. Arresting officers should have "looked at every option to detain this person, as there are a number of options that are open" (Custody Officer Louise) and be asking themselves, "have we considered all our options?" (Custody Officer Barry).

What might explain the apparent over-use of arrest powers described in interviews? The main factor identified by custody officers was neither a crime control mentality (McConville et al., 1999) nor an eagerness to discipline certain social groups (Choongh, 1997; Hillyard and Gordon, 1999). Rather, the over-use of arrest was considered a direct response to the pressure placed on front-line colleagues to achieve police performance targets rigorously enforced by their supervisors. Custody officers described the prevalence of a "figures driven mind-set" that lead to "target orientated arrests". Performance measurement crept into policing in the early 1990s through legislation that empowered government ministers to determine and enforce national police priorities (McLauglin et al., 2001; Loveday, 2006).

The dovetailing of managerialism with the politics of law and order meant clearance rates became *the* indicator of police performance. A series of national targets were set, widened and narrowed from 2002 to 2010, before a single target to reduce crime was arrived at (Kemp, 2014).

With over two-decades of performance management now embedded in police command-and-control structures, organisational targets have been identified as a significant factor shaping police working rules (Sanders et al., 2010; Kemp, 2014). Rowe's (2007) observational research with response officers in an English constabulary offers a particularly good example of the impact of these developments. It reveals how live incident logs triggered by the call handler (and GPS trackers in police vehicles) has enabled supervisors to closely monitor how officers deal with incidents. The officers Rowe observed were motivated by an eagerness to avoid the trouble that was in store if they failed to follow the force's pro-arrest policy for domestic abuse incidents. Despite officers' ambivalence about the appropriateness and effectiveness of this policy, the force's IT system logged the type of the incident they were responding to, meaning there was no way to hide from supervisors who could easily discern whether the policy was being implemented. In this context, "policies may in some cases make arrest (or no arrest) so desirable, that for all practical purposes, the patrolman has no discretion: he is doing what the department wants done" (Wilson, 1968: 84, cited in Rowe, 2007: 285).

In N.Ireland, an assessment of the PSNI's efficiency and effectiveness is spearheaded by the NIPB's exacting performance monitoring framework. As illustrated in Figure 7.1, this framework relies upon precise percentage point targets, with priority offences demanding special effort to improve detection and clear-up rates. Custody officers described how their colleagues were under the watchful eye of their target-minded supervisors. They recalled the daily morning meetings during which the performance of individual officers would be under the microscope. Likewise, stories were re-told of emails flooding in from domestic abuse or volume crime units to ask whether arrests had been made in specific cases that had appeared in their in-trays. The situation was well captured by Custody Officer Mike:

> Issues like road traffic stuff, the assault down the pub or the shoplifting issue, where the jumping in and arresting is for stats and if there was a serial last night at twelve o'clock and someone was assaulted by someone who lives up the road or a known person that they've had an argument with or whatever it is and that person's named on a serial, if that officer didn't jump out and arrest last night when it was known, the duty inspector will get a rollicking [telling off] in the morning, the sergeant who didn't get his constable to do it will get a staver [a telling off] the next day and the constable will also get a staver. So it's forced upon them to run out, grab the person, get them arrested and throw them into custody and the bosses are all happy.

A significant problem this pressure gave rise to, when coupled with inadequate knowledge of the law, was that it prompted arresting officers to insist that because

an offence was one that fell within the organisation's pro-arrest policy or a Policing Plan priority, the necessity criterion must have been met. This belief created tension as custody officers needed to ascertain the grounds for arrest in each specific case, which reference to a blanket arrest policy failed to satisfy. As such, some custody officers admitted to having to ignore pro-arrest policies in making their assessment of the evidence before them if they were to complete the digital booking-in form properly.

Police Performance against the 2015/16 Policing Plan Targets	
Outcome/Indicator	**Percentage Change**
Increase **Confidence** (by 3% points). (Jan 14 to Dec 14 compared to Jan15 to Dec 15)	Increased by 1.2%pts[2]
Decrease **Crime** prioritised for reduction.	Increased by 0.2%
Increase the overall rate of **Outcomes** (by 2% points).	Increased by 1.2%pts
Reduce **ASB** (by 2%).	Reduced by 2.4%
Reduce percentage of people who **perceive ASB** to be high (Jan 14 to Dec 14 compared to Jan 15 to Dec15)	Reduced by 1.2%pts[3]
Reduce **Domestic Burglaries and Robberies in which Older People are Victims** (by 2%).	Increased by 4.0%
Increase Outcome rate for Domestic Burglary in which Older People are Victims (by 2% points).	Increased by 0.8%pts
Reduce **Rural Crime** (by 2%).	Reduced by 8.5%
Increase 10 day **Victim Updates** (by 5% points).	Increased by 35.5%pts
Increase reporting of **Domestically Motivated Crime** (by 3%).	Increased by 5.4%
Increase the outcome rate for **Domesically Motivated Crime** (by 5% points).	Increased by 0.1%pts
Increase the outcome rate for **Rape Crime** (by 2% points).	Increased by 1.5%pts
Increase reporting of **Hate Crime** (by 3%).	Reduced by 4.9%
Increase Outcome Rates for:	
– **Sectarian Hate Crime** (by 3% points).	Increased by 0.6%pts
– **Homophobic Hate Crime** (by 3% points).	Increased by 5.1%pts
– **Racist Hate Crime** (by 3% points).	Increased by 4.7%pts
– **Disability Hate Crime** (by 3% points).	Reduced by 6.8%pts
Reduce alcohol related violent crime (by 3%).	Reduced by 4.6%
Reduce non-domestic violent crime involving injury (by 2%).	Increased by 4.2%

Figure 7.1 - Performance Against the 2015/16 Policing Plan

The use of performance targets has long raised concerns about the over-criminalisation of certain social groups as officers hunt for 'easy hits', in addition to the temptation it creates for officers to manipulate facts to fit within priority offences (Loveday, 2006; Kemp, 2014). In the context of custody, officers explained the pressure targets had in hardening their desire to get the suspect into custody and charged because a charge amounted to a clearance for the purpose of targets, regardless of the outcome at trial. This situation was summed up well by Custody Officer Nigel:

> If you're arrested and your charged, it's a clearance. Now, irrespective of whether you're charged with a minor offence and it goes to court and you're not found guilty, it's already been dealt with as a charge so, it's still a clearance... so I know that the likes

> of the sergeants and the constables are under pressure to do things like arrest him, bring him in, get him charged, get him out, whatever and they are under pressure and I know they're under pressure to do something.

Custody officers complained of how performance targets unduly incentivised the use of custody to investigate crimes at the expense of more appropriate options like warnings, on the spot fines, or just a stern talking to. The performance culture was believed to be so engrained that several custody officers suggested the most effective way to reduce arrests was to amend the targets, so that officers were acknowledged or awarded for their use of these alternative options.

In light of custody officers' accounts, the relationship between organisational performance targets, the use of arrests powers and arresting officers' engagement with the statutory safeguards would be a fruitful line of enquiry for future research. In a particularly frank interview, one sergeant noted the incongruity between the PSNI's performance target culture on the one hand, and their commitment to human rights on the other:

> TSG SERGEANT FREYA: In all this crap about human rights [PSNI's official narrative] they're [senior officers] pushing for figures and arrest figures and basically they want if somebody looks sideways at you to scoop [arrest] them. I ain't gonna do that! And then the next thing somebody's sayin' he hasn't got enough to arrest, well actually, there wasn't the justification to do it and they forget about that.
>
> R.M.: And you think human rights is part of that target driven –
>
> TSG SERGEANT FREYA: No, I think they [senior officers] forget about it when it suits them. When they want to prove to the public, so another smoke and mirrors standin' on TV 'oh, we've arrest 130 people for the Flags protest' they want to be able to say that so they look good on TV but it's us who are actually on the coal face that have to provide those figures for them, you know. So they're all human rights, human rights but then when something happens they go 'Arrest! Go out and scoop them!'

In this extract, we can hear Freya's frustration with the practices she saw and the police official narrative she heard. Whilst senior officers were proudly citing their arrest statistics on television, it was junior officers who were in police custody trying to negotiate the statutory safeguards to ensure the arrest and detention of suspects. Freya resented the pressure placed on her and her colleagues "at the coal face" and questioned how this could be squared with the rights of suspects.

iii. The Necessity to Detain

In the absence of sufficient evidence to charge the arrestee, the crucial decision the custody officer must make is whether there are reasonable grounds to believe that detention is necessary to secure or preserve evidence or to obtain evidence by way of questioning. If so, the custody officer may authorise detention. Given the legal formulation of the test for necessity to detain, most custody officers explained how easy it was to satisfy: there were few incidents where it would not be necessary to

interview the suspect following their arrest. This test did, however, leave open the question – connected to the preceding analysis of necessity to arrest – of whether it was necessary to detain the arrestee in order to interview them. As analysed in the next chapter, in the overwhelming majority of cases, custody officers deemed there to be reasonable grounds to believe detention was necessary. Yet, if custody officers were quizzing arresting officers as to why they needed to arrest suspects, especially if arresting officers had not considered voluntary attendance, then we might ask why custody officers deemed detention necessary in such circumstances. This is an issue we will consider in detail in the following chapter, but for now, let us examine the impact of performance management on this third statutory safeguard.

The pressure to achieve police targets was described as greatly affecting how higher ranking officers treated custody officers. This culture of performance management was one custody officers struggled to reconcile with their role under PACE as the protector of the suspect's rights. Custody officers felt like a lonely breed. As Custody Officer Mike remarked, "I always feel we're the block on the stat [statistic]. I'm between you and you getting your clearance on the other side of me and you have to pass a certain test, which is what I'm there for". Tasked with this crucial filtering function, custody officers were an obvious target for ambitious middle-managers keen to hit their monthly clearance rates. Strongly consistent with Kemp's (2014) findings in England, custody officers described how higher-ranking officers pressured them to accept charges in cases where there was insufficient evidence or the investigation was still early on. If custody officers refused detention, they risked repercussions from inspectors, or even chief inspectors, who would "haul them up" to ask why. This sense of pressure over the decision to detain is expressed by Custody Officer Louise, who had been in the role for some time and was frustrated by the process:

> The organisation has got so figure orientated that it is penalising the custody officers for making decisions which they themselves, when I say they themselves, I mean the higher authorities, believe that actions should be taken. More and more arrests are coming in that could have been dealt with by different means and as we question the officers, we feel that we are being pressurised by supervisors in order to 'we will take' rather than 'you won't take unless' […]. We've also been called by some of our authorities as 'mini-judges' for doing our work to the best of our capability, so I feel that we're are being undermined, our role and function is being seen as something which is interrupting the figures of the organisation rather than what is right.

An issue that captured the pressure custody officers felt centred around the role of the 'gatekeeper', performed by inspectors based in Belfast (but latterly local District Inspectors). Their function was to advise arresting officers of the types of custody disposal they should seek. Custody officers felt that gatekeepers prioritised "corporate level" concerns (i.e., police targets), were too far-removed from the

particular case and usurped the custody officer's duty, prescribed by PACE, to determine whether there was sufficient evidence to charge the suspect and the appropriate disposal thereafter. Constables were under considerable pressure to follow the gatekeeper's 'recommendation', which meant custody officers ended up being the point of challenge when the gatekeeper's advice was under question. This situation, I was told, created "a lot of friction" between inspectors and custody officers, who could be at "logger heads". The gatekeepers were abolished as the research was being conducted, but for some custody officers their role had confirmed the "very contemptuous attitude" senior officers were described as having towards custody. A recurring theme was that the higher ranks "don't realise what we do down here"; they were ignorant not only of custody officers' responsibilities under PACE and the procedures that had to be followed, but also of the deleterious impact that a "charge culture" was having on the people being arrested.

Having now traced how the three statutory safeguards are formulated in law and practice, it is instructive to incorporate into our analysis the actual criminal justice outcomes for cases where detention is authorised. There are two striking findings from the PSNI's official custody data over a five-year period, reproduced in Figure 7.2.[48] The first is that the most common disposal, used in 41-53% of cases, was release on pre-charge police bail,[49] applied in situations where there is insufficient evidence to charge but custody officers deem it necessary to continue the investigation (per section 37 of PACE). This is an extensive power, especially given that, until this year, there was no limit on how long a person could be released on police bail.[50] At the most extreme, a PSNI Freedom of Information Act request revealed that a person has been on police bail for 804 days.[51] Although the number of people released on bail who were ultimately prosecuted is unknown in these figures, the limited research in England and Wales by Hucklesby (2015) found that nearly half of those released on police bail were neither prosecuted nor dealt with by out-of-court disposals. The second finding is that over the last five years, between 17-22% of police detentions result in unconditional release, the majority of which did not result in either a warning or an informal disposal. In sum, most detentions in police custody result in the person's release without charge.

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[48] I obtained this data by way of a Freedom of Information Act request (no. F-2017-01265).

[49] This is referred to as 's.13.1.a' in the PSNI's Freedom of Information Act responses and is described in earlier requests to 'equate' to police bail (PSNI, 2014).

[50] The Policing and Crime Act 2017 amends PACE to introduce: (i) conditions before bail can be authorised (the custody officer must be satisfied it 'necessary and proportionate in all the circumstances' and must be authorised by an inspector or above); (ii) a limit on the period of time which bail may be granted by police (initially 28 days); and (iii) an extension procedure involving the magistrates' court. For a summary, see Cape (2017).

[51] An exploratory study into pre-charge bail undertaken in nine police forces by the College of Policing (2016b) in anticipation of the reforms found that the average length of bail was 46 days, with 9% of cases bailed for over 90 days.

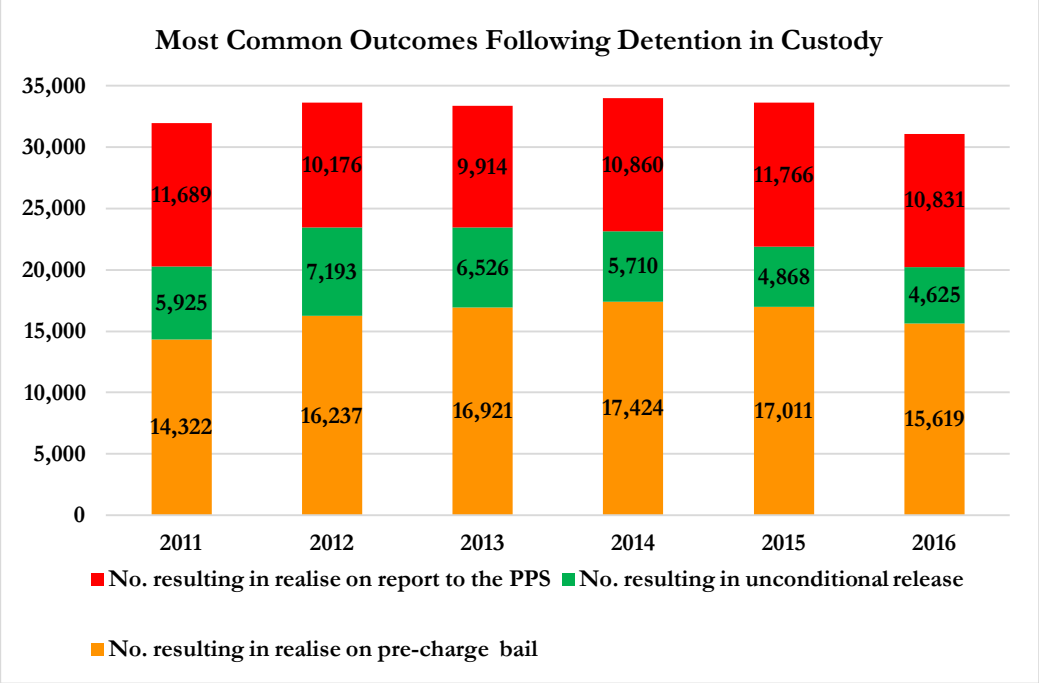

Figure 7.2 - Based on PSNI figures

How might we make sense of these data given what we now know about the court's interpretation of the statutory safeguards and the experiences recounted by custody officers? The fact that the majority of detentions result in the person's release without charge surely seems unsurprising. If we return to the legal threshold for arrest, much will hinge on the officer's own subjective suspicion surrounding the alleged offence and the belief in the need to arrest the person. Although the reasonableness of this suspicion is a crucial means of review, it is one that will only ever be considered if the arrest is legally challenged. And even so, the courts have consistently confirmed that the requisite level of suspicion is low and they have been proven reluctant to define 'necessity' (to arrest) in strong terms.[52] Within the legal formula itself then, arresting officers are permitted to act "on the fog of 'suspicion'", not certainty of proof; it is unsurprising, therefore, "that inevitably hurriedly formulated belief is likely to turn out to be erroneous upon further investigation" (Waddington, 2015: 685). The statutory powers of arrest under section 26 of PACE thus serve as enabling powers, allowing wide interpretive latitude to officers to arrest those they suspect of wrongdoing (Ericson, 2007: 374; see also Ashworth, 2003: 155-156). Even where an arrest seems dubious to the custody officer – a role specifically designed to protect suspects' rights – the courts have made clear it is not their responsibility under PACE to challenge it.

[52] See *Dumbell v Roberts* [1944] per Scott LJ ("the requirement is very limited") and *Castorina* per Woolf LJ ("it is critical to note that [equivalent section to s.24(4) PACE)] only requires suspicion of guilt, not belief or even prima facie proof of guilt").

Yet, the extent to which these standards, as enabling as they are, really determine police behaviour remains questionable. Custody officers, after all, described arresting officers' lack of clarity surrounding the grounds for arrest and their limited consideration of the necessity to arrest. Indeed, other commentators are sceptical that it is purely ignorance at work. In assessing the outcome of unconditional release, or 'no further action' as it is known in England and Wales, Richard Young (2008: 151) argues that it is a likely response where officers lacked legal justification for use of power in the first place. By not pursuing the case any further, officers conveniently avoid the prospect of independent scrutiny by prosecutors or the courts. Sanders et al. (2009: 138-139) likewise refer to the "unofficial purposes" of arrest, for example, where there is no intention to prosecute, but the arrest serves to secure evidence for unrelated offences. Such arguments alert us to the function police powers can serve beyond law enforcement – including the maintenance of social order, which can span from 'the drunk and disorderly' taken to custody to sober up overnight to more sinister practices of disciplining individuals who fail the 'attitude test' (Van Maneen, 1973; Brewer, 1991) and groups deemed suspicious because of their race, ethnicity, class or religion (Choongh, 1997; Warburton et al., 2005; Bradford and Loader, 2016).

Conclusion

Custody officers knew they were supposed to act as an independent and impartial gatekeeper, but they felt their role was under threat from organisational pressures. This threat was described as arising from a culture of performance-driven behaviour that pushed officers to make arrests – an outcome made easier because officers had a poor grasp of the legal grounds for arrest in the first place. Custody officers described being presented with cases that had substantively weak, or at least poorly conveyed, grounds for arrest. But they were also confronted with cases which would be deemed lawful as per the court's interpretation of 'necessity', yet could still have been more appropriately dealt with outside of the police station. This frustrated custody officers. They felt people's liberty was being unfairly restricted by the practices of their target-driven colleagues, and that this was also just bad policing in their eyes – it lacked "craft" or "investigative skills" as officers slipped into lazy practices or shortcuts. Some custody officers feared that cases sent to the Public Prosecution Service were poorly evidenced, but that by this stage, senior officers had little interest as they had already got the charge and "ticked the box". The pressing question this chapter raises, then, is how did custody officers

responded to the challenges they faced at the booking-in process? The answer is to be found in the chapter that follows.

Chapter 8.

Feeling the Pressure: Custody Officers' Decision to Detain

> Street-level bureaucrats often spend their work lives in a corrupted world of service. They believe themselves to be doing the best they can under adverse circumstances, and they develop techniques to salvage service and decision-making values within the limits imposed upon them by the structure of the work […]. These work practices and orientations are maintained even while they contribute to perversion of the service ideal or put the worker in the position of manipulating citizens on behalf of the agencies from which citizens seek help. (Lipsky, 1980: xiii).

In his account of 'street-level' bureaucrats in public services, Michael Lipsky (1980) describes the 'corrupted world' these workers come to face, whether in schools, hospitals, courts or police forces. This corruption arises, in large part, Lipsky suggests, because employees aspire to organisational, or working, lives that align with the very commitments, preferences and ideals that define them as individuals. And yet, the structures of their work – its administrative burdens, its pressures from colleagues or clients, its inadequate resourcing – make it near impossible for them to come close to achieving such commitments, preferences or ideals. For some, this dissonance is too strong, they move out and away. But for those who stay, Lipsky argues, their survival lies in adaption; that is, they alter their work habits and attitudes, sometimes lowering their expectations of themselves, clients or of public policy itself. This notion of managing occupational expectations, the adaption it can require and the cost it incurs by way of normative ideals (fairness, justice, culpability), is one which helpfully introduces this chapter's analysis of the tensions that animate the work of the PSNI's custody officers.

Similar to the street-level bureaucrats in Lipsky's (1980) study, the custody officers I met in the course of my fieldwork were faced with a dilemma emergent from competing occupational demands and police functions. On the one hand, they were conscious of their statutory duty to act as guardians of suspects' rights, and that the routine practices of their fellow officers could undermine the right to liberty. On the other, they were confronted with considerable organisational pressure to process arrests in custody and, in doing so, help their over-worked frontline colleagues that tirelessly bounced from one response call to another. The question emerging from the last chapter is the one I aim to answer here: how did custody officers respond to the pressure they faced to authorise the detention of suspects,

especially where the arrest seemed dubious? Did they succumb to organisational demands and authorise detention, or did they feel able to push back and challenge arresting officers and their supervisors? By the end of this chapter, the reader will come to understand how and, more importantly, why, the former attitude prevailed and what this tells us about custody officers' as human rights practitioners.

The Decision to Detain: Routine Authorisation

Despite custody officers' concerns about the over-use of arrest powers and dubious grounds for the necessity to arrest, most admitted in interviews that they authorised detention in almost every case. Custody officer Frank commented on how refusal to authorise "very rarely wouldn't happen, to be honest, very rarely" and recalled only refusing arrests on two occasions in eleven years. Custody officer Harold, who was newer to the job, mentioned turning down just four arrests that year; still several more than many of his colleagues, but a nominal figure nonetheless. Refusal to detain was such an infrequent event that most could still remember the cases they had refused, even some years later. Indeed, refusals were so rare that when they did occur, they attracted some chatter in the police station, as this neighbourhood officer recalls:

> [G]enerally speaking, by the time you get there [the custody suite] you've already decided yourself [if] it [the arrest] is required and at that point the custody sergeant usually pretty much goes with it, it is always a bit of a surprise if you hear somebody getting refused and it becomes the talk of the station for a while: 'On what grounds!?' and most people are shrugging their shoulders, but there's usually some reason. (Neighbourhood Constable Alan)

This anecdotal evidence is well supported by PSNI's official detention figures (see Figure 8.1), which I obtained through freedom of information requests. Between 2007 and 2016, just 3.2% of arrests brought to custody suites in N. Ireland were refused detention by custody officers.

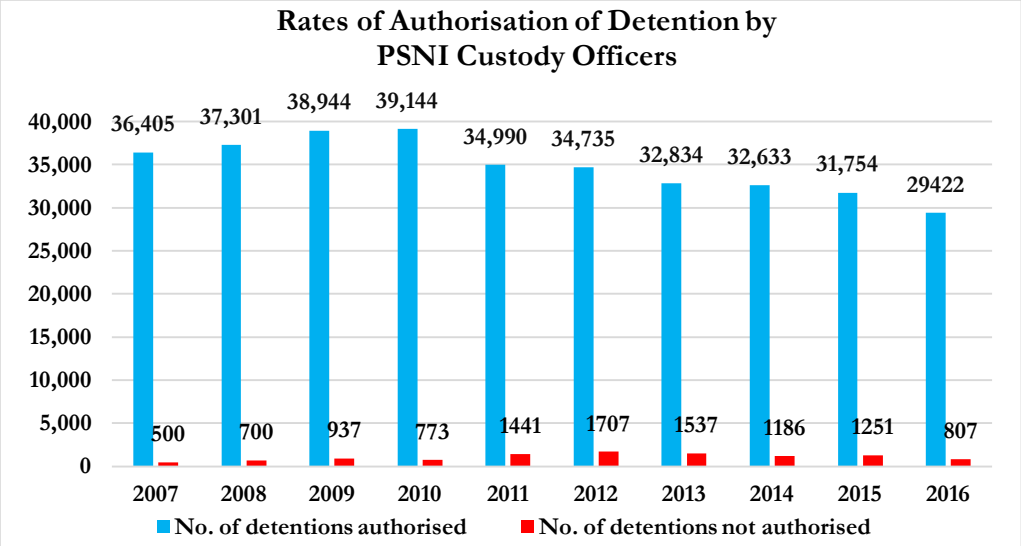

Figure 8.1 - Based on PSNI data obtained through Freedom of Information Act requests

These findings strongly support those from the first wave of PACE studies, which revealed that virtually all arrested suspects were detained in custody (Dixon et al., 1990; McConville et al., 1991; Morgan et al., 1991). They raise a significant question about the rigour with which custody officers apply the statutory safeguard of necessity to detain and fulfil their filtering function in custody. Morgan et al. (1991), for example, referred to the authorisation procedure as a "presentational fig-leaf", rarely ever engaged with meaningfully by officers. Similarly, Dixon et al.'s (1990: 130) observational research revealed how authorisation of arrests had become an essentially routinised process: "procedures are, generally, completed to the letter, but usually in a way which empties them of substance". Only exceptionally would custody officers consider immediate charging or assess the weight of the evidence against the suspect on arrival in custody. Dixon et al. witnessed no instance where a custody officer refused to accept a suspect into detention; in fact, a rubber stamp was used in one custody suite to record the statutory formula on each custody record.

A central finding, then, is that custody officers' criticism of, and sense of frustration with, arresting officers, described in the previous chapter, rarely affected their decision to detain. A form of cognitive dissonance was thus experienced by custody officers who knew that the target-driven, custody-reliant system was not fair to suspects and encouraged lazy, ineffective policing, yet they were crucial to propping it up. This finding is strongly supported by Kemp's (2014) study in 2010 across four police forces in England, which found that custody officers were rarely seen to challenge their colleagues when bringing suspects into custody, despite complaints of their misguided preference to arrest for minor incidents. These findings raise two important questions worthy of closer inspection in this chapter's

account of custody officers as human rights practitioners tasked with interpreting and applying the PACE safeguards protecting suspects' right to liberty. First, what were the techniques, and corresponding narratives, which enabled custody officers to book-in arrests they considered dubious and where the necessity to detain was questionable? Second, pushing this further, what factors explain why custody officers were so heavily swayed in the direction of pro-authorisation of detention? Let us explore these questions in turn in the sections that follow.

Ploys and Narratives for Pro-Authorisation of Suspects' Detention

There were several ploys custody officers described using, and CDOs confirmed seeing, when dubious arrests arrived in custody. The first was evasion; that is, they would simply avoid asking for much information from arresting officers about the circumstances of the arrest, especially if they sensed the more they asked, the weaker the grounds for arrest would appear. By preventing a can of worms from being opened at the booking-in stage, the audio records could be kept clean. Rather than see arresting officers "twist and turn", for example, Custody Officer Louise decided to stop asking them if they had considered options other than arrest. Similarly, Custody Officer Mike described how it was "dangerous to start unrolling things" because he knew that on many occasions there was no good reason for the situation not to have been dealt with it another way. A narrative of futility accompanied this ploy: there was little that custody officers could do to change the target-driven culture their colleagues were responding to and which supervisors reinforced through the pressure they put on custody officers. Furthermore, officers' lack of knowledge of the grounds of arrest, particularly the necessity standard, was deemed a training issue best tackled when officers joined the police.

This technique of non-enquiry is perfectly legal since the court has interpreted section 37 of PACE as not requiring custody officers to question the legality of the arrests brought to them in custody (see *Al Fayed*, discussed in the previous chapter). The curiosity, of course, is that custody officers *did* understand this to be a requirement of their role (see last chapter), yet in their everyday work, many described using this technique of non-enquiry. This approach was made easier due to the all-encompassing list of necessity grounds provided for under section 24(5)(a)-(f) of PACE.[53] As Cape (2008: 200) argues, the list is "so extensive that it is difficult to conceive of circumstances where an officer could not reasonably believe that at least one of them is satisfied". Most striking is the necessity "to allow the prompt and effective investigation of the offence or of the conduct of the

[53] *Op cit.* n.43.

person in question" as per PACE section 24(5)(e). Almost all custody officers stated this was the most common ground relied upon by arresting officers in the overwhelming majority of cases. Aside from cases where the suspect has indicated a clear willingness to attend voluntary (see, e.g., *Richardson*; *B and others*), it is difficult to envisage how an arrest could ever fail to be in pursuit of a prompt and effective investigation if the aim is to interview the person or obtain evidential samples (Cape, 2008).

The second, more commonly reported ploy was to help arresting officers by prompting them. For example, some custody officers would hint at the missing elements of the offence or suggest possible grounds for why the arrest might be necessary. As one custody inspector admitted, the custody officer was not supposed to put words into colleagues' mouths, but there was nothing wrong with "feeding them" or "pulling the necessity criterion out of them". Custody Officer Nigel explained that whilst he was "not allowed to coax" an answer out of the arresting officer, it was fine "to ask for clarification". Likewise, Custody Officer Harold admitted he would "try and drag a wee bit out [of the arresting officer] and give a wee bit" and that "although not strictly within the guidelines of PACE, I don't think it's wrong of me". Unlike most, Harold worked in a custody suite yet to be equipped with video and audio recording, and because of this, he could be "that wee bit more educational" by helping officers with their grounds for arrest. Indeed, he admitted to printing out the list of necessity criteria for arresting officers on several occasions, telling them to find a relevant factor from the list to strengthen their case. Several custody officers in suites with video and audio recording identified this technology as something that prevented them from going further in assisting officers.

Sometimes prompting could be as subtle as a facial expression or a gesture to hint to the officer that more information was required. In other cases, it was quite blatant, as described by Custody Officer Frank:

> We're supposed to be completely impartial but at the end of the day, if they've arrested someone for – I'll give an example: possession of an offensive weapon. Possession of an offensive weapon is only in a public place, so imagine they do that in a home. They've arrested them, but there is an offence for possession of an offensive weapon in a private place but it's called possession of an offensive weapon with intent to commit an indictable offence. So, in those sort of circumstances the person can say 'Listen, I've arrested them under this here'. You would then explain: 'Look, in this particular instance, is there anything that would make you think he or she was going to commit and indictable offence?' 'Well, of course, they were threatening me or –'. 'Okay, well that is alright then, there you go'. So wee things like that, just to keep people right.

This collaborative approach lifted some of the pressure from front-line officers when situations of uncertainty arose over how best to exercise their discretionary

power of arrest. The reassuring predictability that prior liaison with custody officers could bring, especially if they were willing to help fine tune the grounds of arrest, is captured well by one response officer I interviewed:

> Sometimes you go to a call and you maybe don't have a suspect present there and you're sitting there going right, now what do we do? Do we go out and try and arrest them now or are we going to try and get them to come in voluntarily later? And quite often you would have discussions with custody sergeants and say 'Look, this is the situation I've got, these are the facts of the case, if I were to hypothetically bring this person in…' – because you don't want to bring someone to custody and have it refused. You can go and speak to them because they're quite happy to discuss their point of view on a particular case and say: 'I was thinking of going out and arresting this person'. And they might say: 'Yep, no problem, I'd have no issues with that'. Or they might say: 'Had you thought about another option?'…so there's always those kinds of discussions and even when you go in and you're giving your circumstances of arrest, quite often a [custody] sergeant might ask you further questions: 'I don't think you've given me enough, you need to explain more'. And you might then tell them a few more things and they might say: 'Right, perfect, you've covered everything I need.' (Response Officer Alexander)

In contrast with the first technique, custody officers justified this approach on the basis that they had greater knowledge of what the law required, so it was proper for them to educate and mentor junior colleagues. Some officers thought police custody to be a site of learning, where junior colleagues could improve knowledge and skills of how to 'book suspects in' properly. In fact, several custody officers thought more officers were "now coming in pre-armed with their necessity criteria" because they knew certain custody officers would be firm in their requests for it.

The third method was diversion. Custody officers navigated around potential tension at the booking-in stage by encouraging arresting officers to consult with colleagues or a supervisor when issues with the arrest arose. In such circumstances, several custody officers even allowed a supervising officer to contact them directly by phone or email. CDO Gavin, a former RUC officer, explained how he too would "take officers to one side very quickly" to say, "Mate, you need to just go back out there and take another deep breath, speak to someone to your sergeant". These interventions enabled arresting officers to obtain the advice they needed to pass the legal threshold for getting an arrest into custody. This approach was well explained by Custody Officer Mike in a situation where a constable was struggling to explain the driving whilst unfit element of the drink-driving offence:

> I have stopped constables in the past where they're just not getting it, they're just not hitting it and I'm going, 'right, I want you to go 'round the back, go into one of the briefing rooms, phone your sergeant and say that the custody sergeant says you ain't hittin' it and then come back to me with circumstances'. And I just sit there and twiddle my thumbs for ten minutes and then they come back and they go, 'Ah, by the way, sergeant, when I spoke to the guy his eyes were glazed, his speech was slurry, I got him out of the car to speak to him and he was unsteady on his feet'. Happy days. It's a stupid as that.

These apparently minor or 'stupid' routines, however, are not just crucial for keeping administrative processes running smoothly, they serve a social function as well. Such behaviour during the booking-in process allows officers to seek approval, learn or confirm standards for action and put problems into perspective with help from their fellow officers (McNulty, 1994: 289; Foster, 2003). But, again, this ploy sits uncomfortably with custody officers' previously expressed concerns about their colleagues' over-use of arrest powers. Perhaps to reconcile this, a discourse of triviality was notably attached to this ploy of authorisation by custody officers. Sometimes arresting officers had grasped the offence or necessity criterion but "they just couldn't quite verbalise it", or it was so obvious the suspect should be in custody that it was just a matter of getting the phrasing right for the record.

Dynamics Affecting the Decision to Authorise

These ploys formed the primary means by which custody officers actively responded to the processing pressures outlined earlier. What motivated these kinds of responses is what I want to turn to now in considering more closely the factors that played on the minds of custody officers when determining whether to authorise detention under s.37 PACE, based on their accounts described in our interviews. The reasons for nullity of the authorisation procedure by custody officers attracted a "substantial difference of view" after the first wave of PACE studies reported their respective findings (Brown, 1997: 58). Reviewing this debate in light of my own research findings, there are three key dynamics at work which, taken together, can help us better understand custody officers' decision-making: (1) cultural dynamics (2) organisational dynamics and (3) dynamics of external accountability.

Cultural Dynamics of Legal Decision-Making

McConville et al. (1991: 43-47) are the principal advocates of the view that strong, and perhaps sinister, aspects of police culture best explain the ineffectiveness of the authorisation process in custody. Alluding to the police 'mission' to safeguard social order and control crime, they argue that custody officers "are unable to divorce themselves from the 'needs' of policing", are "emotionally committed" to believing fellow officers' version of events, and "share the instrumental goals of case clearance which underpins all police work" (McConville et al., 1991: 42). Case building demanded the suspect be detained; the custody officer became "a func-

tionary who assists in the case movement (McConville et al., 1991: 44). Their affinity to the police mission and institutional allegiances meant custody officers could not properly engage with, or apply, due process safeguards. Skinns (2011), in a more recent study, lends broad support to such sentiments, suggesting that a cultural commitment to crime control led officers to suppress suspects' rights to an appropriate adult or legal advice. In what is perhaps a more nuanced analysis, Dixon (1992) argues it can be easy to overstate these crime control attitudes at the expense of more practical or administrative features of decision-making.

Based on my interviews with custody officers, there is good reason to share Dixon's apprehension of over-reliance on crime control ideology, but at the same time, cultural factors are key in accounting for custody officer's decision-making. Whereas McConville et al. (1991: 44) reported custody officers being "baffled" by the researcher's questions about the decision to detain the suspect (because arrest meant detention), I found a rather different style of answer and sentiment expressed, even if the outcome remained the same (as Figure 8.1 demonstrated, arrest still results in detention in the overwhelming majority of cases). For the custody officers I interviewed, arrests were driven less by a zeal for crime control and more by police targets, producing a culture of pro-arrest among constables who were keen to prove to their supervisors that they were 'performing'. This general sentiment is summed up well by Custody Officer Mike:

> It's a pressured job and sometimes we feel for the constables standing on the other side of the desk there – really you don't know if he's been pulled up this morning in relation to the sergeant saying 'I've had a wee word from the inspector in relation to you, you've only had one arrest in the last six weeks, that's not good enough, you haven't had any clearances in the last two months, what's happening here? Under pressure, we're the lowest performing section'… So the point being there that the stats are so driven that if you were the lowest performing, you'd know about it, so I have to accept that the constable standing at the other side of the desk is under pressure and I'm looking at him going right, okay, why would I be difficult?

Far from endorsing this performance-driven culture, custody officers were frustrated by it and felt it had to change, but crucially, such concerns were outweighed by a deeper sense of solidarity with their junior colleagues. It was solidarity, not crime control, doing the cultural work when it came to police pro-authorisation. Let us explore this some more.

Solidarity amongst officers, especially amongst junior officers, continues to be recognised as a defining feature of police culture (Loftus, 2009: 119-22; Westmarland and Rowe, 2017: 1-3). It is likely born out of the uniqueness of the danger, risk and uncertainty officers experience in their occupational lives, as well as the power they wield and the associated pressures, both inside and outside the organisation (van Maanen, 1978: 118; Brewer and Magee, 1990; Waddington, 1999). On

numerous occasions officers in the TSG and neighbourhood policing alluded to what solidarity looked and felt like to them:

> I had to work with a guy there on Saturday, never worked with him in my life, but by end of the shift you'd have thought we were best mates, having a real laugh and getting on […] The camaraderie and the brother-ship of it […] there's nobody I've come across yet that I couldn't speak to or ask a question to, they're all there to help you. (Neighbourhood Constable Ben)

> Colleagues do help you out, colleagues with years of service really do carry your back, there is a great sense of comradery and sense that you're not on your own, we will help you through it. (Neighbourhood Constable Emma)

This kind of mutual support is said to be crucial in managing the in- and on-the-job 'trouble' mentioned in earlier chapters. In his observational research with a US police department, Van Maanen (1973: 411) describes how new officers quickly grasped that it was their immediate peers, not senior officers, who would best support them in handling daily pressures, dilemmas and, of course, mistakes. This was certainly the case when it came to knowing the law: officers in the TSG and Neighbourhood Teams often joked that provided someone in the group knew the relevant legislation, there was no need to worry.

During interviews, participants explained to me that a good custody officer was one that "looked after their constables on the ground". Custody staff sympathised with the issues their colleagues in response faced, understood "the angle they were coming from" and appreciated that mistakes would be made. Custody Officer Frank, for example, described how his own experience as response officer shaped how he approaches the role:

> I can remember when I was young, and it was a very frightening thing [taking an arrest to custody]…it would have been the talk of the station if someone had made an arrest and it was a very nerve racking thing to go in front of the custody sergeant and you could get some real tough custody sergeants and they would give you a real grilling and it was very stressful…I always kept that in mind that, I was the guy not 100% certain of my grounds for arrest… and I would never really, I wouldn't want somebody to come in and be presenting a case and for me to make them feel very small because I notice whenever I was young and if I got criticised for working at something, I never really got criticised for not doing something but you get criticised for trying something.

The ability to relate to their colleagues' experiences encouraged custody officers to give them the benefit of the doubt when it came to questionable arrest. As Custody Officer Clive admitted, if he thought an arrest was "50/50" he tended to help out his colleagues by asking them for a bit more information that would justify the person's detention. The 'instructional attitude', as described by Cain (1973), was confirmed by several CDOs, who described how custody officers would extend a helping hand to their colleagues: "they'll say before you bring them [the suspect] in, there's no problem just do it in slow time, chill out and relax… the relationships between them are very good".

Closely related to the narrative of education is the second ploy of authorisation, as several custody officers had been 'tutor sergeants' (i.e., responsible for nurturing more junior officers). As a result, they described feeling a natural inclination to continue mentoring arresting officers in custody. Despite her frustration with officers' poor understanding of the law and necessity criteria, Custody Officer Louise conceded that "it's a learning process. We go through, we help them as much as possible". Where there had been a disagreement about the grounds of arrest or if there were points for the officer to improve upon, some custody officers described how they would "flag them up, but in the right manner". Mirroring Morgan et al.'s (1991) research, "the right manner" meant having quiet conversations after the booking-in process, away from the defence solicitors and the detained person to avoid the officer suffering any embarrassment or even reprimand. This practice reflected a feeling amongst some custody officers that they were there to protect the organisation too and, at times, this meant "stepping in" to "protect" young officers from "failing" at the custody desk, either because they were unsure of their grounds of arrest or because suspects' solicitors were making arguments that the arresting officer was struggling with.

There were certain types of arrest, however, which tested the limits of this cultural affinity and custody officers' tolerance. One was the arrest of vulnerable groups seen by custody officers as undeserving of police attention. Several told the 'elderly lady' story, in which the thoughtless response officer had arrested an old lady (described with pathos: her husband had died recently, she was confused, she suffered from poor health) for shoplifting, when really, she had just forgotten to pay for her newspaper. The other group was the young teenagers in care homes who had breached their bail conditions by refusing to abide by care home rules, particularly curfews. Another type of arrest for which custody officers were less likely to authorise detention involved conduct deemed most trivial or harmless in nature. Custody Officer Jeremy, for example, described a man arrested and taken to custody for drunk and disorderly behaviour on a bus. The man was known to police and had sobered up by the time he was in custody. Jeremy refused detention and, like the elderly lady and young teenager cases, instructed the arresting officers to just issue a caution and take the person home. There was a misperception, said Custody Officer Barry, "that all peelers are a big gang with guns, they all stick together", but he described how, to his colleagues' surprise, he would challenge them when he thought arrests were unfair or based on a suspicion of someone being a "bad character".

The demands that come with running a busy, often chaotic, custody suite, inhabited by suspects with a myriad of needs and vulnerabilities, have been cited as an important factor making it impracticable to carry out enquiries during the 'booking-in process' (Bottomley et al., 1989; Dixon et al., 1990). From my interviews and observations, it was apparent that the custody officers' role was stressful, requiring constant alertness to the well-being and procedural rights of the suspect, as well as keeping track of the actions of investigations officers, solicitors, forensic medical officers, appropriate adults, interpreters and so forth. When reflecting on their work in interviews, however, custody officers and CDOs never connected the demands on their time and attention with the decision to detain; that is, none suggested they were simply too busy to engage in the kind of process PACE envisioned. Whether this factor would have emerged with greater time spent observing their work is an open question. During her short period of observational research, Skinns (2011: 129), for example, found that denial of rights or failure to fulfil the spirit of PACE was inadvertent and often a result of the sheer busyness and frantic nature of custody.

The most significant organisational factor linked to processing pressures was, in fact, the internal accountability of decision-making. Consistent with the analysis in Chapter 6, the avoidance of trouble was a central concern of custody officers. Echoing Dixon et al.'s (1990) findings, the custody officers I interviewed did not feel as if they had wide discretion or the freedom of control, describing it as a "very fallible" job with "an awful lot of spotlight if anything goes wrong". It was only a minority of custody officers who sensed accountability as arising from the law. In fact, Custody Officer Alan cited court decisions as the reason why he felt disempowered to challenge arresting officers. Without stating the case names, he understood the legal position as requiring custody officers "not to interrogate arresting officers but take them at their word". For the majority, though, the pressing source of trouble was their bosses who, as described in Chapter 7, were viewed as putting pressure on custody officers to accept detention and charges. In the eyes of custody officers, supervisors pushed front-line officers to achieve targets, all the while being ignorant of the rules and procedures that were supposed to act as procedural safeguards. Several officers described in frank terms how they had much more to fear from their bosses than judges, with one stating their fear of judicial review was just 30% but fear from their own authorities would be closer to 90%.

Taking a moment to reflect on this finding, custody officers were, legally speaking, right to be most concerned about internal trouble given the courts' weak standard of review. First, the exercise of discretion to authorise detention is subject to the administrative law test of 'Wednesbury unreasonableness', which sets a low

threshold, asking: "whether the decision of the custody sergeant was unreasonable in the sense that no custody officer, acquainted with the ordinary use of language and applying his common sense to the competing considerations before him, could reasonably have reached that decision" (*Wilding v CC Lancashire* (1995)). Second, even where an arrest is deemed unlawful because the arresting officer failed to comply with s.24 PACE, this does not invalidate anything that the custody officer did thereafter in exercising their power of detention under s.37 (*DPP v L & S*). Ultimately, receiving an unlawful arrest, continuing to process it and deciding to detain the person would not land custody officers in legal trouble.

As discussed in Chapter 7, and as noted by others (Maguire, 1988; Sanders, 2008), record-keeping can be understood as a memory aid and legitimating mechanism, as well as a mode of regulating behaviour. In rare instances of "controversial decisions" (like refusing authorisation), custody officers explained how they would make clear justifications on the custody record. Detailed record keeping was considered a prudent exercise in managing blow back from senior officers, weeks even months down the line. The custody record was especially important because duty inspectors who disagreed with custody officers' decisions were known to document their dissatisfaction in their own records in an effort to ensure "the buck stops with someone else". As such, record-keeping was not only a way of producing an authoritative record of events (Dixon et al., 1990) or protecting against suspects' vexatious complaints (Maguire, 1988), it also served to lodge competing views and rationales within the organisation with a view to fending off internal challenges. As discussed below, rights discourse featured far-less prominently in these rationales and justifications than in public order, where decisions were recorded with external human rights audiences firmly in mind.

There did, however, seem to be some exception to the norms of authorisation at a larger custody suite equipped with forty cells and staffed by three to four custody officers. Its custody staff had a reputation for taking the arrest grounds more seriously, being sterner with arresting officers and more likely to refuse detention. CDO Gavin, for example, described how there was "no kind of pre-empting or giving them assistance with how their arrest should be worded" and that "if your grounds for arrest aren't good enough for me to authorise detention, you're walking straight out the door". An officer I met during my time in Clantown described how custody officers in the city station were "like God down there", which was different compared to Clantown's custody suite, where this officer had only been refused detention twice in seven years. Some custody staff put it down to the "big city culture" – a culture less friendly than in smaller or rural stations or because custody officers were concerned that with such large capacity, if they authorised too many arrests the suite would quickly fill up and be harder to manage.

In interviews with custody officers from the larger suite, it was apparent that they had a firmer expectation of police to demonstrate they had met the statutory requirements for arrest. One interviewee described how arresting officers had "to fight their case", while another insisted custody was not a dumping ground for arrests and that officers would be challenged. This minority view was rooted in a sense of fairness to the suspect, as well as to a greater sense of being accountable to the courts, rather than senior officers. Interestingly, this custody suite is located just a stone's throw from the Magistrates' and Crown Courts. It might also be the case that more confident, assertive custody officers had been selected to manage the busyness and pressure of this 'super suite'. More research at this site would be worthwhile, along with a breakdown of this suite's authorisation figures vis-à-vis others.

The Presence of Outsiders: Defence Solicitors and Lay Custody Visitors

By entering the closed, self-regulatory arenas of custody and "chipping away at the traditional secretiveness and exclusivity of police stations" (Dixon et al., 1990: 116), third parties in custody have been described as one of the greatest checks on police power (Dixon, 2008; Sanders, 2008). Suspects enjoy rights of access and communication to family and friends, legal advisors, social workers, doctors, appropriate adults, interpreters and independent lay visitors. But the precise effect that these outside "challengers" (Reiner, 2012: 613) have on police behaviour in custody remains the subject of debate. Some argue that the "new archipelago" of multi-agency professionals and civilian staff in custody has the potential to have a "profound impact" on police culture and reform in custody (Skinns, 2009b: 60), while others remain sceptical of how far such interventions really go in improving the treatment of detained persons, at least in their current form (Sanders, 2008). In this section, I focus on the impact custody staff thought two, quite different, types of external challengers had on police decision-making: defence solicitors and independent custody visitors.

The access to free legal advice has been identified as potentially the most significant safeguard for suspects under PACE. As was intended, the introduction of PACE brought about an increase in the number of detained persons requesting and receiving custodial legal advice. That said, the uptake generally remains low, with research in two custody suites in England revealing that over one-third of detained persons did not request legal advice (Skinns, 2009a). This figure is even higher in N.Ireland, with 39% of suspects not requesting advice in 2016-17 (PSNI, 2017). The reasons why suspects remain reluctant to avail of their right to legal

advice has been explored in detail elsewhere (Skinns, 2009a, 2009b). For the purposes of this chapter, most interesting is the fact that the defence solicitors were not generally considered by custody staff to pose much in the way of accountability, nor did they inspire a commitment to the statutory safeguards. There were some "wily old solicitors" and "awkward ones", but overall defence lawyers were described by custody officers in favourable, friendly terms and, like Dixon et al.'s (1990) findings, rarely caused an issue for custody staff by challenging their decisions.

The benign status of lawyers was connected in large part to a strong sense of familiarity, even collegiality, between custody staff and defence solicitors. CDO Gavin, for example, described how "it's got the stage now where I ring them and they know who it is on the phone, I don't even have to tell them my name". Several custody officers similarly described how they knew almost all the solicitor in their station's town or city (see also Skinns, 2009a: 70). In a parochial jurisdiction like N.Ireland, custody officers came to know the temperament and working ways of their local lawyers: "you get to know their quirks. You get to know how they react, their buzzwords whenever they're going to start an argument, you can read them" (Custody Office Louise). Custody officers' ability to "read" and "learn" local solicitors worked to the mutual benefit of both by ensuring the process in custody went smoothly. In the rare instances of awkward solicitors, custody staff described how they would manage their behaviour by ensuring they "went straight down the middle, by the book". In most cases, however, custody staff described sharing gossip, gripes and football scores with solicitors over a cup of tea or a chat before the suspect appeared. This kind of rapport enabled some solicitors to whisper in the custody sergeants' ear to see if they could convince the investigating officer to drop a minor charge.

The primary concern of defence solicitors, according to custody staff, was not necessity for the arrest or the authorisation of detention. This view, expressed in interviews, was broadly supported by PSNI data obtained through freedom of information requests, which revealed that just seven legal challenges to the necessity of detention have been made in a four-year period, over which time close to 100,000 detentions will have been authorised (PSNI, 2011). This figure can be partly explained by the absence of solicitors at the booking-in process – it is uncommon for solicitors to be in custody suites when clients arrive as most liaise with them over the phone and only attend when they are fit for interview (Skinns, 2009b; Sanders et al., 2010). Custody staff recalled that the most heated exchanges with solicitors tended to arise over the suspect's disposal, especially police bail. As officers explained, detained persons were obviously keen to be released and this was an area where solicitors could make a strong case on behalf of their clients.

Solicitors knew that if they failed to get lenient police bail conditions from the custody officer, it would be an uphill struggle to convince a magistrate.

There was, however, a strong sense amongst custody staff that there was a theatrical element to defence solicitors work; they were performing in front of their clients and once the detained person had gone, the acting ended. Solicitors would shout and scream, expressing frustration and anger at police officers when their clients were present, then later admit to the custody officer they were right all along or even ring up to apologise for the way they had behaved. This was described by custody officers as just part of the game, in which they were the referees. Solicitors wanted to portray a victory to their client by having charges dropped or bail conditions amended. Sometimes custody officers admitted they would play along too, telling the suspect that they would have been staying in custody if their solicitor had not made such a strong case. This kind of behaviour underscored custody officers' sense that lawyers were not to be feared: their arguments were largely for show, not substance. As long they put down solicitors' representations on the custody record (so they could refer to them later in court) solicitors were satisfied. The few lawyers that did hold a grudge or stir up a fuss in custody were well-remembered and considered naïve for misunderstanding how custody worked.

A second outsider of quite a different nature that is involved in overseeing the rights of detained person are the independent lay visitors who make up the Independent Custody Visiting Scheme, administered by the NIPB in accordance with s.73 Police (NI) Act 2000. Lay visitors are volunteers drawn from across the community and unconnected with police. They make unannounced visits to custody suites and must be allowed access to inspect the facilities and, with consent, speak to detainees and check custody records. Recording their findings on a pro forma sheet, visitors report back to the NIPB and PSNI on three key areas: the rights of the detainee; health and well-being in custody; and the conditions of detention. As illustrated in Figure 8.2, the extent of the lay visitors' coverage is quite impressive, especially for a voluntary scheme operating across the country. Between 800 to 1200 custody records are checked and 600 to 900 detained persons are spoken to each year. Even in 2014-15, when figures were at their lowest, lay visitors reviewed one in 29 people's custody records and spoke to one in 45 detained persons.

The lay visitor scheme is described by the NIPB as "discharging a critical function in ensuring the protection of the human rights of detained suspects" (NIPB, 2015a: 199), with the NIPB's legal advisor relying heavily on its findings for the custody section of the annual human rights monitoring report. In interviews, custody officers and CDOs were broadly supportive of the scheme. Only a small number remained unconvinced of its benefits, with some suggesting visitors were "liberal types" (Custody Officer Ken) and "tree huggers" (Custody Officer Harold). According to this minority view, suspects were already well-treated, staff

worked to strict guidelines and any issues could be dealt with via complaints to the Police Ombudsman. Most custody staff, however, thought the work of lay visitors was commendable and worthwhile. For instance, it dispelled myths about the mistreatment of suspects and injected independent oversight that could reassure the public and strengthen the PSNI's reputation. Some officers admitted if they ever ended up in custody as a suspect, they would like the idea of someone checking up to make sure they were being treated well.

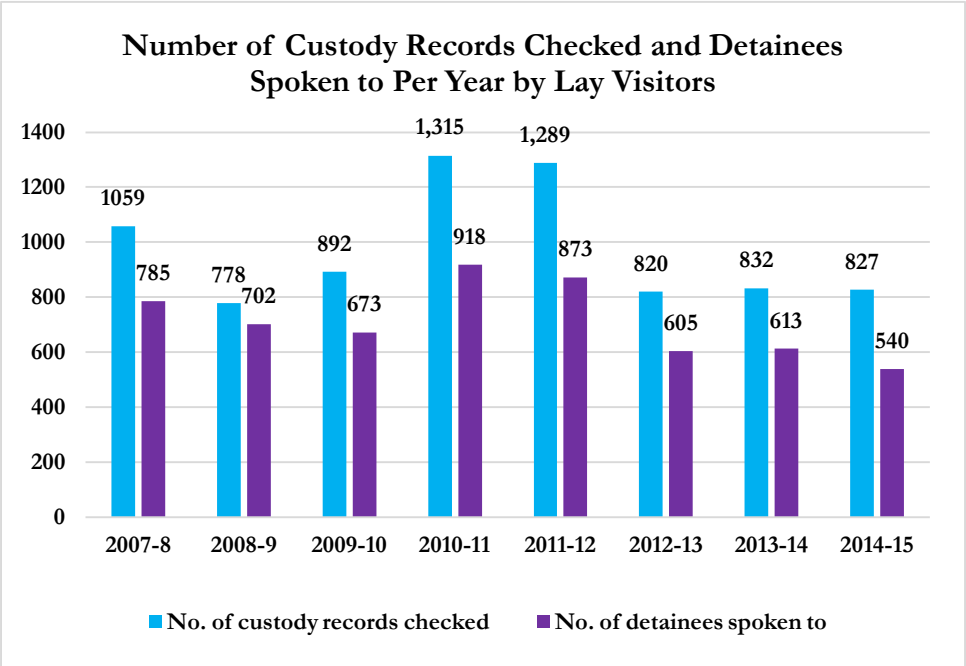

Figure 8.2 - Collated using NIPB figures 2007-2015

This generally positive attitude towards lay visitors – who were, after all, outsiders with the power to demand access to the station as the "home territory" of police (Holdaway, 1986: 148; Waddington, 1994) – reflected officers' sense that visitors were not a source of trouble. They were not an audience police needed to be on show for, or appeal to, in carrying out their work. The inspections of custody visitors were described as benign events that attracted little interest for detained persons or custody staff. Again, some officers described having struck up a rapport with visitors, occasionally offering them a cup of tea. When asked what visitors did during their visits, almost all custody staff described the inspection as being primarily concerned with the material conditions of the suite, with very little mention made of their review of suspects' procedural rights. This perception accurately reflects the greater number of concerns raised by visitors about the condition of

custody than the treatment of suspects, as captured in Figure 8.3. Indeed, it is striking just how few concerns were raised about suspects' rights by visitors, with just eleven incidents of suspects not being read their rights in an eight-year period.[54]

By paying closer attention to lay visitors' assessments and the nature of the custody record, a significant regulatory gap emerges regarding the authorisation of detention at the booking-in process which further explains officers' sense of having little to fear from lay visitors. In assessing the treatment of suspects, visitors must record whether procedural safeguards have been given, but all these relate to decisions and circumstances post-authorisation (e.g., the right to legal advice, informed of their rights, appropriate adult called, reviews of detention). In fact, even if we assume lay visitors have the relevant legal expertise, it would be almost impossible for them to assess whether the statutory safeguards were adhered to in a specific case without observing the booking-in process live or interviewing the officers involved. Relying on the custody record alone to determine the legality of the arrest or detention is a blunt tool for two reasons. First, the record itself does not require custody officers to provide a sufficiently detailed account of their decision to authorise detention. Second, custody records can be manipulated or presented in such a way as to portray compliance (Ericson, 2007).

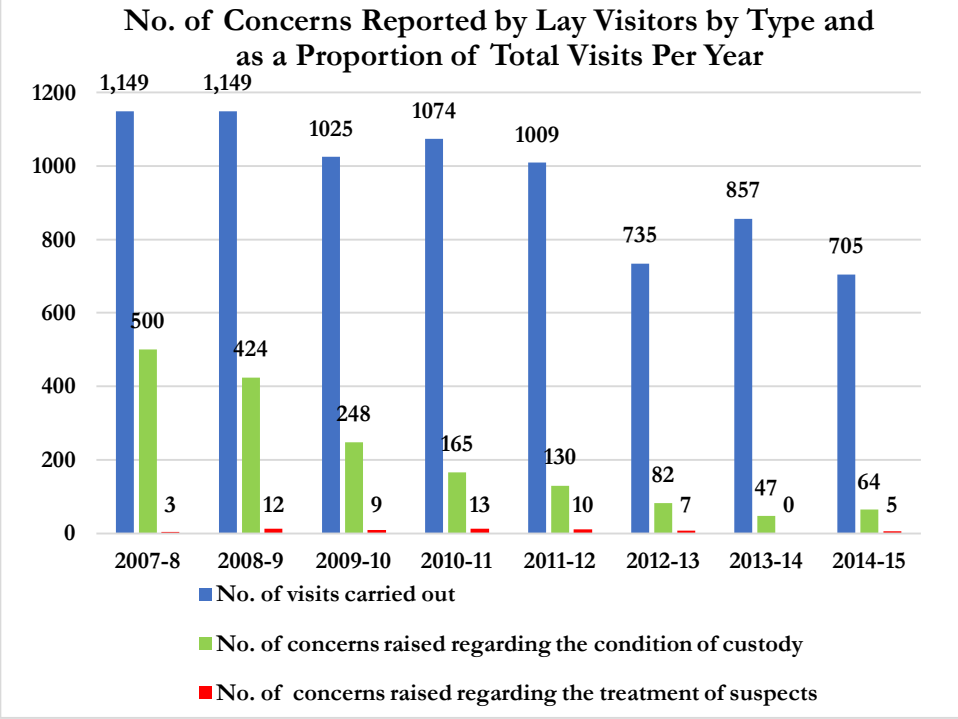

Figure 8.3 - Collated using NIPB figures 2007-15

[54] This contrasts, rather curiously, with the findings of two-small scale self-report surveys in 2009 and 2015, in which almost a quarter of detained persons reported not being read their rights (CJINI, 2016).

As mentioned above, visitors do speak with detained persons, but they themselves may not have been present when the officers gave their grounds for arrest and detention – indeed, the suspect's absence at this stage was a practice I observed and heard in interviews. And supposing the detained person was there, they may not have been in the state of mind (or sobriety) to fully appreciate, let alone critically assess, the situation. In an apparently typical month in custody, for example, one in three suspects were deemed to be drunk on arrival (CJINI, 2016: 17). For the "frequent fliers" whose appearance in custody was a regular occurrence, the booking-in process and legal safeguards were described as a non-event. As Custody Officer Harold quipped, "[m]ost arrested people expect to be arrested, you know what I mean? You're not expecting the officer to explain the necessity criteria". Indeed, in surveys carried out by the CJINI (2016), only one in two suspects recalled being told about PACE during their time in custody. But even if we assume suspects were alert to any misgivings over the legality of their arrest or detention, the prospects of conveying this in a meaningful way to a lay visitor was limited due to the sheer brevity of time visitors spend with suspects. On average, custody visits last just 23 to 28 minutes in total (based on figures from the NIPB's Annual Human Rights Reports from 2008, 2013-2015), offering little time to carry out physical inspections and reviews of custody records, let alone establish rapport with detained persons.

Conclusion: Human Rights, Decision-Making and Adaption

Dixon (2008) argues that the authorise and regulate strategy PACE embodied was typical of a period of the late twentieth century when liberal democracies prioritised individual rights, granting them constitutional protection. This time, he argues, has passed. Rights safeguards have been weakened since by changes in the socio-political climate. Neoliberal priorities captured in the rhetoric of 'security', 'competition' and 'responsibility' have pitted human rights against broader interests of the economy and of a capitalist community (see, for example, Wacquant, 2009). To witness these sentiments, we need look no further than the political discourse that swirls around the HRA 1998, routinely dismissed as a 'villain's charter' and an impediment to fighting crime, as well as European meddling in properly British affairs (Loader, 2007). Yet, the existence of HRA 1998 as a piece of legislation officers are trained in and can be found in violation of, leads Dixon (2008: 43) to suggest it might function as a rare and significant counterpoint to populist rights discourses that "inevitably affect police implementation of PACE". Similarly, de Lint (2017)

writes of the "modulating" or "filtering" potential of human rights to temper an "authoritarian neo-liberalism" that compels police to enforce laws indifferent to, if not actively hostile towards, socially disadvantaged groups.

An important finding from interviews was that custody officers' pro-authorisation of detention occurred notwithstanding their consciousness of human rights. Custody officers were patently aware that protecting suspects' rights was their core function for as long as PACE had been around. Indeed, almost all referred to themselves as the "guardian of rights" there "to look after detained persons". Their biggest concern was "Article 2 issues" (right to life), a proxy they used to convey that a detained person was extremely vulnerable, even a suicide risk (cf. Chapter 4). Many custody officers, however, were equally able to cite the right to liberty and its relevance for authorising detention, with some specifically linking it to the necessity criterion and the need to consider options other than arrest. Custody Officer Clive, for example, described detention as taking away of bit of a person's life – time that could otherwise be spent at home or with loved ones. The necessity criterion helped him to justify curtailing this freedom, but human rights were also, he insisted, about "treating people with respect and not being judgmental. That's for the courts to do".

Interestingly, human rights consciousness was rarely linked back to the HRA 1998, which perhaps questions Dixon's (2008) optimism of its potential to reinforce the legal safeguards in custody. Most officers continued to see their obligations as arising from PACE, not the HRA 1998, though the two were often linked. As Custody Officer Harold explained:

> PACE and human rights legislation are that interwoven now, you can't really separate them… if you do everything with the spirit of PACE, you'll not go far wrong with human rights, because PACE is written from a human rights perspective.

This was reinforced by custody officers' (objectively questionable) narrative that they had always completed their work with human rights in mind, even before the HRA 1998: "I've been in the police twenty years, looking back at it retrospectively, it's nothing we didn't already do. PACE is a really, really slick bit of regulation for managing prisoners" (Custody Officer Barry). Most curiously, several officers who had expressed concern about the infringement of suspects' rights due to dubious arrests and the target culture proceeded to criticise the HRA 1998. Custody Officer Nigel, for example, complained it "was weighted far too heavily on the offender". Likewise, despite her frustration with arresting officers' poor grasp of the law, Custody Officer Louise still complained that too much time was spent learning about the HRA 1998 and not enough time learning police craft and discretionary judgment; again, this suggests the disconnect between the PACE safeguards and the right to liberty enshrined in Article 5 of the HRA 1998.

The peripheral status of the HRA 1998 might be further linked to the bureaucratic format of regulation in custody, especially when compared to public order policing. Organisational actors are governed not just by regulations, but also communication formats that require decisions to be accounted for in specific ways (Ericson, 2007: 380). The principles of necessity and proportionality may find form in PACE and its Codes of Practice, but the HRA 1998 itself is barely present in either the computer programmes that structure the booking-in process or the custody records it produces. Digital custody records seem to be populated in a mechanistic way, as Custody Office Ken explains: "you start at the top left and you read through it and ask all the question and fill in the thing… you're just walking through all the pages and it basically prompts you what to do". The necessity grounds were selected from a drop-down list and then moved to the next box; detainees' rights were rhymed off hundreds of times a month, following the on-screen prompts of their computer system. For regular suspects, some custody officers described populating the custody record before the suspect had even arrived. Such formats can thus embed regulations in a way that forces actors to make and report decisions so as to appear procedurally correct, while distracting from their human impact (Ericson, 2007).

Research conducted before the HRA 1998 found that suspects already had strong awareness of their rights under PACE (Brown, 1992). A degree of rights consciousness existing amongst detainees was described by custody staff. What was most interesting in my interviews, though, was how the language of human rights was now being regularly deployed by detainees, animating the types of interactions that took place in custody. Similar to neighbourhood officers' response to rights 'forgery' (Hornberger, 2011) discussed in Chapter 4, custody officers were dismissive of this, perceiving it as a cynical, misguided appropriation of a concept suspects did not really understand, as the following quotes illustrate.

> All I get is 'I know my human rights'. 'Well, what exactly are your human rights?' I did actually say that to a boy recently, 'What do you mean? Quote me, what article are we talking about of the European Convention on Human Rights?' 'Doesn't matter, I know them, you have to do this.' 'Well, I actually I don't!' (Custody Officer Nigel)

> Oh aye, we're always getting human rights stuff, especially when they come in. I go to do a strip search, 'I have human rights!'. You talk them out of it. You talk them out of it, you says [sic] 'You have your human rights, I have my rights as well, my right is to look after you and make sure you have nothing on you that could harm you or harm me.' (CDO Harry)

Empowered by their status and control of the rule book, custody staff belittled, even ridiculed, the vague and uninformed use of rights-talk by suspects to convey their frustrations, anger or sense of unfairness. The discourse of rights in custody would thus appear to serve as a less powerful bargaining tool for detainees than it did for the community representatives and protest organisers discussed in Chapter

6. Nonetheless, it was apparent that some detained persons (e.g., the middle-class drink-drivers) were talked about by custody officers in a manner that seemed to suggest their rights-claims would be taken more seriously than others (e.g., the drug dependent 'crazies').

Tying the threads of this chapter together, custody officers navigated their way through the pressures of their job using various modes of adaption – the ploys that enabled them to ease the pressures emergent from their awkward job. The rights of individuals were embossed in PACE, a statutory scheme of safeguards that the courts have been reluctant to interpret strongly and which arresting officers seem to have limited regard for. The eagerness of response officers to arrest and detain suspects was something custody officers could understand, even if they felt it was driven too often by performance targets and organisational demands rather than basic principles of fairness or the precept of necessity. Softened by a cultural affinity to their fellow junior officers and freed by the relative absence of meaningful accountability from solicitors, lay visitors or judges, custody officers found themselves succumbing to the pressure to detain. In law and in practice, Article 5(1)(c) of the ECHR, which purports to protect the right to liberty at this entry way into the criminal justice system, seems more fictional than real. Many custody officers sensed this in their daily work to their dismay, but as Lipsky's (1980) account of street level bureaucrats revealed some decades ago, occupational survival often lies in adaption.

Conclusion

The Political, Social and Legal Lives of Human Rights in Policing

I have endeavoured to make sense of human rights as a defining feature of how the Police Service of Northern Ireland has been 'imagined and made' in the country's post-conflict society. The fruit of this labour is an empirical account of the interplay between human rights law, politics and practice, which reveals the complex and contradictory sets of understandings, interpretations and applications that narrate and inform the four sites of policing I have examined. Drawing on a breath of qualitative data gathered during extensive fieldwork with the PSNI, I have sought to offer new empirical insights, using conceptual tools particular to each site of policing, to offer an account of how human rights are understood, interpreted and applied in contemporary policing. The central idea reflected within, and delivered across, the four sites of policing is that an empirical enquiry of human rights is essential if we are to grasp the variegated form human rights take as a vernacular for debating, making sense of and 'doing' policing, but also as a form of legal self-regulation, requiring officers to act as human rights practitioners – as interpreters and appliers of legal standards and principles.

The Independent Commission on Policing placed human rights at the very core of its 1999 report and set in motion a series of landmark police reforms in N.Ireland. It is easy to understand the appeal of human rights to the ICP. At the turn of the millennium the political air was thick with human rights. The Human Rights Act 1998 had just been enacted, the Council of Europe was promoting its human rights programme across Europe and the ink was still wet on the Good Friday Agreement, signed by local politicians the year before and replete with references to human rights. The ICP's focus on human rights was a vitally important signal to Nationalist and Republican communities that the Royal Ulster Constabulary had not adequately protected and respected the rights of all people. As the ICP (1999: ch.3) stated, human rights would encourage greater compliance with, and accountability, to the law, but more than that, the concept of human rights underscored the universality and inalienability of rights of all people in N.Ireland, regardless of creed, nationality, ethnicity or class. The enacting of the ICP's reforms set the stage to "reorient policing in Northern Ireland onto an approach based on upholding human rights and respecting human dignity" (ICP, 1999: 11).

To what extent has the ICP's vision of human rights reform succeeded? There is no doubt the PSNI has gone to the great lengths to embed human rights law into its internal processes and promote a cultural awareness of rights through the training and assessment of its officers. Since 2001, the PSNI has introduced over 250 human rights recommendations made by the NIPB (Connolly, 2016) and the NIPB's legal advisors have been generous in their praise of the PSNI's commitment to human rights. The very fact that the PSNI's Chief Constable was invited to give the key note speech at the Human Rights Consortium's annual event in 2016 speaks volumes as to how far the PSNI has travelled. Likewise, both the PSNI and NIPB continue to attract a stream of police organisations, accountability bodies and policy-makers from all over the world, who are keen to learn from this local success story. As local human rights scholar Colin Harvey (2015: 61) has asked: "who would have predicted the extent to which human rights discourse would become so core to policing?"

In an effort to produce an empirical account of human rights in N.Irish policing, I have been less interested in specific questions around technical compliance with the HRA 1998 or the success or failure to achieve particular recommendations. These appraisals are important, and I have not ignored them, but ultimately, they are issues best left to the legal expertise of the NIPB's human rights legal advisors, equipped with the necessary sources and institutional access. I have, instead, endeavoured to examine how human rights are articulated, interpreted and applied by those intimately involved in N.Irish policing. First, I have identified and de-constructed the vernaculars of human rights; that is, how various actors express and mobilise competing visions, values and agendas using human rights narratives. Second, I have explored the police officers as an important, but poorly understood, class of human rights practitioner to grasp how they interpret and apply legal standards in the context of their work. I have argued that human rights are, in fact, a malleable, contested and conditional concept to 'imagine and make' a police service and regulate the decision-making of its officers; perhaps far more so than the ICP had fully envisioned.

In a lecture given in Belfast, Greer (2009) argued that even those committed to human rights as a legal project ought to be 'realistic' about what human rights are, what they can achieve and what they cannot. Human rights are, by their very nature, open-textured and thus capable of hosting a myriad of meanings by those who wish to adopt and deploy them:

> "[A]lthough human rights must be taken seriously and installed at the very centre of the emergent global value system, realism acknowledges that they can never be fully implemented. This is not because of the innate wickedness of people, those who exercise power, or the institutions and systems within which we all live our lives. It is because determining what full implementation means will always be a matter of controversy since human rights are by nature vague, imprecise and open to competing

> interpretations even by those who are fully committed to them. We have, in other words, to be realistic about how close we can get to the fulfilment of the ideal." (Greer, 2009: 154-5)

Being 'realistic' about human rights is to acknowledge that human rights do not provide a basis for a fully fleshed out vision of morality or philosophy. As Wilson (2006: 78) has noted, such visions "must be formulated elsewhere and brought to discussions of rights". In the concluding sections, I draw together the fluid formulations and discussions of human rights that have emerged from the four sites of policing. In doing so, I want to return to the anniversary event at Crumlin Road Gaol which opened this thesis and look at it afresh, using the analytical tools and empirical insights gained through the thesis. I propose we can meaningfully identify three 'lives', or realms of existences, of human rights: the political lives of human rights; the social lives of human rights*;* the legal lives of human rights.

The Political Lives of Human Rights

The PSNI was born out of the peace process and the commitment of political leaders to create a new police service for a new peacetime society. Now two decades on, death and destruction has largely ended but sectarianism remains prevalent and the legacy of the conflict is a festering wound yet to receive the pressing treatment it deserves. The Northern Irish Executive has collapsed and the Northern Ireland Assembly suspended; neither look set to return anytime soon. The PSNI has maintained its societal promise to re-orient itself on the basis of human rights and has arguably gone further than any other public authority in N.Ireland to publicly promote and internalise the Human Rights Act 1998. At the event at the Crumlin Road Gaol the Chief Constable defended the HRA 1998, stating to the audience: "all of these rights and freedoms are things that I struggle to understand how people could argue with them in a progressive, liberal democratic society." He concluded by warning the audience not to get mixed up with Brexit and ECHR and insisted even if the HRA 1998 was to be repealed, his organisation would continue to rely on its principles. The Chief Constable stated: "I'd hate to see the narrative swept along that because the UK is leaving Europe that that means some sort of removal of the Convention and power of the ECHR".

What is the source of this strong defence and clarification on human rights? It reflects, in part, the genuine belief of chief officers' that human rights ought to be respected. But as I argued in Chapter 1, human rights also serve as a lifeline for the PSNI in the choppy political waters. Chief officers have carefully appropriated and actively promoted a human rights vocabulary that draws on potent themes of ethical policing, commitment to the law and respect for accountability which have

helped it to rebuild its organisational esteem and respond to the criticisms levelled at it from political parties and oversight bodies. If human rights began as the ICP's storyline for policing peacetime N.Ireland, the PSNI has now taken over and is writing its own rights narrative suited to the imperfect peace it faces. The narrative is a powerful illustration of how human rights vernaculars can shift from a political tool to challenge power, to a device powerful actors can use to promote the very credentials their opponents seek to challenge. The properties of the PSNI's rights narratives – ethics, legality, accountability – must be so actively promoted and maintained because their rights vernacular is competing with other voices in the political arena.

Although the NIPB and local media have authorised and amplified the PSNI's official narrative, Nationalist and Republican political parties have their own human rights narratives that clash with the values and visions of the PSNI's. The questions asked by Sinn Féin politicians at the Crumlin Road Gaol probed the PSNI's commitment to and compliance with human rights, hinting at their own rights-based campaigns. For the Nationalist political parties, the official rights narrative of the PSNI can, at times, not only ring hollow, but distract from, and even obstruct, ongoing policing concerns, especially into conflict related deaths. For Unionist politicians, however, human rights continue to be a foreign vocabulary that fails to resonate with their own sense of the conflict and condition of N.Ireland today. Though many of the PSNI's chief officers served in the RUC – the Protestants' police force – Unionist politicians are not prepared to share in the PSNI's official rights narrative, preferring to avoid it altogether if they can. Tellingly, no politicians from the UUP or DUP made it to the anniversary event at the Crumlin Road Gaol that morning.

Amongst the political parties represented on the NIPB, I argued in Chapter 2 that human rights are a divisive linguistic vessel harbouring competing histories of the conflict, legacies of policing and understandings of the condition of N.Ireland today. The Chief Constable has identified this rupture in the universality that defines the very concept of human rights:

> The challenge for my organisation, charged with the delivery of policing in a peace building society, is that at times, *the universal nature of human rights is ignored, and the focus becomes solely on an interpretation of "my" human rights or the human rights of "my community"*. Too often my organisation is required to step into a situation and make decisions about balancing the human rights of opposing groups as a result of a broader societal failure. This is not just in relation to parades and protests but a whole range of unresolved post conflict challenges… (Hamilton, 2016b; my emphasis)

The PSNI's sustained reliance on human rights, notwithstanding its failure to resonate with some political audiences, alludes to chief officers' belief that their narrative, rooted in a legalistic conception of rights, is the correct one capable of winning sway in political debates. It also suggests the significance of other local

audiences that are receptive to the PSNI's official vernacular, including the NIPB's chairpersons and parts of local media. How other community groups, local NGOs and agencies like the N.Ireland Human Rights Commission accept, reject or promote to the PSNI's official rights narrative would be an interesting topic for future research.

In the NIPB legal advisor's speech at Crumlin Road Gaol, she argued for the need to keep human rights at the forefront of policing and reminded the audience how far N.Ireland had progressed since the conflict. As it transpires, in October 2017 the NIPB opted not to renew its legal advisor's contract. At the time of writing the reason seems unclear, not least because the NIPB is not formally sitting due to the absence of political members (devolution has been suspended after controversy over a botched renewable energy scheme). Nationalist politicians have expressed deep concern at the failure to appoint a legal advisor. Sinn Féin's policing spokesperson, for example, Gerry Kelly (2017) has stated:

> This should not have happened. A human rights-based approach to policing is at the core of the Patten Recommendations and the setting up of the PSNI. The Policing Board is the main accountability mechanism for the police and without a Human Rights Advisor it cannot properly do its job.

The Unionist parties are yet to publicly comment on the issue. The legal advisor is the linchpin of the human rights monitoring regime in N.Irish policing and, as Chapter 6 revealed, a crucial audience for the PSNI to prove their human rights credentials to. It would be remarkable if the first retreat from human rights policing in N.Ireland was a result of a decision of the NIPB to weaken the rigour of oversight, not the PSNI. Time will tell how the NIPB will fulfil its statutory duty to monitor the PSNI's compliance with the HRA 1998 without a legal advisor.

The Social Lives of Human Rights

What did the Constables sitting in their Land Rovers outside the Crumlin Road Gaol make of these high-profile events? The only junior officers to be found inside the venue were the few positioned at the entrances and exits to provide security. As Chapters 3 and 4 explored, the junior officers performing routine work saw the official narratives espoused at these events distance from their daily occupational lives. Human rights were perceived as a language belonging to chief officers, whether it was to appeal to political audiences like those at the Gaol or legal audiences for whom the police script was written and performed. The question from representative of the Police Federation to the Chief Constable and NIPB legal advisor about officers' rights, hinted at a general sense amongst the TSG that their human rights were swept aside in the debates about the policing of protests and

parades. For the officers in the Tactical Support Group, the event at the Gaol likely reflected another example of their bosses trying to appeal to politicians and other groups they needed to 'appease' in order to manage the tensions that still exist between Republican and Loyalist communities and the PSNI.

Yet as Chapters 3 and 5 have revealed, the PSNI's promotion of human rights was not simply for external audiences and high profile events like the one at the Crumlin Road Gaol. Junior officers were an internal audience senior officers sought to sell their vision of human rights-inspired policing to. Human rights were peppered throughout PSNI's internal policies, manual, operational orders, aide memoirs, training documents and PowerPoint slides. Indeed, budding officers had to pass a quiz in their pre-enrolment for PSNI training college which assessed their knowledge of human rights, informed by a PSNI pamphlet they had been given. Most officers in the Tactical Support Group and, to a lesser extent the Neighbourhood Policing Teams, had little difficulty reciting the articles of the ECHR or the human rights principles of 'legality' 'proportionality' and 'necessity'. Junior officers knew this human rights vocabulary was important to the organisation's identity and one they needed to be familiar with in case they were called before an oversight body if accused of misconduct. The extent to which this familiarity with human rights language distinct to officers in the PSNI, or whether it has become equally prevalent across policing in the UK since the introduction of the HRA 1998, is an interesting avenue to explore further. Bullock and Johnson's (2012) study with covert officers in England certainly hints at a lack of human rights awareness.

I have argued, however, that the PSNI's official rights narrative is received, interpreted and made sense of by officers within their own sites of socialisation. Through this process of socialisation, officers bring to bear their own dispositions, experiences and conceptions of police work, producing alternative rights narratives. When it came to the 'dirty work' of the TSG, officers have heavily re-interpreted the rights vernacular of chief officers, translating it into themes of common sense, consistency with past policing and most relevant to the work and practices of senior officers. The PSNI's commitment to human rights meant little to TSG officers in search of more immediate, personal and affective ideals to garner the self-esteem and resilience needed to carry out their 'dirty work'. For neighbourhood officers embedded in their local 'patch', their priority was to maintain relationships with communities and be responsive to local issues; human rights talk was rarely helpful in this project of trust-building. The discursive bridges made by the PSNI and NIPB linking community policing with human rights failed to resonate with neighbourhood officers. In their attempts to enforce order in communities and manage public interactions, neighbourhood officers did not seem to consciously reflect on whose rights they were protecting, whose they might be undermining and the type of social order they were maintaining.

My findings in Chapters 3 and 4 are, of course, mostly confined to officers' self-accounts of their work. In these sites of routine policing, more observational work examining how these narratives affect (or do not affect) police practices would be invaluable. This is particularly so because the issue of how officers' narratives and self-conceptions of their work influence their practice is a debate that still rumbles on (Waddington, 1999; cf. O'Brien-Ollinger, 201: 210-212). It would be fascinating to observe first-hand the kinds of interactions recounted by TSG Larry in our interview:

> The layman on the street would sorta start shouting 'my human rights, my human rights,' I think there's a common misconception with people saying their human rights says they can do whatever the bloody hell they want […] That's probably where the hindrance comes in because these people think we can't enforce the law because it impinges upon their human rights and their civil liberties when that's a load of bullshit.

What kinds of lay vernaculars of human rights are in circulation? Do officers deploy similar rights narratives in public interactions as they do in private interviews? How do officers negotiate the rights 'fakery' reported in Chapter 4? These are questions that would begin to expose rights narratives circulating within communities and brought to public-police encounters. As Chapter 2 illustrated, there are a disparate range of sentiments, visions, hopes and frustrations that communities might bring to bear in filling human rights with local meaning.

The accounts of the TSG and NPT largely support Goold's (2016: 233-4) prediction that police culture and routine work makes it unlikely officers will conceive of their function as the protection of human rights. However, in the areas of police work, which were also sites of socialisation, a more encouraging picture emerges. The public order commanders in Chapters 5 and 6 approach their human rights responsibilities to facilitate parades and protests and protect those taking part in them very seriously. In contrast to Waddington's (1994) findings on the limited relevance of the law, I have revealed how an awareness of, and proficiency in, human rights law was seen as a mark of pride and professionalism amongst public order commanders. This group of senior officers, proximate to, if not a part of, the official police voice, were socialised to see their function as the facilitators and protectors of democratic rights in their divided society. Police custody as a site of socialisation was more complex. Custody officers did undoubtedly perceive their role as being about the protection of the rights of the persons they detained and recognised its importance, but it was a role they knowingly struggled to live up to in the face of organisational pressures and cultural affinity with arresting officers. Let us turn, finally, to how these public order commanders and custody officers fare as human rights practitioners in the realm of 'legal lives of human rights'

The capacity of the law to regulate police behaviour and decision-making has been subject to sustained scepticism. The limits of the law articulated by Bittner (1970, 1990) in his foundational analysis still hold sway in the contemporary literature (e.g., Manning, 2013; Bradford and Jackson, 2016). First, Bittner noted the very point made at the start of this chapter – legal rules are open-ended, they invite a myriad of interpretations and thus cannot offer a prescriptive guide to police interventions. If anything, the law provides officers with a format to produce tidy, post-facto, reconstructed accounts of a situation which can appeal to legal audiences (Bittner, 1990; Ericson, 2007). Second, police work is rarely about law enforcement in the first place but rather intervention in *"something-that-ought-not-to-be-happening-and-about-which-someone-had-better-do-something-now"* (Bittner, 1990: 249). The priority of officers is to negotiate a resolution appropriate in the circumstance and for the people involved; quite simply, applying the law may not be as effective in this negotiation of order as a stern warning, courteous reminder or wilful blindness.

When the Chief Constable was asked by an audience member how his officers' new they were getting the balance 'right' between competing human rights in public order operations, he quickly deployed what was referred to in Chapter 1 as the 'legality' narrative. "We don't view the ECHR as something imposed on us", the Chief Constable insisted, "this actually creates a really positive framework for decision-making". He sought to reassure the audience that all officers, "not even the commanders, right down to officers taking action on the street", were thinking about human rights principles. Yet the accounts of officers in the TSG and NPTs suggest the remoteness of human rights law in routine policing; if anything, TSG officers seemed more interested in their legislative powers for house searches or stop and search in case they got 'caught out' by members of the public. According to officers, they rarely even used human rights law in their post-facto notebook entries, preferring a generic decision-making model taught in training.

However, in Chapters 5 to 8 I explored public order policing and police custody as two sites of policing to demonstrate the under-acknowledged poorly understood role that police officers play as human rights practitioners. In these sites, police officers are routinely confronted with dilemmas in which human rights law standards must be interpreted and applied in carrying out their roles. Regardless of the open-textured nature of human rights law, officers must, in law and in practice, arrive at conclusions as to how competing human rights ought to be balanced. As we have seen, this includes balancing the rights of paraders, counter-protesters and local residents, as well as how the individual's right to liberty is weighted against factors like public safety and the administration of justice. The analysis in Chapters 5 to 8 revealed the variable impact of human rights law. Public order commanders

are heavily influenced by rights standards and principles, which are conscientiously and skilfully applied by senior officers. In police custody, however, human rights protections for suspects arrested and brought to custody has not emboldened custody officers' practices or strengthened the safeguards provided by PACE. What explains this variation and what does it tell us about police as rights practitioners?

The substantive law itself offers little explanation. In both sites of policing, the courts have given police significant leeway in their practices and decision-making, thus officers' have considerable space to exercise their legal powers. The UKHL in *E* and ECtHR in *Ef and Pf*, respectively, demonstrated a willingness to defer to senior police when it comes to operational decision-making, even when there are implication for Article 2 ECHR. The UKSC did rule against the PSNI in *Re DB*, but this concerned the PSNI's misapprehension of the Police (NI) Act 2000, not their interpretation and application of human rights law per se. In fact, in *Re DB*, the UKSC acknowledged the difficult decisions commanders faced in fraught circumstances. In the context of police custody, the courts have not read Article 5(1)(c) ECHR to require more rigour from police at the point of arrest and detention. In *O'Hara* and *Salmon,* the courts took a relaxed approach to briefings and prior investigations officers' must undertake prior to making arrests. The courts are also reluctant to strengthen the 'necessity to arrest' criterion, interpreting it loosely in *Hayes* and *Alexander*, with the courts wary of imposing too great a burden on officers. Despite custody officers' misunderstanding on this point, the court in *Al Fayed* made clear that custody officers can lawfully authorise illegal arrests; that is, it is not their duty to assess the actions of their colleagues.

So, if in sites human rights law offers police considerable leeway, why was the interpretation and application of human rights law approached with more rigour and attention in public order policing? The organisational structure and officers' roles seem particularly salient. Human rights came alive in public order policing through the police script. It was the product of a carefully co-ordinated process, involving senior officers, who were specially trained and who enjoyed dedicated legal and tactical advice to help navigate through the human rights issues that arose. Commanders were assigned specific roles, which they took determined ownership of. This was an internal process the PSNI was proud of and had spent years devising and improving in light of constructive feedback from the NIPB's legal advisors. In custody, officers were conscious of human rights, however, the presence of human rights protections was reduced to a bureaucratic checklist on a computer screen, a task officers completed hundreds of times a month. In performing their role as guardian of suspects' rights, custody officers felt undermined and disrespected by senior officers. This was compounded by the organisation's target-driven performance culture which invited dubious arrests into custody suites.

The influence of police culture helps to further explain the different ways officers in these sites applied the law. When it came to making decisions about whether to authorise the use of force in public order operations, Silver Commanders were not easily influenced by requests for use of force from their Bronze Commanders. Silver Commanders were sympathetic to the threat their frontline colleagues faced, but they described taking an independent and careful assessment of the legal criteria under Article 2, a point confirmed by the NIPB's legal advisor in her remarks at the Crumlin Road Gaol. In these situations, the kind of solidarity often described in the police sub-culture literature gave way to greater concerns linked to professionalism and accountability. In contrast to commanders, custody officers seemed far more receptive to the pressures their fellow junior officers faced, reflected in custody officers' willingness to make concessions to arresting officers when it appeared the legal grounds for arrest seemed dubious. Custody officers relied on a series of ploys to help arresting officers to navigate through the statutory safeguards designed to protect suspects' rights,

Finally, in explaining the difference in concern for, and application of, human rights across the sites of policing the prospect of 'trouble' cannot be underestimated. Public order commanders were acutely aware of the ramifications their decision-making had for the parties involved, as well as their own professional standing. They saw the application of human rights law, and careful reference to the ECHR throughout the script, as an effective means of managing potential trouble arising from external accountability. The proximity to legal audiences, most obviously the NIPB's human rights advisors, encouraged a close and careful engagement with rights standards. For custody officers, however, whilst the environment was video and audio recorded, they had learnt how to manage potential trouble arising from possible legal challenges using their ploys of authorisation and knowing the limits of what they could get away with when prompting arresting officers ground for arrest. The immediate external audiences in custody, most notably defence solicitors and lay visitors, were neither perceived as sources of trouble nor as audiences for whom an overt commitment to human rights need to be communicated to. These findings highlight the significance of constructive, external scrutiny in ensuring meaningful engagement with human rights as a mode of legal regulation (Goold, 2016).

It is through these three 'lives' of human rights that can came to make sense of, and critically engage with, human rights and its intersection with law politics and practice. Human rights are a defining concept of our time; the "values for a godless age" in Francesca Klug's (2000) words. It is hard to think of anyone who would suggest that police in democratic societies should not strive to protect and respect human rights. It is a concept that encourages us to ask what legitimate intrusions the state ought to make into our lives to protect us and the community

at large. Across Europe and further afield, police are governed by human rights law principles and increasingly detailed standards; from the arrest and detention of suspects to the regulation of public protest, from criminal investigations to the use of lethal force. We can train police as human rights practitioners, we can strengthen legal protections and resolve to address personal prejudices and intolerance. But ultimately, we must acknowledge that we are investing in a concept that is slippery and contested. The values and visions we express through human rights tell us as much about ourselves, our communities and our societies as it does about the concept of human rights itself.

Appendix I

Methodological Note

Brokering Access to the PSNI

The police organisation in N.Ireland is not known for its ease of research access (Ellison, 1997; Mulcahy, 2000). The situation seemed far from promising when I began scouting out the prospects of doing research with the PSNI in the first term of the DPhil. I was warned by local academics that it was largely a lost cause, especially on the topic of human rights. With help from Dr. John Topping, I secured a meeting with the Chief Superintendent from the PSNI's service improvement department. It was clear their primary interest was on public perceptions of the PSNI, not officers' self-perceptions of their work. But over nine-months I met with a Chief Superintendent and Superintendent from PSNI Headquarters on several occasions to try and agree on a project of mutual interest. The mood changed with the arrival of a new Chief Constable and senior officers seemed more open to the idea of me interviewing officers. I gently introduced the idea of working across departments to hear officers' views on human rights and agreed to incorporate questions on community policing to help with the organisational review that was taking place. I suggested the departments (public order, police custody, neighbourhood policing, covert intelligence) which I thought might be most interesting to examine and, with the Chief Superintendent's approval, I was put in contact with senior officers responsible for each department.

It was agreed that the research should be useful and not damage public confidence in the police. That said, no editorial rights were, or would, be insisted upon by the PSNI. These senior officers invested a great deal of trust in me and were keen to remind me of the unprecedented access I was being given. The brokering of access was undoubtedly assisted by the fact senior officers were recent graduates of a criminology programmes and completed small research projects as part of their degrees. The Chief Superintendent from the service improvement department was crucial to maintaining access during the year of fieldwork. He was intellectually curious, determined to improve policing and eager for a greater evidence base to do so. There were social factors likely at work too in securing access: in my conversations with senior officers it turned out some of us attended the same grammar school and lived in nearby middle-class areas. There was a tacit agreement, I suspect, that I would not make the PSNI look silly. But more than this, I

sensed a deeper confidence in these senior officers' that the PSNI's human rights compliance was something they were proud of and that there was positive story to be told. Indeed, the project was an opportunity for senior officers to prove their commitment to transparency and they were keen that the NIPB knew of my research.

My fieldwork was, of course, made easier by the ESRC's generous funding which allowed me to rack up many thousands of miles on my mother's car driving to and from police stations. I held many meetings with senior officers responsible for the various departments to broker further access. This was an opportunity to prove my credentials, get a sense of issues or sensitivities within each department and incorporate topics of interest to them into the semi-structured interview questionnaires. This process was swift in some departments and slower in others; I managed to access the TSG units within weeks but it took over a year to get access to police custody because a crucial gatekeeper was seconded to another department. When contact was re-established with this department an email was sent within weeks to every custody suite in the country, informing them of my research and asking if officers could spare time to be interviewed. The bulk of the research took place between September 2014 to September 2015 and supplemented with several more interviews with senior officers to clarify initial findings in November to December 2016. Research across police departments, spread across twenty locations in N.Ireland, in a short time period was a logistical challenge.

I should mention that I gained access to PSNI's covert policing department (C3) using personal contacts. I conducted twenty interviews with junior officers who had applied for covert surveillance and senior officers who authorised such requests. Ultimately, this material does not feature in the thesis, but will, hopefully, form the basis of future work if further data can be collected. The reason for excluding this material was both practical and methodological. First, there was no official data readily available (e.g. rates of application and authorisation for the various types of covert data) which, as the custody chapters demonstrate, is crucial to corroborate qualitative data, especially when shifting from officers' self-narratives of their work to making claims about what they do in practice (Waddington, 1999; cf. O'Brien-Ollinger, 2016). Second, public order policing and police custody already offer strong comparative accounts, rich in detail, that demonstrate how different legal, social and cultural conditions affect the regulatory impact of human rights. Third, the thesis, as it stands now, is bursting at the seams with empirical data from four sites of policing; to add a fifth would have meant sacrificing the depth of analysis elsewhere given the confines of the word limit.

By the end of the year, I had interviewed or held focus groups with well over one hundred police officers in over twenty sites across N.Ireland (Figure A.1). The projected was approved by Oxford University's ethical review body. Consent

forms were used in most cases and where they were not, oral consent was given. Almost all interviews were audio recorded and every officer was promised anonymity: officers have been given pseudonyms and geographical locations are not included. Many junior officers were curious about me, the research and how I had managed to get access to the PSNI. That said, most were also generous with their time, keen to tell me about their work and often frank in the accounts they gave. I spent the greatest time with a TSG unit who were particularly welcoming and keen to help; after dropping in and out of the station over several months, my presence was rarely remarked on. Generally, officers assumed I would be from one of N.Ireland's two universities, so hearing I was a student at Oxford prompted amusing comments, curiosity and at times a degree of reservation. I managed these reactions with a healthy dose of humour and self-deprecation.

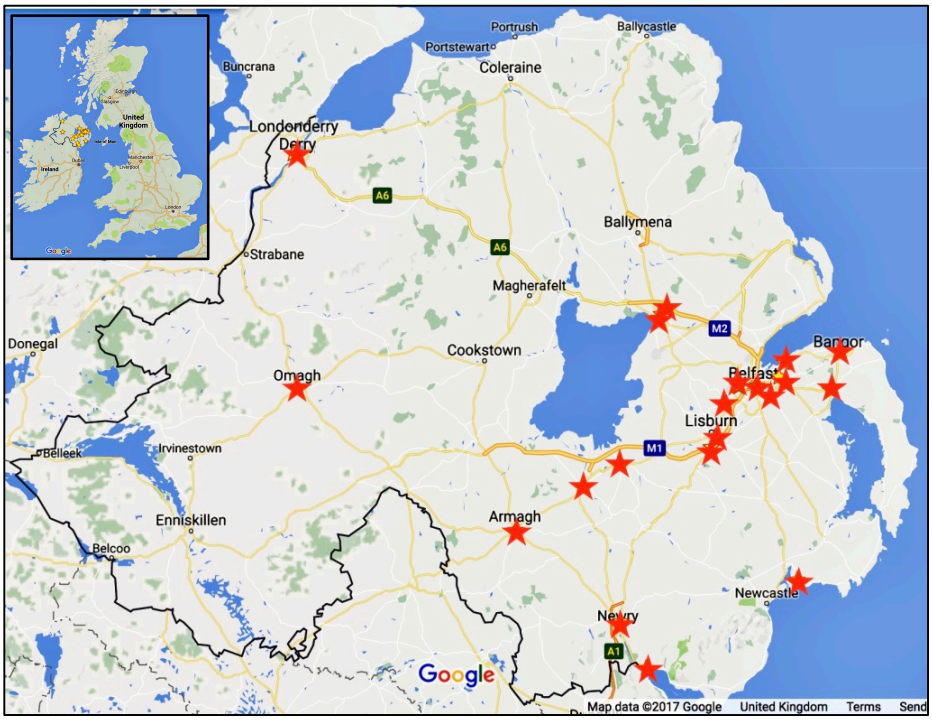

Figure A.1 - Map of N.Ireland, including research sites.

Managing Identity

How the numerous officers I met made sense of me and, in turn, how this affected the experiences and understandings they shared with me is difficult to know. I am a Belfast born, Protestant, rugby-playing, grammar school-attending, heterosexual young man. In so far as this aligns with a positive vision of N.Irish identity amongst police officers, my being this way likely helped. Indeed, I met several officers with whom I had mutual friends or acquaintances or who attended the same school or socialised in the same places as me. I suspect this has helped break down some

barriers. That said, my N.Irish accent has softened and tells of eight years spent in universities in England and I sensed some officers trying to discern whether I was really a local or not. Finally, members of my family served in the RUC. I disclosed this to participants if it came up in our interviews – some, for example, were curious if I had police connections given the access I had. In fact, these RUC relatives of mine were rarely discussed, or obviously relevant, in negotiating access with senior officers. My family members did not introduce me to any contacts in the PSNI.

How might my personal characteristics have affected my analysis of the topic and the qualitative data I generated? I am keen for the reader to decide for themselves the extent to which they think it did. As my teacher at school remarked before embarking on a term of Irish history, 'I will have succeeded if at the end of term, you are unsure which side of the community I come from'. I think this might be a good test to apply here too. My identity was, unsurprisingly, more fluid than the participants may have ascribed to me. I spent my eight years growing up in Edinburgh during the 1990s – it was not until I arrived back in N.Ireland at age ten that I had any sense of being Protestant, rather than Catholic. My vague recollection of the conflict was being shushed by my parents as they closely watched the ceasefire unfold on our television set in Scotland. I have never attended an Orange Order parade. My family members who served in the RUC seldom discuss their experiences. My brother, called Patrick, lives and works Dublin. I have voted for both Unionist and Nationalist political parties. What kind of Protestant does that make me? I have endeavoured to share my work with local and international readers to help unearth any such biases and consider what they might mean for the topics at issue.

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