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Emotion and Memory of the Holocaust

Surviving what was arguably the greatest act of genocide in human history, the Holocaust, entitles one the opportunity to recount one's feeling and memories of the horror. In the aftermath of the Holocaust, an outpouring of eyewitness accounts by both survivors and perpetrators has surfaced as historical evidence. For many, this has determined what modern popular culture remembers about this atrocious event. Emotion obviously plays a vital role in the accounts of the survivors, yet can it be considered when discussing the historical significance of and the truth behind the murder of six million European Jews by the Third Reich? Emotion is the expression of thoughts and beliefs affected by feeling and sensibility of an individual regarding a certain event or individual. In terms of the Holocaust, emotion is overwhelmingly prevalent in the survivors' tales of their experiences almost sixty years ago, conveyed in terms of life, death, and survival. As scholars often point out, the Holocaust evokes strong sentiments, and transmits and reinforces basic societal values. Through in-depth observation of various forms of media sources, this paper will argue that emotion and the lack thereof, as a repercussion of the Holocaust, through the testimonies of those who survived its trials and tribulations, has played an enormous role in determining historical knowledge of the genocide.

In analyzing the stories which survivors of the concentration camps and their perpetrators have put forth as historical evidence supporting the findings of scholars, one must pose the question: where does fact end and emotional distortion of the subject begin? It is critical to approach this question with great care, so as to note that not all historical accounts of the Holocaust by survivors and perpetrators are laden with emotional input and a multilayered interpretation of the event. In her acclaimed article "Memory, Distortion, and History in the Museum," Susan Crane argues that the distortion of memory is the fault of historical institutions in failing to pose evidence which agrees with the testimony of the eyewitnesses. She writes that "the 'distortion' related to memory...is not so much of facts or interpretations, but a distortion from the lack of congruity between personal experience and expectation...and the institutional representation of the past on the other" (Crane, 1). At some point, scholars must interpret a filtered account of the survivor's tale, searching through the layers of important facts and emotional embellishments, and

find the most important knowledge buried deep within. Yet how may one distinguish fact from emotion? Famed Holocaust historian James Young, in his 1997 work "Toward a Received History of the Holocaust," asks:

Is it possible to write a history that includes some oblique reference to such deep memory, but which leaves it essentially intact, untouched and thereby deep? In this section, I suggest, after Patrick Hutton, that 'What is at issue here is not how history can recover memory, but, rather, what memory will bequeath to history' (Young, 1)

Clearly, this is an issue with which scholars have struggled to deal for years, however this paper will show that it is quite possible to distinguish the two sides.

The methodological approach undertaken in this paper confronts each account as one in which memory and fact have merged together, through which even scholars often have trouble determining how historical knowledge can be retrieved from these testimonies. A prime example of this emotion layered within a survivor's account of the Holocaust is Primo Levi's discussion of a fellow prisoner at the Auschwitz death camp. Henri, to Levi's discontent, rarely exhibits any displeasure with his treatment in the camp and is one of the most well-respected inmates at Auschwitz by all, often granted special treatment by the German officers present. Levi's vendetta against Henri is emotionally-charged, as he writes, "I know that Henri is living today. I would give much to know his life as a free man, but I don't not want to see him again" (Levi, 100). Why would Levi force obvious feelings of anger into his remembrance of the camp? His obvious jealousy of Henri's stature within the camp taints his testimony, and begs the question of whether or not certain or all parts of *Survival in Auschwitz* can be counted as a reliable source. This paper will attempt to differentiate between emotional charges, such as Levi's personal vendetta, and those lacking sentiment, and the way in which both play a role in historical memory.

It is important to first look at the stoicism portrayed in accounts of the Holocaust in order to understand those testimonies which are laden with it. One must also distinguish the testimonial proof provided by victims as well as perpetrators of the Holocaust, as both are historically significant in piecing together the chronology of events between 1939 and 1945. No proof could be stronger than that voiced by Hannah Arendt in her book *Eichmann in Jerusalem: Report on the Banality of Evil*. Her work describes the capture, trial, and execution of Adolf Eichmann by the Israeli Government. Eichmann was one of the most notorious desk killers of the Third Reich, organizing the deportations of many Jews from all over Europe, including Germany, Vienna, Prague, and Hungary. At the same time, Arendt deals with the intricate details of his Jerusalem trial for crimes against humanity. She uses her work as a medium through which she describes him as ordinary gentleman, a far cry from the brutal murderer as he is portrayed by Nazi documents which survived through the end

of World War II. Similar to Christopher Browning's argument regarding the psychological state of Reserve Police Battalion No. 101 in *Ordinary Men*, Arendt surmises that Eichmann was influenced by the authoritarian regime of the Nazi government. She portrays Eichmann as a common citizen, no different from those who opposed his position during the war.

As scholars have written, it is the Eichmann trial which first opened the eyes of the world to the atrocities of the crimes committed by the Nazi perpetrators. Many continue to argue that Eichmann himself is the stereotypical desk killer of the Third Reich, and represents the 'banality of evil' of this regime. Arendt attempts to research Eichmann's statements which deem him ordinary, not diminishing his murderous deeds, however removing the sense of emotional hatred for the Jewish people which most view as the impetus for his actions. She accomplishes this task well as she presents ample evidence, while allowing the reader to decide whether to accept such ideas. Furthermore, she shows Eichmann as a willing captive of the Israeli Parliament, detailing his lack of opposition to the arrest, seemingly accepting his fate. "I, the undersigned, Adolf Eichmann...express my readiness to travel to Israel to face a court of judgment...I shall try to write down the facts of my last years of public activities in Germany, without any [emotional] embellishments" (Arendt, 241). Arendt's argument highlights the lack of emotion often viewed in reminiscent accounts of the Holocaust by the surviving perpetrators.

At the opposite end of the spectrum of the testimony of the Nazi perpetrators, contrasting Arendt's views is Stanley Kramer's 1961 film *Judgment at Nuremberg*. Kramer's emotional film depicts the trial of four German justices who implemented and enforced the sterilization as well as anti-Semitic measures of the Third Reich. Kramer evokes emotion through accounts of their actions by the judges themselves, forcing them to confront their past and realize the error of their ways, dissimilar to Eichmann in *Jerusalem: Report on the Banality of Evil*, in which Arendt proposed Eichmann to be an ordinary citizen merely following orders. As one of the top German justices during the Third Reich, Dr. Ernst Janning is represented in the film as a man, at first, unwilling to come to terms with his decisions and the consequences thereafter. Eventually, though, through an emotional description of his wrongs and the state of humanity, Janning accepts responsibility for his enforcement of Hitler's policies. As lead prosecutor, Colonel Tad Lawson, argues: "[These men are] the embodiment of what passed for justice during the Third Reich...They distorted, they perverted, they destroyed justice and law in Germany" (Kramer). Kramer's emotional portrayal of the judge forces the viewer to feel some sympathy for Janning.

As Arendt argues that Eichmann was an ordinary man, *Judgment at Nuremberg* exhibits the exact opposite regarding these four Nazi judges. Through expert testimony, and especially the discussions between the group of perpetrators, Kramer

portrays these men with a mission to uphold their nationalistic feelings for Hitler's cause. Possibly the film's most emotional segment, other than Lancaster's monologue, is the viewing of the liberation of the internment camp Dachau, during which the entire courtroom, most for the first time, views the atrocities of the Holocaust. The horror is most obvious in the faces and expressions of the four men on trial, who have finally realized the fatal effects of their decisions. The final change in these judges from silent killers to emotionally scarred criminals takes place as defendant judge Friedrich Hofstetter inquires of a fellow inmate whether the film's portrayal of the murder of thousands upon thousands of individuals is possible. The prisoner assures him that it is not only possible, but also easy, a horror which they previously failed to readily accept.

Following Arendt's lead, Levi also seems to convey coldness and stoicism, however his work clearly relates to certain aspects of his account of his time spent in Auschwitz. Survival in Auschwitz seems to juxtapose itself so often on numerous fronts, exhibited clearly by Levi's jump from emotional to stoic descriptions of life within the camp. As noted earlier, he exhibits a personal vendetta against another former member of the camp, Henri, however often completely reverses these feelings of emotion with cold recollections of his experiences. In his depiction of the hanging of a prisoner attempting to rise up against the Nazi forces within Auschwitz-Birkenau, Levi leaves the reader void of any emotional memories, recalling the incident with harsh and bitter precision, not allowing his feelings to interrupt. "Everybody heard the cry of the doomed man, it pierced through the old thick barriers of inertia and submissiveness... I wish I could say that from the midst of us, an abject flock, a voice rose, a murmur, a sigh of assent" (Levi, 149). Levi's chilling testimony contradicts his earlier descriptions so radically that one must beg to ask: why does he remove all emotion from this description while layering others with it? The answer, however, is one which historians have pondered since the conclusion of the Holocaust, and cannot truly answer, as these differences in the body of the eyewitness testimonies account for problems regarding their historical significance. One reason for Levi's stoicism, though, could relate to his eventual indifference to death; it is likely that his mind has become numb to the Nazi murders, and thus such a hanging is merely another life lost, a number rather than a name.

The stark contrast between emotional and stoic accounts of the Holocaust as a whole is most noticeable in the aftermath of the events, through the recollections of its survivors. Such a scene is painted, in contrast to Levi's account of the hanging at Auschwitz, by Morris Wyszogrod in his book *A Brush with Death*. Wyszogrod's work recounts his experiences at the Warsaw ghetto and finally the internment camp Theresienstadt until its liberation by the Allied forces in 1945. What is most intriguing about this book, however, is the artwork created by Wyszogrod to convey specific

events within the camp. One of the most significant pieces is one in which the author, and artist, has painted a scene recounting the torturous murder of a member of the Warsaw ghetto in the autumn of 1943. In contrast to Levi's account of the hanging of an unnamed revolutionary in Auschwitz, this portrayal contains emotional memory and thorough detail. Wyszogrod describes the murder of Bitter as one in which mob rule, the sentiment felt by those within a society to conform to the feelings of that community, prevailed and horror set in. Bitter was murdered by the Ukrainian guards, Polakov and Popov, for attempting to steal potatoes, a violation of an unwritten ghetto law. "Earlier, this poor soul had been discovered in the industrial area boiling some potatoes in his tin can...A Jew was not supposed to have potatoes" (Wyszogrod, 158).

From here on, however, the description of the beating and murder of the victim becomes much more graphic, detailed, and emotional than at any point in Levi's work. Wyszogrod writes of the ways in which the guards forced other prisoners to attack Bitter, thrashing him to the threshold of death, while the description concludes with the account of the final acts committed by the Ukrainians to kill their "criminal" prisoner:

Bitter was bleeding from all over, but he was still alive. The Ukrainians...decided that Bitter's condition was not bad Enough. They bent his head down and began to burn his Eyes with cigarette lighters and matches. While all this was Happening...Bitter cried out as loudly as he could: '[May I be An atonement for the whole people of Israel . God, take my Soul. Hear, Oh Israel .]' At the end, when he was already close To death, they forced a sharp wooden stake down his throat And poured water into his mouth. (Wyszogrod, 159)

This account of the murder of a fellow Jewish prisoner during the Holocaust strikes the reader with an obvious contrast to Levi's lax re-telling of a similar event. Here, however, emotion pours throughout the testimony.

Similar to Levi's account of his interment at Auschwitz, Elie Wiesel's work *Night* describes one man's battles against the Nazi regime and the social structure of the four different death camps through which he passed. Wiesel's account is similar to that of Levi in that both portray their experiences through emotional means, however there are many significant instances during which the author fails to exude a sense of feeling and sentiment in recounting specific events. A famed Holocaust speaker, it is highly likely that Wiesel intentionally fails to convey emotion in his portrayals, as he is a firm supporter of the idea that readers and listeners to such memories can never fully understand what happened in the camps. As Levi stoically describes the hanging of a prisoner within the camp, Wiesel also discusses death with a haunting lack of emotion. In *Night* he writes:

That same evening, we reached our destination...The guards came to unload us. The dead were abandoned in the train. Only those who could still stand were able to get out...The last day had been the most murderous. A hundred of us had got into the wagon. A dozen of us got out-among them, my father and I. We had arrived at Buchenwald. (Wiesel, 98)

His account of the death of eighty-eight Jews on a train bound for the Buchenwald camp is chilling, one clearly affected by the personal experience of mass murder. The lack of emotion exhibited in this instance alters the historical significance of this testimony, and begs the question of whether historians may take Wiesel's argument as evidence regarding the Holocaust if all emotion is drained? Though not evident in every stage of Night, Wiesel's unemotional description here might not accurately describe the event as historical records must remember it; the records must portray these experiences devoid of bias and sentimental memory.

Reeve Robert Brenner takes a different approach to investigating the aftermath of the Holocaust and its effects on the survivors in his 1980 book *The Faith and Doubt of Holocaust Survivors*. Brenner eloquently discusses the religious feelings and beliefs of those who survived, while furthering his argument by discussing the issue of religion itself and the current state of Judaism. He sheds light on the innermost secrets and sentiments of those who emerged from the camps in regards to their religion and affiliation with it. As Dr. Debora Phillips, Director of the Princeton Center for Behavior Therapy Congress Monthly writes, "Page after page, the book lifts the veil which reveals the Jewish innermost soul, the richness of the Jewish mind and character" (Phillips). Brenner, however, explores the emotional aspect involved in the testimony of the Jewish victims remaining today, as one survivor comments:

Why do you have to do research...There's nothing so complicated That it requires scholarship. We who went through the camps no Longer believe in God. It's as simple as that. We, because of our Experience and what we witnessed, know there is no God. God is a Myth. (Brenner, 109)

This account highlights the fact that many of the survivors who emerged from the Holocaust felt that there was no one, especially no higher being, who was concerned for their well-being; many felt betrayed. Brenner extracts a great deal of emotion from this testimony, which clearly exemplifies the bitter resentment which many survivors sense towards the acts committed against them and the lack of aide received. With no one to blame but the Nazis, the Jews turn to God as the culprit of the Holocaust, guilty of not saving his people from their ruthless extermination.

Having filtered this individual memory into specific categories of emotional and stoic accounts, in addition to those by Jewish survivors and Nazi perpetrators, it is crucial

to determine the weight of memory in recollection of the Holocaust as a whole. May a scholar take into account the testimony of a survivor of Auschwitz if his portrayal of his experiences is layered with feelings such as hatred and sorrow? On the other hand, does a lack of any such emotion play a part in determining the actual events of the Final Solution? Memory is a factor which must be considered heavily before taking any action regarding historical evidence of the Holocaust, however historians would be rash not to research the source of the account and its context. Even memorials, such as the United States Holocaust Memorial Museum in Washington, D.C., and YadV'Shem in Israel, agree that memory plays a significant role in the determination and treatment of actions taken by both the victims and the perpetrators during the war. As certain historians have written in reinforcing the point that memory is a key aspect in the "myth" of the Holocaust, memorials and museums are important in promoting awareness of the event, as it can be argued that the Holocaust came to America only finally with the building of the United States Holocaust Memorial Museum. Many argue that the memory of survivors is an important tool for teaching present and future generations about the horrors which occurred so that such an atrocity never happens again.

As is written on the website for the United States Holocaust Memorial Museum's website, a direct quote from a tribute participant of the scroll of remembrance inscription, "I have survived and am here with my children and grandchildren. We will never forget and will pass on this memory so that this horror will never be forgotten"

(<http://www.ushmm.org/tribute/index.php?content=followup/>). This section of the website is devoted to the preservation of the memory of Holocaust survivors, and allows visitors to read excerpts of testimony by such individuals. Thus, memory is clearly an important aspect of re-telling the story of the extermination of six million Jews during World War II, however, it also plays a significant role in shaping future attitudes towards the Holocaust. Memory devoid of emotion may be recorded differently from those accounts filled with feeling, often stressed with greater emphasis than the former, however both play equally significant roles in determining the ever-changing implications of the Holocaust.

Although survivor testimonials clearly weigh heavily in the role of re-piecing the events of the Holocaust, they are not the most important factors, a designation which is credited to historical documents and footage. Historical evidence, however, would not be the same without the memory of Jews and Nazis alike. As noted, memory plays on the emotional aspect of the scholars' findings, evoking images and ideas about the occurrences in Eastern Europe, and other occupied territories, which hard facts could not uncover. As Ronald J. Berger writes in his discussion of memory of the Holocaust in *Constructing a Collective Memory of the Holocaust*, knowledge of the genocide

and specific facts pertaining to its occurrences were lacking in the decade or so in its aftermath without the weight of memory. Berger's work outlines the ways in which scholars and pedestrian readers may interpret the accounts by Jewish survivors as well as Nazi killers, and how that memory can be shaped into one cohesive whole. The book details the events leading up to the implementation of the Final Solution and its enforcement through testimony of those who whole survived its wrath. As is clear from the work, without memory, as was the case essentially until the Eichmann trial of 1961, historical records of the Holocaust are tainted and fail to fully inform historians.

In the first decade after the war the suppression of memory of the Jewish experience was also apparent in the relationships Survivors had with those outside their community...Nevertheless, The 1961 trial of Adolf Eichmann marked a turning point in the Postwar memory of the Holocaust...Gradually survivors who had Been 'deprived for so many years of respectful listeners to their Stories' came to see themselves as responsible for reminding the world That what happened to them must happen 'Never Again!' (Berger, 4-5)

Berger's account of the collection of facts regarding the Holocaust before and after the introduction of memory into scholarly research is remarkable. His argument exhibits that, without memory of the survivors and victimizers, the Holocaust would be merely another barbarous act of humanity, lacking the emotional factors which have made it such a crucial actor in European history. Devoid of the writings of survivors such as Wiesel and Levi, remembrance of this event would be seen in a different light than it is today.

At the focal point of Steven Spielberg's powerful 1996 documentary Survivors of the Holocaust is the effort to gather the testimonies of those who survived the extermination of over eleven million people between 1933 and 1945. Spielberg's hope is to ensure that future generations understand the horrors through which the survivors lived, and never forget such crimes against humanity. These accounts are important to society as a whole because they assure that those who research the topic and learn about the events of the Holocaust will value their life on an entirely different level than previously thought; they will always remember and never forget. As Ben Kingsley states in the introduction to Spielberg's film, "[The Holocaust] cannot be understood, may not be forgiven, and must not be forgiven" (Spielberg). These testimonies ensure that scholars and archivists create accurate representations of the genocide of the Jews, as well as other minorities, allowing future generations to understand what occurred and the impact it had on those who experienced its full force. Among the other "racially inferior" groups murdered were the gypsies, or Roma, who, as Guenter Lewy writes in his book The Nazi Persecution of the Gypsies, were exterminated because of society's portrayal of them as thieves, vandals, and nomads. As one survivor recounted to Spielberg, "When the last Holocaust survivor

dies, the six million will finally be able to rest in peace because we will have passed on the message...we must always be involved” (Spielberg). Similar to the YadV'Shem and United States Holocaust Memorial Museum's websites, the Spielberg documentary attempts to force the accounts to teach those interested “lessons about life and hope and the devastation that can come from intolerance” (Spielberg). Although there is a difference between Levi and Wyszogrod's account of the murder of a fellow inmate, both accounts further historical knowledge of life within the ghettos and camps, and develop an ever-increasing understanding of the proceedings of the Holocaust. As Kingsley states in regards to the vast amounts of testimonies recorded by Spielberg and his crew, “each was important, each was unique, and each was an important piece of history” (Spielberg).

The tales of Holocaust survivors are clearly among the most important data used to determine historical records of the genocide of six million Jews. Though some testimonies stand out with emotional accounts while others lack sentiment, both types support the idea that knowledge of the Holocaust would be severely different without the memory of Primo Levi, Elie Wiesel, and others. The accounts such as those by Wyszogrod play on the emotion of scholars and pedestrian readers alike, however still maintain historical significance for the information underneath the layers of hatred, sorrow, and confusion. On the other hand, Arendt's work is one of many which highlight the stoicism of the Holocaust, as she portrays Adolf Eichmann in such a light. Both types of tales, though, are used by historians to extract crucial information relating to the events which occurred within the death camps, in order to learn more about the daily lives of the survivors and victims of the Nazi regime. Works such as those visited in this paper have facilitated the spread of the Holocaust as a cultural phenomenon in the past two decades, and created an aura about the event itself. As scholar Yehudah Bauer writes,

Whether presented authentically or inauthentically, in accordance with the historical facts or in contradiction to them, with empathy and understanding or as monumental kitsch, the Holocaust has become a ruling symbol in our culture. I am not sure whether this is good or bad, but it seems to be a fact. (Bauer)

Bauer's valid assessment leads one to question whether all of the current knowledge regarding the Holocaust is completely correct. Can Levi recount his experiences in Auschwitz correctly to every detail five years after his liberation? Many struggle with errors in the accuracy of the accounts of survivors and perpetrators alike in the aftermath of the Holocaust, however one cannot speculate as to their exactness as memory and emotion are different for each individual, treated differently from fact. The memory of those who lived through the Holocaust is assessed and read with care, for the survivors will not be here forever, however their testimonies will live on forever.

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History Journal Submission

Human Rights Abuses by Security Forces in Northern Ireland

The European Court of Human Rights recently issued a set of landmark decisions related to killings by police in Northern Ireland . In six separate cases, the Court ruled that the government of the United Kingdom had violated Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The first part of Article 2 states that “Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”^[1] The passing of Protocol 9 to the Convention in 1998 allowed for individuals to bring governments to the Court for violations not rectified domestically, and the plaintiffs were among the first from Northern Ireland to take advantage and challenge the police record of the British government.

The decision that the British government had violated the right to life of some of its citizens was tightly worded, as the Court based its rulings only on the inadequate police investigations into the killings. Nevertheless, the Court's decision validated the claims of many human rights organizations, most notably Amnesty International and Human Rights Watch, that additional abuses had occurred in Northern Ireland . The Court transcripts and the reports issued by the above organizations show that human rights abuses went beyond deficient police investigations. The government of the United Kingdom was responsible for many of the human rights abuses that occurred from the arrival of British troops in Northern Ireland in 1969 to the signing of the Good Friday Agreement in 1998. The British Parliament gave security forces too much leeway in the hopes of fighting terrorism, resulting in foreseeable abuses.

The human rights abuses occurred in Northern Ireland as a result of the conflicts that broke out late in the 1960s and continued on through the late 1990s. Since the split between the Republic of Ireland and Northern Ireland in 1921,^[2] there had been religious tension in Northern Ireland . Both Catholics (sometimes referred to as nationalists or republicans) and Protestants (sometimes referred to as unionists or loyalists) tended to favor people of the same religious faith when it came to issues such as hiring and housing, but Catholics faced the pinch of discrimination more acutely because they were the minority in population, political power and economic

power. However, this resentment was generally not expressed through violence until the late 1960s. Drawing from the example of black civil rights groups in the United States, Catholics began publicly marching in late 1968 in protest of perceived unequal treatment. The unionist politicians who controlled Northern Ireland made a number of concessions in the wake of large-scale protests. Catholics felt these concessions were mere tokens designed to end protest rather than efforts at real reform. Protests continued, and soon escalated to rioting and violence in 1969, beginning the period known as “The Troubles.”[\[3\]](#)

The United Kingdom government was forced to move troops into Northern Ireland in late 1969 in an attempt to quell the violence. Ironically, considering what later happened, the United Kingdom was instrumental in pushing for equal rights for Catholics. One of the main reasons troops were sent in was to protect the rights of Catholics. However, the sight of British troops galvanized nationalists who wished for a unified Ireland. There were soon clashes between the two groups. Both nationalists and unionists began organizing paramilitary organizations, and violence rapidly increased. The United Kingdom began a policy of internment of suspected leaders of terrorism, which aroused indignation. A large nationalist protest was organized on January 30, 1972. Troops were sent in to try to contain the protest. Shooting broke out in the process, and fourteen unarmed protestors were killed in what became known as “Bloody Sunday.” Violence exploded after the shooting, and there was a great deal of international pressure on Britain to quell the bloodshed. In response, the United Kingdom dissolved the parliament of Northern Ireland and began direct rule. [\[4\]](#)

The government of Britain enacted several legislative acts to expand the power of police in Northern Ireland in an attempt to contain violence. Many paramilitary organizations were banned, on both the nationalist and unionist sides. The Northern Ireland (Emergency Provisions) Act was passed in 1973, and was amended and extended a number of times. It granted widespread powers to police. The police had the right to stop any person or vehicle. Any person could be searched for weapons. The police were not required to show cause or reasonable suspicion. Houses could be searched without a warrant if police had reason to believe the house contained weapons or explosives. The Prevention of Terrorism (Temporary Provisions) Act was first passed in 1974 and was also amended and extended a number of times. It allowed for the arrest of any person without warrant if the officer had reason to believe the person belonged to a prohibited organization or had in some way been involved with terrorism.[\[5\]](#)

In a country racked by terrorism, none of the provisions on their face may appear unreasonable. However, they placed a great deal of power in the hands of the police and military. The only way for such a system to work without notable human rights violations would be to have an effective and independent method of internal

investigation into any abuses by security forces. Great power must be accompanied by great accountability. In Northern Ireland, such checks on the power of the police were sorely lacking.

Predictably enough, security forces were involved in a number of killings, notably 329 between 1969 and 1989. Of these killings, 178 of the 329 were of civilians that were not affiliated with paramilitary organizations.^[6] Taking advantage of the recent change in procedure that allowed for individuals to open proceedings against governments, six separate cases were brought against the United Kingdom in the European Court of Human Rights. These cases were brought by relatives of men killed in Northern Ireland by security forces. No police officers were convicted in any of the cases.^[7]

The petitioners alleged a number of violations of the Convention, including of Articles 2, 6, 13, and 14. Article 2 is the right to life clause, and the applicants claimed that the deceased men were wrongly killed by security forces. Furthermore they asserted that the government of the United Kingdom did not take proper steps to insure police killings were properly investigated. Article 6 is the fair trial clause. The applicants alleged that the United Kingdom made it a policy of killing suspected terrorists rather than arresting them and bringing them to trial. The killings were illegal executions. Article 13 is right to an effective remedy clause. The applicants claimed that the government did not properly investigate and punish those responsible for human rights abuses. Finally, Article 14 is the prohibition of discrimination clause.^[8] The applicants charged that security forces in Northern Ireland unfairly targeted Catholics, thus violating the clause. All of the deceased in the six cases were Catholic.

The six cases were different in many ways, but the verdict was the same in each case. The United Kingdom was held to be in violation of the right to life article of the Convention, but the Court found no violations of other articles of the Convention. While the ruling may have been the same in each case, the particulars varied a great deal. A careful examination of the cases can reveal a great deal about the interaction between police and the public in Northern Ireland under the rule of the United Kingdom. They demonstrate the human dimension of the human rights crisis in Northern Ireland.

While looking at statistics and reports can be useful, often it is more telling to look at specific cases. The transcripts of the Court cases reveal some of the abuses that occurred in Northern Ireland. As it appears in the Court cases, Pearse Jordon was shot and killed in Belfast on November 25, 1992 by an officer in the Royal Ulster Constabulary (RUC), the regular police force of Northern Ireland. According to witnesses, his car was stopped after a short chase by a police vehicle. After being

brought to a stop, he exited his car and ran away. A number of officers chased after him. Without firing a warning shot, a police officer opened fire on the fleeing Jordon, hitting him several times and knocking him over. The witnesses claimed that when officers reached Jordon, they verbally abused him and kicked him. He never threatened or posed a threat to the police.

The British government does not accept this account. The police officer who shot him claimed that Jordon had spun around to face him immediately before he had opened fire, and that he could not see Jordon's hands because his vision had been obscured. He opened fire only because he feared his life was in danger. Despite the government claims, circumstantial evidence supports some of the claims of the witnesses. The post mortem reported three entry wounds, one on the back of his left arm and two on his back. Jordon was unarmed, and there were no weapons or explosives in his car.^[9] It would seem difficult to argue that it was reasonable for a veteran police officer to have fired at an unarmed man merely because he could not see the suspect's hands clearly. It also seems strange that the victim's wounds were all on his back, considering the police officer claimed he spun around to face him. An investigation was made, but no charges were brought.

In another case, Gervaise McKerr was killed on November 11, 1982. He was driving a car with two suspected terrorists in it. A police roadblock was set up with the express purpose of arresting his passengers. Anticipating a possible fight, police were heavily armed. Rather than stopping, McKerr drove through the roadblock. The police chased after the car, and began opening fire. Eventually the car came to a stop, and all three men inside jumped out of the car. The police continued firing, killing the three men as they tried to get away. All three men were unarmed, and at least 109 bullets hit the car.^[10]

The police officers at first denied setting up the roadblock to target the deceased. Testimony showed that they were told by a senior police officer to conceal this information in order not to compromise anti-terrorism efforts. After the case was reviewed, three police officers were charged with murder. The case went to trial. 27 witnesses appeared for the prosecution. Nevertheless all three men were found not guilty by Lord Justice Gibson in a non-jury trial. The Judge held that the officers had in fact acted reasonably. They had been told before the attempted arrest that the deceased were dangerous terrorists who had sworn not to be taken alive. McKerr and the other victims were allegedly planning to commit a murder that night before the police attempted to apprehend them. Judge Gibson accepted the defense of the accused that they had believed that the flashes from their bullets hitting the car were actually muzzle flashes from the deceased, and that the officers feared that they would continue firing or escape after they jumped out of the car. Judge Gibson ruled that the killing was completely justified. In his conclusion he went even further, saying that he

regarded the accused as “absolutely blameless in this matter,” and commended them for their “courage and determination in bringing the three deceased men to justice.”[\[11\]](#)

The next cases had a different focus. The first two cases concerned improper police shootings. However, they seemed largely to have been spontaneous occurrences, where overzealous officers were too quick to use force after a chase. They generally lack any element of planning. The cases of Patrick Shanaghan and Patrick Finucane revealed more premeditated abuse, including the possibility of collusion. Patrick Shanaghan was killed on August 12, 1991 by the loyalist paramilitary group Ulster Freedom Fighters. He was a suspected member of the Irish Republican Army, a banned group. While in custody, Shanaghan alleged that he was abused and threatened. He claimed that he was physically assaulted by officers, and told that loyalists knew his identity, implying that they would try to kill or injure him. He instituted proceedings against the chief of the RUC but eventually withdrew these allegations. The RUC warned Shanaghan that he was a target for loyalists, informing him that confidential information about him, including photographs, had fallen out of an army vehicle and could possibly be in the hands of loyalist paramilitary groups.[\[12\]](#)

Patrick Finucane was a solicitor who often represented clients on both sides of the conflict, but was especially well known as representing nationalist paramilitaries. Clients of his reported that RUC officers made a series of threats stated he would be soon killed. Finucane was gunned down by members of the loyalist paramilitary organization the Ulster Freedom Fighters in 1989. It was alleged that security forces passed on his photo and pointed him out to the loyalist, leading to his death. Brian Nielson, an undercover informant for the British security forces and head of intelligence loyalist paramilitary organization, allegedly confessed to pointing out Finucane. At the time of his claimed confession, he was in prison for conspiracy to murder in another case of collusion.[\[13\]](#)

A fifth case revealed even more evidence of planned abuses. The relatives of nine men killed on May 8, 1987 accused the government of being responsible for their deaths. These men were killed during an attempt by the IRA to bomb a police station. The police gained knowledge of plot to bomb the station, and according to the applicants planned to ambush and kill the IRA members. Twenty-four soldiers and three police officers took commanding positions surrounding the police station. The soldiers were members of the Special Air Services (SAS), an elite special forces branch of the British military. The IRA men arrived at the police station and began opening fire upon it. In response the soldiers returned fire. One of the men drove a stolen digger laden with explosives into the police station. An explosion occurred, severely wounding one of the police officers. The soldiers continued firing, eventually

killing all eight of the IRA men. At least three of the men were unarmed. It is unclear whether any warnings or surrender demands were issued by the security forces. After an investigation, no charges were brought against any of the soldiers or police officers.[\[14\]](#)

Finally, the sixth case was somewhat separate from the rest. This case was more a result of negligence than a deliberate killing. Dermot McShane was killed in the city of Londonderry on July 13, 1996. The night of July 12 brought conflict between nationalist protestors and police over the rights of unionist groups to march in parades. This fighting lasted into the early morning hours of July 13, with the protestors launching rocks and other missiles at the police and the police retaliating by firing plastic bullets. The crowd used a piece of hoarding to protect themselves from the bullets. In response, the security forces employed an armored personal carrier (APC) to attempt to remove the barricade. Unfortunately for McShane, he fell underneath the hoarding, and was run over when the APC advanced. He was taken to a hospital by ambulance, and died shortly thereafter. Ultimately, no charges were brought against the driver or any other member of the security forces.[\[15\]](#)

These cases show some of the ambiguity found in the relationship between police and civilians in Northern Ireland . However, a brief examination of the cases reveals that something was horribly wrong with the policing of Northern Ireland . Security forces used vastly excessive force in some instances, and displayed incredible negligence in others. In any event, though, it is easy to sympathize with the security forces. They were placed in extremely dangerous situations, where they very easily might have been killed themselves. As noted earlier, between 1969 and 1989 security forces killed 329 people. However, they suffered 876 deaths, including 847 at the hands of members of nationalist paramilitary organizations.[\[16\]](#) It is relatively easy to understand why police officers might be prone to opening fire if they felt at all threatened. This would be especially true when they knew the people they would be arresting were likely armed.

Ultimately, the European Court did not even attempt to rule on whether the killings themselves were wrong. The Court felt that this fell out of the range of its jurisdiction and did not feel comfortable attempting to determine the true facts in each case. However, they did rule that the government had violated the plaintiffs' right to life. In each case the violation stemmed from the failure to properly investigate the killings. The investigation was ruled defective because it contained two important flaws: a lack of a truly independent investigation and insufficient inquest hearings. The UK did not fulfill its procedural obligation under article 2. The government was required to pay compensation to the families of the victims, and to make efforts to correct the flaws.[\[17\]](#)

In all cases, the RUC was responsible for conducting investigations of shootings by security forces. Investigations were regulated by the Independent Commission for Police Complaints, but the members of it were appointed by the secretary of state of Northern Ireland . This represented a major conflict of interest because the secretary of state was responsible for the policing of the area.[\[18\]](#) In any event, the Independent Commission only had a limited role in overseeing investigations, providing little oversight for the RUC. This was a problem because it was difficult for the officers to be completely impartial in judging their brethren. As the Court noted, there was a “hierarchical link between the officers in the investigation and the officers subject to investigation, both of whom were under the responsibility of the RUC Chief Constable, who played a role in the process of instituting any disciplinary or criminal proceedings.”[\[19\]](#) The Court accepted that the legal agency responsible for bringing charges against the police, the Northern Ireland Director of Public Prosecutions (DPP), was independent. However, it found that this was not a sufficient safeguard when the investigation itself was subject to bias.[\[20\]](#)

The other deficiency the Court noted was the lack of an effective and independent inquest hearing. Inquest hearings are public inquiries held whenever there is a suspicious death in the United Kingdom . These proceedings are of course not required to satisfy the procedural obligation under article 2, but they are another way of fulfilling it. If properly held, inquest hearings can be enough to satisfy the procedural obligation even if the police investigation is flawed. In fact, this is what the Court ruled in the case of *McCann and others v. the United Kingdom* , a case that involved the killing of suspected IRA members in Gibraltar.[\[21\]](#) However, in the cases examined in this paper, the Court ruled that the differences between the inquest hearings in the *McCann* case and the cases in Northern Ireland invalidated this precedent. The Court found the hearings too flawed to be used to satisfy article 2.

Inquest hearings represent a sort of independent check on the police in the United Kingdom . They are conducted by coroners in order to determine the facts surrounding a suspicious death, with the rulings generally made by a jury, and are not run by the police or the prosecution. The inquest hearings are open to the public. Coroners are appointed by the Lord Chancellor, and must have had at least five years experience as a practicing attorney.[\[22\]](#) In England and Wales , and in the *McCann* case, the jury may rule that a killing is an “unlawful death” and the DPP must either prosecute or give a reason for not prosecuting. This practice insures that the DPP is accountable to the public. In Northern Ireland in the time period in question, the juries faced far more restriction. They could only return a verdict stating the deceased’s name, the place and time of death, and the cause of death.[\[23\]](#) In other words, they could not comment beyond the narrowest of reports. A jury could state the deceased died from being shot in the chest or head, but they could not even consider whether

the shooting was proper or not. This limitation striped inquest hearings of any possibility of correcting improper police investigations. The coroner could send a report to the DPP stating that a criminal offense may have occurred, but the DPP was under no obligation to do anything in response. The prosecution did not have to provide a reason for not bringing criminal charges.[\[24\]](#)

Even if the juries could have returned a verdict of “unlawful death,” a further flaw in the inquest hearing would have prevented it from fulfilling article 2 of the Convention. No one suspected of causing a death could be compelled to testify in the inquest hearings. When a member of the security forces was involved in a case of lethal force, the officer never testified at the hearing. Instead, he or she submitted a written statement describing the events in question. This precluded the possibility of a cross-examination of the officer to determine the validity of his or her testimony. Thus, in the event of conflicting accounts, it was virtually impossible to determine which one was accurate. In Northern Ireland , the inquest hearings could not be used to identify criminal offenses and thus do not satisfy the procedural aspect of article 2 of the Convention. [\[25\]](#)

The Court ruling on Article 2 was very important. It validated the longstanding claims of human rights organizations such as Amnesty International and Human Rights Watch that abuses were occurring in Northern Ireland . An independent court held the UK government responsible for the inadequate investigations into killings by security forces. The ruling meant that even in areas racked by terrorism, governments must respect individual rights. Human rights abuses cannot be justified by the commendable goal of preventing terrorist attacks.

However, as noted earlier, the ruling was very narrowly argued. It felt that there was not enough evidence to find the UK in violation of the other charges the plaintiffs claimed. These charges included that the shootings themselves were unjust, they were part of a larger shoot-to-kill policy, there were not enough efforts to individually punish the officers responsible for the shooting, and the policing in Northern Ireland was discriminatory. The Court did not necessarily deny that the charges might have been true, but instead stated that they were not presented with enough evidence to rule conclusively one way or the other.

As part of the judgment, the British government was required to show the Secretariat responsible for enforcing the ruling that it was complying. The government indicated that an independent Police Ombudsman had been hired in November of 2000 and given the power to investigate any complaint about police. She has a team of independent investigators to carry these investigations out, so she does not need to rely on the police for them. The Ombudsman can recommend criminal or disciplinary proceedings even when the Chief Constable does not. In the event of a killing by a

police officer or the use of baton rounds (plastic bullets), the Ombudsman must conduct her own investigation, and issue a recommendation on whether charges should be issued. The DPP must provide the Ombudsman with their decision whether to prosecute or not and the reasons for it. The Secretariat was satisfied with these changes.[\[26\]](#)

Furthermore, the House of Lords recently decided unanimously that the scope of the investigation of inquest hearings was to be widened. Juries were to determine “by what means and under what circumstances” a person met his or her death. Coroners were to insure that the inquest hearings would be effective enough to fulfill the procedural obligations of article 2 of the Convention. The Secretariat was satisfied with these changes in the instance as well.[\[27\]](#)

Generally, the government made a real effort to comply with the ruling. The Secretariat requested a few clarifications and made minor recommendations, but appeared satisfied on the major issues. The changes greatly expand the accountability of the police forces. No longer are the security forces allowed to police themselves. Several independent checks on the security forces were introduced, reducing the possibility of a conflict of interest. I believe that if these changes had been made earlier, far more police officers would have been held responsible for unlawful deaths. It is unfortunate that the government waited so long to make the reforms.

This was as far as the Court ruling went. However, reports by groups like Amnesty International and Helsinki Watch allege that abuses went beyond a lack of accountability. These organizations assert that overly vague standards for the proper use of lethal force contributed to killings by security forces. In Northern Ireland , police officers could use “such force as is reasonable under the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders.” [\[28\]](#) The domestic courts in the UK gave a wide leeway to officers. What is “reasonable under the circumstances” is not an objective standard, and according to Helsinki Watch the courts chose to give it a very broad interpretation. This standard directly contradicts international standards, including the European Convention on Human Rights. The second part of Article 2 states that:

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defense of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.[\[29\]](#)

The lethal force standard was far too vague in Northern Ireland , and helped contribute to the deaths that occurred there. Police officers were almost never held accountable for shootings because what is “reasonable” was interpreted so broadly that it was virtually impossible to prove that officers had not been reasonable. If there had been a clear, enforceable statute on lethal force it seems extremely likely that officers would have exercised better discretion. Perhaps some of the men who died in the cases above would still be alive today if the British government had applied international standards for the use of force.

Amnesty International has argued that police sometimes operated a under shoot to kill policy. They argue that the policy for certain operations was to take no prisoners. Amnesty used the shooting of Kelly and the other members of the IRA in the attempted attack on the police station as evidence of this possible policy. The SAS cut down the deceased with machine guns from elevated areas above the station; if this operation had occurred in a military setting it would be a textbook example of an ambush. Although Kelly is the case that went to the European Court, there are numerous examples of other killings that also appear arbitrary. Even if there was not an official policy to shoot to kill, there was an unwritten one that resulted from the vague use of force standard. The security forces faced no deterrence from the legal system as virtually no officers were ever convicted for unlawful killing. When dangerous operations were taken, security forces were overly willing to use lethal force.[\[30\]](#)

The DPP faced difficulty in prosecuting police forces and soldiers even beyond the vague use of force statutes. If a security force member was ruled to have intentionally killed someone, he or she could only be charged with murder. Manslaughter in any degree was not an option. Manslaughter charges could only be brought in cases of unintentional killing. On the face of it, this may appear reasonable. Someone who intentionally kills someone should not be allowed to plead off to a lesser charge. However, it did not allow for the wide range of circumstances involved in killings by police forces. A killing might have been intentional, but nevertheless mitigating factors could have been present. For instance, a soldier might have acted in self defense, but nevertheless used excessive force. If manslaughter was an option, officers could be convicted on grounds that they used unreasonable force. Widening the options available to the DPP would have made it easier to reach a just outcome.[\[31\]](#)

In addition, in practice this made it virtually impossible to convict a member of the security forces of any crime in the event of an unlawful shooting. As noted before, the RUC handled investigations of killings by the police or military. Police officers were loath to recommend murder charges for their brethren. The police, the prosecution, and the courts were all reluctant to go after police officers except in the most egregious cases. The possibility of manslaughter charges would have made it far easier for the DPP to secure convictions against officers who used excessive force in police killings.[\[32\]](#)

As a result of the use of force regulations and lack of options for the prosecutions, convictions of security force members were almost impossible to secure. Between 1969 and 1991, the DPP only brought charges against only 21 members of security forces for killings using fire arms. In only two instances were defendants found guilty of manslaughter or murder. They served, combined, less than two and one half years in prison. The officer who was convicted of manslaughter was given a suspended sentence.[\[33\]](#) The one soldier who was found guilty of murder, Private Ian Thain, served only two years and three months of a life sentence, and was allowed to rejoin his army unit after his release.[\[34\]](#) Considering that security forces were responsible for 329 deaths between 1969 and 1989, this was a woeful record. According to Amnesty International, around half of those killed were unarmed.[\[35\]](#) No matter what the circumstances, the actions of the officers went unpunished. Security officers were implicitly told they could act with impunity.

Some activists have made even stronger allegations. These activists claim that not only did the DPP fail to prosecute offenders, but that security forces actively colluded with loyalist paramilitary organizations. This charge is hardly surprising, considering that the loyalist organizations claimed they are supporting the government. Loyalist groups almost never targeted security forces. Whatever the actual extent of collusion, it is natural that nationalist groups would be suspicious that the security forces were more sympathetic to the loyalists than the nationalists.[\[36\]](#)

The cases of Patrick Shanaghan and Patrick Finucane were not the only case where evidence of collusion was present. In 1989, spokesmen for the loyalist group Ulster Defense Association defended the killing of a Catholic man by stating that he belonged to the IRA. They claimed that they had police files to support this allegation, and in fact it was discovered that police files had gone missing from several security bases. By the end of 1989, the names of over 250 republicans had been leaked to the public, often including photos and detailed descriptions of their habits. A police investigation of evidence of collusion was directed under John Stevens, a senior British police officer. This investigation became known as the Steven's Inquiry, and led to the arrest of 59 people. However, the investigation was very narrow. It was only

concerned with security leaks that occurred in 1989, and did not investigate larger allegations of collusion between security forces and loyalist groups.[\[37\]](#)

Later investigations revealed even more. In 2003, Stevens concluded that there was collusion in several other cases, including the killing of attorney Patrick Finucane. He wrote that there was “collusion in both murders and the circumstances surrounding them,” confirming the suspicions of activists, though how much senior officials in British government knew was not determined. These activities by certain security officers led to the loss of innocent life. Stevens further accused the RUC of obstructing his investigation, and even stated that they started a fire in his team’s incident room. Police officers in the RUC were apparently even willing to commit crimes against other officers in order to hinder the investigation.[\[38\]](#)

The allegations of collusion are part of a larger theme of discrimination against Catholics in Northern Ireland. The plaintiffs in each of the cases brought to the Court argued that the patterns of police killing proved a policy of discrimination. The overwhelming majority of people killed were young Catholic men, thus violating Article 13 of the Convention banning discrimination. The Court did not rule the government in violation of this Article, stating that statistics were not enough to prove a policy was discriminatory.[\[39\]](#) Nevertheless, the statistics are revealing when combined with the historical patterns of discrimination against Catholics in Northern Ireland. At the very least, it’s an issue that requires further research.

The charges of discrimination are partially fueled by the composition of the RUC. According to census records, around 50% of the population is Protestant and 38% Catholic. However, as of 1996 Catholics comprised only around 8% of the police forces. Some of that was due to a low application rate. Catholics generally applied to join the RUC in less numbers than Protestants. Nonetheless, Catholics regularly made up a larger percentage of the applicant pool than of the accepted officer pool, indicating that the RUC could have included more Catholics. A police force that better reflected the general population would have greatly bolstered the RUC’s claim of impartiality, and combated claims of discrimination.[\[40\]](#)

Another area of concern to human rights groups is the continued use of plastic bullets for crowd control. The use of plastic bullets was mentioned in the case of Dermot McShane, when they set the events in motion that led to his death. The use of plastic bullets led to protestors taking cover behind the piece of hoarding. McShane was killed when he was run over by an APC removing the hoarding. However, the Court did not make a ruling on the use of plastic bullets in the case.[\[41\]](#) Plastic bullets have been used by police forces since 1974, when they replaced rubber bullets. The British government has claimed that the use of such weapons actually reduces injuries, by giving police forces an intermediate option to disperse rioters without the use of live

ammunition. However, plastic bullets killed fourteen people between 1974 and 1996. Half of the deceased were children. Hundreds of other people were severely injured by the rounds.[\[42\]](#)

According to internal guidelines, the rounds were to only be fired at specific rioters, and only if the safety of police officers or others was seriously threatened. Even then, the bullets were to be fired only at the lower body of the rioter. Under these situations, the use of plastic bullets seems responsible. However, the guidelines have been routinely ignored by security forces. Because plastic bullets are seen as a non-lethal weapon by many officers, they are used with little regard for the official policy. Many of those killed by the bullets have later been proven to not have been rioting, and there is little excuse to fire such a dangerous weapon at children, no matter what the situation. In any event, there have been a large number of reported cases of head and chest injuries, contradicting the official policy that the bullets were to be fired only at the lower extremities.[\[43\]](#) As of September of 2004, plastic bullets were still officially in use, though no plastic bullets had been fired in nearly two years. Groups like the Social Democratic and Labor Party, a moderate nationalist party, attribute this lack of usage to the mandatory independent investigations by the police Ombudsman required every time a plastic bullet is fired. Nevertheless, they still call for the complete banning of plastic bullets.[\[44\]](#)

The anger with the police forces can be seen in the Good Friday Agreement of 1998 which attempted to end the violence. This agreement was a compromise between nationalist and unionists, and was approved by a referendum by a majority of both groups.[\[45\]](#) Much of the agreement deals with setting up an assembly for Northern Ireland and regulating relations with the United Kingdom and the Republic of Ireland. However, a significant portion of the thirty page document concerns the regulation of policing and protecting human rights. The British government agreed to fully incorporate the European Convention on Human Rights into the law of Northern Ireland and to provide remedy in the courts for any violation. This helped pave the way for the challenges in the court cases examined in this paper. The practice of discrimination based on religion or ethnicity was also condemned.[\[46\]](#)

Whole sections of the agreement are devoted to issues of security and policing. The British government was to make progress towards the eventual revocation of the Emergency Powers Act, the act which granted widespread powers to police forces. Further more, the government was required to take measures to insure that the police forces accurately represented the ethnic composition of the people of Northern Ireland. Efforts were to be made to insure that there were more Catholics on the police force. Finally, an independent commission was to be set up to issue recommendations to the police forces to insure they were held accountable for their actions and

respected human rights. The British government was also to review the justice system to ensure it was working properly.[\[47\]](#)

The Good Friday Agreement makes clear the high level of distrust the public had for police forces. The people of Northern Ireland did not have confidence that the security forces would protect their rights. Ultimately, though, it can probably be said that most of the official policies regulating the interaction between police and public were not unreasonable, considering the circumstances (the one principal exception would be the vague use of force statute). The major mistake the British government made was in not insuring complete accountability. I do not think that there were official policies encouraging collusion, shooting to kill, or firing plastic bullets at children, at least not at the very highest levels. However, the government effectively condoned these actions by not actively investigating or punishing wrongdoers. The overarching theme of the abuses was a lack of accountability. The security forces were given a free hand in a hostile country, and the result was gross violations of human rights norms.

It is clear that human rights violations by security forces and other government representatives were widespread in Northern Ireland. However, one could certainly make the argument that such violations were necessary to maintain law and order in Northern Ireland. In a country racked by terrorism, it would certainly be preferable to violate a few civil liberties than allow the entire territory to dissolve into violence and anarchy. The paramilitary organizations exemplified by the IRA committed many acts of gross violence. Security forces killed a number of civilians but there never was an official government policy of targeting them. On the other hand, groups like the Irish Republican Army and Ulster Defense Force deliberately killed civilians in an attempt to achieve their goals. From 1969 to 1989, republican paramilitaries killed 574 civilians, while loyalist groups killed 632 civilians.[\[48\]](#) The IRA did not limit violence to Northern Ireland either. Terrorist attacks were conducted against civilians in England as well. When it came to killing, the paramilitaries far outdid the security forces. Thus, the realist argument goes, although the widespread powers granted to security forces led to some abuse, the situation would have been far worse if they were not granted these powers.

This is an important argument, and I think that it must be discussed. I must at least attempt to refute it for the paper to have any meaning, as otherwise the paper is merely hand wringing about abuses that were unfortunate but better than the alternative of uncontrolled violence. However, I do not think that the only alternative to greater accountability was unrestrained terrorism. The argument that the violations were necessary does not hold. The government can not justify the abuses on these grounds.

The first, and perhaps most obvious, reason the realist argument is wrong is that security forces did not simply violate the rights of terrorists. Security forces killed more civilians than they did paramilitaries.^[49] Even when the security officers killed paramilitary members, they were often unarmed. If we accept that it is ok to violate the rights of terrorists, that still leaves us with the problem of how to determine whether a person is a terrorist or not. Without a fair trial, it is impossible to prevent innocent civilians from being caught in the crossfire. And civilians, in fact, were the ones who suffered the most from the human rights abuses on all sides. Paradoxically, security forces and paramilitary organizations on both sides were far more likely to kill civilians than they were to kill the opposing side.^[50] Thus, even if we decide that it is tolerable to violate the rights of terrorists, that still leaves us with the problem of figuring out who is a terrorist and who is a civilian, which is impossible to solve without due process.

A second major argument was introduced by human rights groups, and attempted to undermine the very core of the realist stance. The realists argued that some abuses were acceptable because the alternative was so much worse. However, Human Rights Watch argues that the human rights policies of the British government actually perpetuated violence and terrorism. The public, especially Catholics, lost all faith in police forces that were seen as corrupt and discriminatory. The emergency legislation that gave police forces such wide powers served to “sustain the historic climate of distrust and hostility between the government of the United Kingdom and certain segments of its citizenry.”^[51] The government’s heavy handed attempts to fight terrorism by violating civil liberties actually worsened the problem.

The only ones that gained from the human rights abuses were the paramilitary organizations themselves, the very groups the government was seeking to undermine. Because police forces were not held accountable for their actions and abused the rights of the public, many turned to paramilitary organizations instead. In fact, paramilitary groups on both the republican and loyalist sides actively policed their own neighborhoods. Many in the community supported the paramilitaries because they fulfilled this function.^[52] The failings of the government gave these organizations air of legitimacy. The widespread distrust of the police ensured the paramilitaries received popular support. If the government had reformed the security forces they could have undermined an important source of strength of organizations like the IRA. As it were, these organizations were able to continue their campaigns of terror and violence.

The final counter to the realist argument stems from the United Kingdom’s vision of its role in the world. England has an extremely long history of democracy and individual rights. The government views itself as a supporter of the human rights system and the rule of law. However, this commitment to human rights is hollow if

the government does not respect the rights of its own citizens. The Court ruled that Britain was in violation of the Convention on Human Rights, which the government signed onto. It has an obligation to protect the rights it agreed to defend. The excuse that the paramilitaries committed worse violations cannot be used. In any event, Britain has implicitly conceded that mistakes were made. Efforts were made to reform the police investigations even before the European Court made its ruling. The Police Ombudsman was hired in 2000, indicating that the government knew that there were problems with police investigations even before the Court ruled them in violation.^[53]

Examining the question of human rights in Northern Ireland is difficult. Much like in the United States in the post 9/11 world, the government of the United Kingdom was faced with the difficult task of fighting terrorism while still protecting individual rights. Terrorists from Northern Ireland attacked civilians in both Northern Ireland and in England, putting the government in a difficult situation. The government had to do something to stop the violence. Security forces likewise faced the difficult task of respecting the rights while facing great personal danger. I think that the government attempted to fight terrorism as effectively as it could and did not intend for widespread abuses to occur.

However, the failure of the British policing effort cannot be ignored. Some members of security forces engaged in egregious violations of human rights. Demanding accountability for police actions would not have hindered the fight on terrorism. In fact, it likely would have decreased the threat of terrorism by reducing the anger of the population, and thus the support for paramilitary groups. It was a major mistake to expect that security forces would be able to police themselves in such a hostile and stressful setting. The British government failed to create an environment where rights were respected, perpetuating and worsening the violence in Northern Ireland. The government has attempted in recent years to correct the abuses it was responsible for and must be commended for this effort. Northern Ireland has largely been peaceful since 1998 and hopefully will continue to be so into the future. However, peace could have been achieved far sooner if the British government had made a greater effort to protect human rights before the signing of the Good Friday Agreement. Respecting human rights is not incompatible with fighting terrorism.

^[1] “European Convention on Human Rights” at <http://www.hri.org/docs/ECHR50.html> (Accessed December 5, 2005).

^[2] T.G. Fraser, *Ireland in Conflict 1922-1998* (London: Routledge, 2000), 1.

[3] Ibid 41-44.

[4] Ibid 50-54.

[5] Human Rights Watch, *To Serve Without Favor: Policing, Human Rights, and Accountability in Northern Ireland* (New York: Human Rights Watch, 1997), 16-18.

[6] Helsinki Watch, *Human Rights in Northern Ireland* (New York: Helsinki Watch, 1991), 69.

[7] Related Items in European and Domestic Courts
<http://www.serve.com/pfc/euro/eurindex.html>.

[8] European Court of Human Rights: Historical Background
<http://www.echr.coe.int/Eng/EDocs/HistoricalBackground.htm>.

[9] European Court of Human Rights Application no. 24746/94 “Jordon v the United Kingdom ” <http://www.serve.com/pfc/euro/jordon.pdf> (Accessed December 5, 2005) 3-7.

[10] European Court of Human Rights Application no. 28883/95 “McKerr v the United Kingdom ” <http://www.serve.com/pfc/euro/mckerr.pdf> (Accessed December 5, 2005) 3-6.

[11] Ibid 6.

[12] European Court of Human Rights Application no. 37715/97 “Shanaghan v the United Kingdom ” <http://www.serve.com/pfc/euro/shanagha.pdf> (Accessed December 5, 2005) 3-6

[13] European Court of Human Rights Application no. 29187/95 “Finucane v the United Kingdom ” <http://www.serve.com/pfc/pf/echr0307.html> (Accessed December 5, 2005) 3-5.

[14] Ibid 4-8.

[15] European Court of Human Rights Application no. 43290/98 “McShane v the United Kingdom ” <http://www.serve.com/pfc/euro/mcshane.pdf> (Accessed December 5, 2005) 2-4.

[16] Helsinki Watch, 47.

[17] European Court of Human Rights Application no. 28883/95 “McKerr v the United Kingdom ” 38-40.

[18] Helsinki Watch, 26.

[19] European Court of Human Rights Application no. 28883/95 “McKerr v the United Kingdom ” 40.

[20] Ibid 40-42.

[21] Ibid 43.

[22] Helsinki Watch, 81.

[23] European Court of Human Rights Application no. 24746/94 “Jordon v the United Kingdom ” 34.

[24] Ibid 34-35.

[25] Ibid 33-34.

[26] “Cases Concerning the Actions of Security Forces in Northern Ireland ” <http://www.serve.com/pfc/euro/04cminfl4.pdf> (Accessed December 5, 2005) 4-7.

[27] Ibid 12-13.

[28] Section 3 (1) of the Criminal Law (Northern Ireland) Act 1967 as quoted in Human Rights Watch, 85.

[29] “European Convention on Human Rights.”

[30] Amnesty International, *United Kingdom : Political Killings in Northern Ireland* (New York: Amnesty International, 1994), 3-7.

[31] Helsinki Watch, 79-80.

[32] Ibid pp 79-80.

[33] Amnesty International, 9.

[34] Helsinki Watch, 69-70.

[35] Amnesty International, 3.

[36] Ibid 30.

[37] Ibid 14-16.

[38] The Irish Times “Security Forces Colluded with Loyalists to Carry Out Killings” <http://www.ireland.com/newspaper/front/2003/0418/598133766HM1NORTHMAIN.html> (Accessed December 5, 2005)

[39] European Court of Human Rights Application no. 24746/94 “Jordon v the United Kingdom ” 40.

[40] Human Rights Watch, 27-29.

[41] European Court of Human Rights Application no. 43290/98 “McShane v the United Kingdom ” 3.

[42] Human Rights Watch, 74-75.

[43] Ibid 75-79

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[47] Ibid.

[48] Helsinki Watch, 47.

[49] Ibid 47.

[50] Ibid 2.

[51] Human Rights Watch, 3.

[52] Amnesty International, 14-16.

[53] Cases Concerning the action of Security Forces in Northern Ireland 4.

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