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COMMENT

From Kneecappings Toward Peace: The Use of Intra-Community Dispute Resolution in Northern Ireland

“The definitive renunciation of violence, without any second thoughts, will become the sine qua non for the survival of humanity itself and for each of us.”¹

I. INTRODUCTION

Violence has been a way of life in Northern Ireland for many years as communities were divided by separate warring paramilitary factions.² Each side believed that it existed for the benefit and protection of the local community against the forces on the other side. The Irish Republican Army (“IRA”) pledged itself to the defense of Northern Irish Catholics from persecution by those loyal to the British government.³ Similarly, groups such as the Ulster Volunteer Force (“UVF”) and the Ulster Defense Association (“UDA”) formed to defend Protestant citizens against IRA attacks.⁴ Policing of local neighborhoods fell largely to these groups.⁵ Enforcement of the rules created by both the IRA and Protestant groups involved shootings, kneecappings, and occasionally tarring and feathering.⁶

In 1996, realizing the importance of renouncing violence, both Catholic and Protestant communities began devising systems of non-violent, community-based justice to replace the brutal regime of kneecappings and punishment shootings.⁷ The result of these meetings was the development of two groups: Northern Ireland Alternatives (“NIA”) in Protestant communities and Community Restorative Justice Ireland (“CRJI”) in Catholic communities.⁸ NIA focuses much of its work on youths accused of anti-social crimes,⁹ using techniques such as victim-offender

1. RENÉ GIRARD, THINGS HIDDEN SINCE THE FOUNDATION OF THE WORLD, 137 (Stephen Bann & Michael Metteer trans., Stanford University Press 1987).

2. See JOHN CONROY, BELFAST DIARY: WAR AS A WAY OF LIFE 2 (Beacon Press 1995).

3. Feargal Cochrane, *Unsung Heroes? The Role of Peace and Conflict Resolution Organizations in the Northern Ireland Conflict*, in NORTHERN IRELAND AND THE DIVIDED WORLD, 138 (John McGarry ed., Oxford University Press 2001). The PIRA was formed in 1970 when it split from the Irish Republican Army, advocating more intensive military action against the British Government. *Id.*

4. *Id.*

5. See CONROY, *supra* note 2, at 88.

6. *Id.* at 85-88.

7. Brian Gormally, *Community Restorative Justice in Northern Ireland*, in RESTORATIVE JUSTICE ONLINE (April 2006), <http://www.restorativejustice.org/editions/2006/april06/gormallyarticle>.

8. *Id.*

9. “Anti-social crime” generally refers to incidents such as vandalism, stealing and rioting. HARRY MIKA, COMMUNITY-BASED RESTORATIVE JUSTICE IN NORTHERN IRELAND, 17, 25 (Institute of Criminology and Criminal Justice 2006) available at <http://atlanticphilanthropies.org/content/download/3484/52576/file/HMikaReport.pdf>.

mediation and reparation to the community to resolve the dispute.¹⁰ Similarly, CRJI organizes meetings between victims, offenders, and local leaders in the Catholic communities.¹¹

Several criticisms have been lodged against these groups. Critics claim that they are little more than fronts to allow the IRA and UVF to maintain greater control over members of their communities.¹² Critics also argue that the use of these community-based programs creates what is essentially a two-tiered justice system, as clients of these programs may still be punished by the state legal system.¹³ Lastly, detractors argue that these programs are not truly voluntary.¹⁴

Despite the criticisms, the work of NIA and CRJI has significantly decreased the number of paramilitary punishment attacks in the communities where they are active.¹⁵ To supporters, this is evidence that these programs provide positive and desirable alternatives to retributive violence.¹⁶

II. PARAMILITARY POLICING

A detailed analysis of the history and causes of the troubles in Northern Ireland is beyond the scope of this paper. Some background information will be helpful, however, to understand the conflict. The beginning of the conflict can be traced back to the early Seventeenth Century.¹⁷ In an effort to quell the very rebellious colony of Ireland, the British government began a system of "plantation," which involved displacing the rebellious Irish natives, confiscating their land, and turning it over to loyal English and Scots.¹⁸ The natives in Ulster, the northernmost and largely Catholic region in Ireland, reacted violently to being ousted from their land by Scottish Protestants.¹⁹

For the next 300 years, the Catholics in Ireland continuously fought for their independence from Britain.²⁰ Finally, the IRA and the British Army agreed to a truce in December 1921, and the Anglo-Irish Treaty was signed.²¹ Under the terms of the treaty, the new Irish Free State acquired its own Parliament but remained a part of the British Empire.²² In order to appease Protestants in the North, the treaty also created the state of Northern Ireland from six of the nine counties of Ulster where Protestants had become a majority.²³

10. *Id.*

11. *Id.*

12. CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, COMMUNITY RESTORATIVE JUSTICE IRELAND 3 (October 2007) available at <http://www.cjini.org/InspectionReports2007Icons.htm>.

13. *Id.*

14. *Id.*

15. See MIKA, *supra* note 9, at 25. The preceding study by Atlantic Philanthropies demonstrated that CRJI prevented 82% of paramilitary punishments, while NIA prevented 71% of paramilitary punishments. *Id.* at 34.

16. Mark Davenport, *Guidelines on Justice by New Year*, BBC NEWS, Oct. 5, 2005, available at http://news.bbc.co.uk/1/hi/northern_ireland/4312192.stm.

17. See CONROY, *supra* note 2, at 19.

18. *Id.*

19. *Id.* at 19-20.

20. *Id.* at 21.

21. *Id.* at 22.

22. *Id.*

23. *Id.* at 22-23.

The police force of Northern Ireland, known as the Royal Ulster Constabulary (“RUC”), had little legitimacy in the Catholic communities of Northern Ireland.²⁴ The predominantly Protestant police force had been known in some cases to turn the other way when Protestants attacked Catholic homes.²⁵ Many Catholic residents distrusted the police and doubted that the police would protect them.²⁶ As a result, much of the violence and crime in Catholic communities went unreported.²⁷ This tension between the RUC and the Catholic citizens essentially created a law enforcement vacuum.²⁸ With crime and other anti-social activities going mostly unchecked in these neighborhoods, the local citizens turned to paramilitary groups like the IRA to step in.²⁹ Some scholars claim that paramilitary self-policing flourished because the government, indifferent to victims in working class neighborhoods, chose to ignore it.³⁰

Government apathy, social unrest, and the citizens’ misgivings about the police all contributed to an environment that was ripe for vigilante justice; the IRA stepped in and created a series of informal “rules.” These rules were spread by word-of-mouth and wall murals; sometimes the IRA actually dropped their directives into community mail slots.³¹ The rules covered a broad range of anti-social activity and sometimes drew seemingly arbitrary lines. Robbing your neighbor was forbidden; robbing from the government was allowed.³² Teenagers were not allowed to steal cars or trucks unless it was necessary to make a barricade during a riot.³³ Policemen were always legitimate targets for attack; firemen, however, could not be targeted.³⁴ Drinking was allowed, but liquor could not be sold to minors.³⁵ The IRA members also became de facto truant officers, ensuring that area youths attended school.³⁶

When the IRA decided that a rule had been broken and punishment was in order, the IRA dispatched a punishment squad.³⁷ The punishments used by paramilitary groups varied and could include: shootings in the knee (kneecapping), thigh, elbow, or ankle; beatings with baseball bats, iron bars, or hurling sticks; and, in some cases, banishment from the community.³⁸ The severity of the pu-

24. Kieran McEvoy & Harry Mika, *Restorative Justice and the Critique of Informalism in Northern Ireland*, 42 BRIT. J. CRIMINOLOGY 534, 537 (Summer 2002).

25. CONROY, *supra* note 2, at 34.

26. *Id.*

27. *Id.* at 81.

28. McEvoy & Mika, *supra* note 24, at 537.

29. *Id.*

30. MIKA, *supra* note 9, Foreward.

31. CONROY, *supra* note 2, at 68.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 80.

37. *Id.* at 85.

38. McEvoy & Mika, *supra* note 24, at 536. In the 1970s the PIRA also used tar and feathers as a punishment; that method was largely abandoned, however, because of the time and conspicuousness of the act. CONROY, *supra* note 2, at 87.

nishment depended on the severity of the offense.³⁹ Between 1973 and 1985, the RUC reported 1,110 kneecappings.⁴⁰

The story of a man named "Peter Murphy" offers a sad example of these punishment attacks. In 1974, Peter broke up a fight between his child and another child.⁴¹ In the process, he swung at the other child's father, who was a member of the IRA.⁴² Peter was taken to a cemetery, shot in the knee, and left there.⁴³ Two years later, Peter was accused of robbing a pub and punched his accuser.⁴⁴ Shortly thereafter, he was taken to an alley and shot in the arm.⁴⁵ The severe nerve and muscle damage to his arm left his hand permanently limp.⁴⁶

The victims of kneecappings were often too poor to do anything but return to their neighborhood and serve as visual reminders of what happened to rule-breakers.⁴⁷ Despite the violent nature of these paramilitary attacks, local residents viewed these forms of retribution as swift and visible ways to dispense justice.⁴⁸ The communities needed to be policed by someone. If the IRA did not step in, residents would be forced to turn to the police for help; and turning to the police meant rejecting the IRA.⁴⁹ Therefore, as brutal as the attacks seemed, local residents viewed them as acceptable and had little pity for the victims.⁵⁰

Protestant paramilitary groups also imposed similar punishment attacks on their local offenders, though less often than in Catholic communities.⁵¹ The Protestant paramilitary groups had a much less organized system of punishment than the IRA, though their attacks were equally brutal; and while the Protestant punishment attacks were also used to police local civilians in the community, they also targeted other paramilitary groups or carried out internal discipline.⁵²

Punishment attacks continued in both Protestant and Catholic communities unabated for many years. Even the 1994 ceasefire declared between the IRA and British Loyalist groups did not stop the punishment attacks.⁵³ The ceasefire, by its terms, applied only to "military activities."⁵⁴ Both sides considered the punishment attacks "policing" activities, unaffected by the ceasefire.⁵⁵ It was not until the Good Friday Agreement of 1998 that the issue of punishment attacks was

39. CONROY, *supra* note 2, at 85. For example, a bullet through the fleshy part of the thigh was considered a light sentence, whereas, "[a] heavy sentence could destroy bones and arteries." *Id.*

40. *Id.* at 85-86. One study indicated that 10% of kneecappings resulted in amputation, while one in five victims were forced to walk with a limp for the rest of their lives. *Id.* at 86.

41. *Id.* at 89.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 86. It is possible for the victims of punishment attacks to receive government compensation as victims of a terrorist attack; however, any person who has ever been a member of a proscribed organization like the PIRA is automatically ineligible for compensation. *See id.* at 46.

48. McEvoy & Mika, *supra* note 24, at 536.

49. *Id.*

50. *See generally* CONROY, *supra* note 2, at 67-106.

51. *Id.*

52. McEvoy & Mika, *supra* note 24, at 536.

53. *Id.*

54. *Id.*

55. *Id.*

addressed.⁵⁶ As a precondition for participating in the peace talks, all parties had to agree to the Mitchell Principles,⁵⁷ which required, among other things, the renunciation of punishment killings and beatings.⁵⁸ During the actual peace negotiations, both Irish Republican and British Loyalist paramilitaries continued to carry out punishment attacks within their communities.⁵⁹ However, the commitment by Sinn Féin⁶⁰ and Loyalist political parties to lean on their respective paramilitary organizations was an important step in the cessation of punishment attacks.⁶¹ Also, international political embarrassment and criticism from international human rights organizations contributed to an atmosphere that made paramilitary groups more willing to explore options for moving their organizations away from punishment violence.⁶² The Good Friday Agreement itself also set up several bodies that had a direct effect on the criminal justice system.⁶³ These included a Human Rights Commission, an Equality Commission, a Sentence Review Commission, an independent policing commission, and civil service review of the criminal justice system.⁶⁴

III. RESTORATIVE JUSTICE AND ITS USE IN NORTHERN IRELAND

A. Restorative Justice Defined

Restorative justice is defined as a system of dealing with conflicts, crime, and anti-social behavior in a way that maximizes the involvement of the concerned parties (offenders, victims, families, support networks, community representatives, and justice professionals) in responding to the needs of victims, holding the offenders accountable, and creating conditions for reducing and preventing further

56. See Stefan Wolff, *Introduction: From Sunningdale to Belfast, 1973-98*, in *PEACE AT LAST?: THE IMPACT OF THE GOOD FRIDAY AGREEMENT ON NORTHERN IRELAND*, 133 (Jörg Neuheiser & Stefan Wolff eds., Berghahn Books 2002).

57. The Mitchell Principles were developed by former United States Senator George Mitchell. In 1996, Mitchell was appointed as chairperson of the multi-party talks that led to the Good Friday Agreement. ALVIN JACKSON, *IRELAND 1798-1998: POLITICS AND WAR* (Blackwell Publishers Inc. 1999).

58. See Wolff, *supra* note 56. The Mitchell Principles required that parties to the peace talks commit:

- a. To democratic and exclusively peaceful means of resolving political issues;
- b. To the total disarmament of all paramilitary organisations;
- c. To agree that such disarmament must be verified to the satisfaction of an independent commission;
- d. To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations;
- e. To agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree; and,
- f. To urge that 'punishment' killings and beatings stop and to take effective steps to prevent such actions.

Id. at 13 n. 9 (quotations omitted).

59. *Id.* at 31.

60. Sinn Féin, literally meaning "ourselves alone," is the dominant Irish Republican political party in Ireland. It was once considered to be one of the most militant nationalistic groups, but today it is considered the political wing of the IRA. CONROY, *supra* note 2, at 21-22.

61. McEvoy & Mika, *supra* note 24, at 537.

62. *Id.* at 537.

63. *Id.* at 535.

64. *Id.*

harm.⁶⁵ The concept of restorative justice can include a varied number of practices, including conferencing, victim-offender mediation, sentencing circles, community reparation boards, restitution programs, and negotiation.⁶⁶

The goal of restorative justice is to reintegrate both victims and offenders back into their communities by healing the harm caused and attempting to prevent its reoccurrence.⁶⁷ For the victims of crime, restorative justice seeks to provide them with justice that extends beyond what can be provided by the formal legal system; instead, restorative justice aims to restore the victim's security, self-respect, dignity, and sense of control.⁶⁸ For the offenders, restorative justice seeks to hold them responsible for their behavior while simultaneously providing them with a sense of control over how to make amends.⁶⁹ This process attempts to instill in the offender a belief in the fairness of the processes that punished him.⁷⁰

At its most basic level, restorative justice involves an informal and private process where the victims, offenders, and other interested groups meet with a facilitator.⁷¹ Despite the participation of a facilitator, the voices of the stakeholders dominate the discussions.⁷² The hope is that this informal, private process will help create an environment that is both respectful and tolerant, where all participants feel comfortable speaking for themselves.⁷³ Restorative justice also involves a great deal of flexibility in the process and the outcomes, though there are rules to be followed and rights to be protected.⁷⁴

The outcomes of a restorative justice process can vary widely.⁷⁵ Outcomes are broadly defined as "whatever dimensions of restoration matter to the victims, offenders and communities affected by the crime."⁷⁶ Outcomes can include apologies, reparations, community work, returning stolen property, compensating the victims for injuries, or even serving a prison sentence.⁷⁷ The only requirement for an outcome to be considered "restorative" is that it is agreed upon and considered appropriate by the parties involved.⁷⁸ Therefore, the success of an outcome is measured by the satisfaction of the stakeholders in each individual case.⁷⁹ Ideally, restorative justice ends with reconciliation between the victim and the offender.⁸⁰

65. MIKA, *supra* note 9, at 1. Restorative justice has also been defined as, "a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future." Andrew Ashworth, *Responsibilities, Rights and Restorative Justice*, 42 BRIT. J. CRIMINOLOGY 578 (Summer 2002).

66. Allison Morris, *Critiquing the Critics*, 42 BRIT. J. CRIMINOLOGY 596, 597 (2002).

67. *Id.* at 598.

68. *Id.* at 598-99.

69. *Id.* at 599.

70. *Id.*

71. *Id.*

72. Ashworth, *supra* note 65, at 578.

73. Morris, *supra* note 66, at 599.

74. *Id.*

75. *Id.*

76. Ashworth, *supra* note 65, at 578 (quotations omitted).

77. Morris, *supra* note 66, at 599.

78. *Id.*

79. Ashworth, *supra* note 65, at 578.

80. Morris, *supra* note 66, at 599. Examples include the victim inviting the offender over for dinner with the victim's family, and in some cases, the victim showing up at the court hearing to speak on the offender's behalf. *Id.* at 599-600.

There is no “right way” to administer restorative justice, and there is no requirement to adopt one form of restorative justice over another.⁸¹

On some level, restorative justice is meant to replace government-sanctioned criminal justice for a wide range of offenses.⁸² Restorative justice thus requires a redefining of the concept of “criminal justice,” away from the idea that it is a matter concerning only the offender and the state, and toward the idea that “criminal justice” also includes the victim and the community as stakeholders in the outcome.⁸³ However, the typical criminal justice goals of protecting society and making sure the “punishment fits the crime” are not precluded by a restorative justice system. The difference is that in a restorative justice system, the offender, victim, and community have more input, and ideally, more satisfaction with the outcome.⁸⁴

B. CRJI and NIA

Prior to the signing of the Good Friday Agreement, in 1996, Irish Republican activists approached a group of human rights workers in Northern Ireland to begin discussion and training on restorative justice issues.⁸⁵ After consultation with statutory organizations, community representatives, and political parties, the Republican activists and human rights workers published a document entitled the “Blue Book.”⁸⁶ The “Blue Book” contained a proposed model for a system based on restorative justice principles.⁸⁷ This document was eventually endorsed by the IRA and Sinn Féin.⁸⁸ Following the publication of the Blue Book, and with funding from several philanthropic organizations, four CRJI pilot programs opened in Irish Republican communities, and a NIA pilot project started in British Loyalist areas.⁸⁹

The CRJI pilot programs offered basic restorative justice techniques like victim-offender mediation, family group conferencing, and monitoring agreements.⁹⁰ The NIA programs in Loyalist areas were limited to primarily providing an alternative to punishment violence for youthful offenders.⁹¹ This limitation is due in large part to the UVF’s stipulation that it would not use the restorative justice program for internal paramilitary discipline, conflicts between paramilitary organizations, and sexual or drug offenses.⁹²

In Irish Republican communities, CRJI urged community members to approach CRJI as an alternative to any cases where they previously would have

81. *Id.* at 600.

82. Ashworth, *supra* note 65, at 578.

83. *Id.*

84. Morris, *supra* note 66, at 599.

85. McEvoy & Mika, *supra* note 24, at 537.

86. *Id.*

87. *Id.*

88. *Id.* Sinn Féin made it clear that they did not view a restorative justice system as replacing the formal justice system, however, emphasized that these restorative justice projects should not cooperate with an unreformed RUC. *Id.*

89. *Id.*; see also, MIKA, *supra* note 9, at 4.

90. McEvoy & Mika, *supra* note 24, at 538.

91. *Id.* at 539.

92. *Id.*

approached the IRA.⁹³ The typical path of a restorative justice case in CRJI begins with a referral to CRJI either by self-referral or referral by the victim or his family, paramilitary groups, or any other community groups.⁹⁴ CRJI then determines whether the case is one covered by CRJI.⁹⁵ Cases handled by CRJI range from relatively minor cases of noise violations or property damage to more serious disputes like threats of paramilitary attack.⁹⁶ CRJI representatives then participate in “shuttle diplomacy,” where the project staff meets with the various affected parties (the offender, the victim, the paramilitary groups, etc.) individually, often at the parties’ homes.⁹⁷ If this shuttle diplomacy results in a resolution of the dispute, then CRJI formalizes the agreement between all parties.⁹⁸ If shuttle diplomacy fails to resolve the dispute, then CRJI arranges a more formal mediation or conference involving all of the interested parties at a neutral site.⁹⁹ The agreements reached by CRJI and the parties can include apologies, agreements to desist, return or replacement of items, monetary restitution, personal development programs, and reintegration to the community.¹⁰⁰ After the parties reach an agreement, CRJI provides periodic monitoring of the agreement to ensure compliance and provides support and intervention as needed.¹⁰¹ The case is finally closed after CRJI ensures full compliance with the agreement.¹⁰²

A real-world situation provides a good example of CRJI work in action. A group of teenagers committed more than sixteen break-ins in a neighborhood.¹⁰³ Community residents who recognized the perpetrators approached the IRA to recover the stolen items.¹⁰⁴ The IRA then contacted CRJI, which held a series of meetings between the victims, the offenders, and their families.¹⁰⁵ These meetings included twenty-one people.¹⁰⁶ In the end, the offenders agreed not to commit the crimes again and promised to replace the stolen items and money; furthermore, both the victims and offenders agreed not to retaliate against one another.¹⁰⁷ Lastly, the offenders’ parents committed to encouraging their children to pursue more positive goals.¹⁰⁸

While restorative justice programs in both Republican and Loyalist communities are dedicated to resolving disputes in a way that addresses the concerns of victims, offenders, and the public, there are some differences in how these pro-

93. *Id.* at 538.

94. MIKA, *supra* note 9, at 10.

95. McEvoy & Mika, *supra* note 24, at 538. Certain types of cases like domestic assault or child abuse are typically referred to other organizations. *Id.*

96. *Id.* at 538-39. CRJI handles a large variety of cases including underage drinking, graffiti, stoning of fire brigades, taxis, buses, and ambulances, desecration of churches, vandalism of local shops and businesses, fighting, and joyriding. *Id.* at 539.

97. MIKA, *supra* note 9, at 10.

98. *Id.*

99. McEvoy & Mika, *supra* note 24, at 538.

100. MIKA, *supra* note 9, at 10.

101. *Id.*

102. *Id.* Data suggests that most cases are resolved very quickly, usually within forty-eight hours. McEvoy & Mika, *supra* note 24, at 538.

103. MIKA, *supra* note 9, at 18.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

grams are carried out. Generally speaking, the goal of CRJI is to negotiate a satisfactory resolution of the specific dispute between the victim and offender.¹⁰⁹ NIA programs in Loyalist communities, on the other hand, focus much of their efforts on rehabilitating wayward youths.¹¹⁰ Because of UVF-imposed limitations, most of the clients for NIA are between thirteen and twenty-two years old.¹¹¹ Referrals are made to NIA from paramilitary organizations, the offender or his family, or other members of the community.¹¹² Once a referral is received, NIA staff contact the UVF to verify the existence of a paramilitary threat and negotiate with the UVF to lift the punishment threat against the offender if he successfully completes the NIA program.¹¹³ NIA representatives then meet with the offender and his or her family to explain and discuss participation.¹¹⁴ If the offender agrees to participate in the restorative justice program, NIA then assigns the offender a caseworker and works out a contract specifying remedial actions on offending behavior, victim restitution, and community reparations.¹¹⁵ Similar to the CRJI agreements, the NIA contracts can include apologies, agreements to desist, replacement of items, monetary restitution, victim-offender conferences, volunteer work, and personal development goals.¹¹⁶ Throughout this process, NIA has contact with victims, the offender's family, residents groups, and schools.¹¹⁷

After the contract is formed, the youth offender makes a presentation to a community panel that judges the adequacy of the contract terms.¹¹⁸ The panel, the offender, and NIA maintain regular contact thereafter.¹¹⁹ After several months, the offender appears in front of the panel again to certify that the contract has been successfully completed.¹²⁰ Subsequently, NIA provides support, after-care services, interventions, and referrals to other organizations as needed.¹²¹

In one case, an area youth had been involved in a series of anti-social behaviors, including vandalism.¹²² After repeated warnings from the UVF, and after seriously damaging a local retiree's property, paramilitary punishment was set to take place.¹²³ However, the case was referred to NIA, which assigned a caseworker who worked out a contract with the youth.¹²⁴ The contract included apologizing to the victim and fixing up his yard.¹²⁵ The youth also received assis-

109. McEvoy & Mika, *supra* note 24, at 539.

110. *Id.*

111. *Id.*

112. MIKA, *supra* note 9, at 8.

113. McEvoy & Mika, *supra* note 24, at 539.

114. *Id.* If the offender decides not to participate in the program, NIA refers them to BASE 2. MIKA, *supra* note 9, at 8. BASE 2 is a project sponsored by the Northern Ireland Association for the Care and Resettlement of Offenders ("NIACRO"), which supports and relocates people under threat of paramilitary punishment. *Id.* at 8 n. 6. NIACRO also provided funding for the four CRJI pilot programs. McEvoy & Mika, *supra* note 24, at 537.

115. *Id.* at 540.

116. MIKA, *supra* note 9, at 8.

117. *Id.*

118. McEvoy & Mika, *supra* note 24, at 540.

119. *Id.*

120. *Id.*

121. MIKA, *supra* note 9, at 8.

122. *Id.* at 17.

123. *Id.*

124. *Id.*

125. *Id.*

tance with his school work to help get him “back on track.”¹²⁶ The youth developed a relationship with the victim and even started running errands for him.¹²⁷

Both CRJI and NIA have had a dramatic impact on providing alternatives to paramilitary punishment violence.¹²⁸ One study showed that in all but one studied area with a CRJI or NIA project, punishment beatings and shootings fell to zero.¹²⁹ In addition, both programs have since expanded to provide mediation and conflict resolution services in situations that would not otherwise be resolved by paramilitary violence.¹³⁰

CRJI and NIA demonstrate the flexibility of the concept of restorative justice and that no method is the “correct” method. CRJI engages in shuttle diplomacy between the individual parties, coordinating a meeting between them all when necessary. NIA, on the other hand, works out a contract with the offender, with the input of the victim, school groups, and the offender’s family, which is then approved by a panel of community members. These techniques vary widely, but they are both considered restorative justice because they involve a resolution—agreeable to the offender, the victim, and the community at large—that goes beyond the normal criminal justice remedy of jail time.

IV. CRITICISMS AND RESPONSE

Despite the apparent success of CRJI and NIA at decreasing the number of punishment beatings in the areas where they are located, CRJI and NIA have not been universally accepted. A number of criticisms have been made against these restorative justice programs: that they are not truly voluntary, that they still leave offenders subject to punishment from the criminal justice system, and that CRJI and NIA are little more than fronts for allowing the IRA and UVF to assert more control over their respective communities.¹³¹

A. Voluntary or Coercive?

Supporters of restorative justice criticize the traditional criminal justice system as being coercive and repressive.¹³² These supporters argue that because restorative justice requires cooperation, it cannot be coerced or imposed.¹³³

Critics of CRJI and NIA, however, argue that the programs rely on either implied or express coercion to force clients to take part in restorative justice.¹³⁴ These critics, while acknowledging the superiority of voluntary agreements, argue that restorative justice programs are not truly voluntary.¹³⁵ Any perceived free-

126. *Id.*

127. *Id.*

128. McEvoy & Mika, *supra* note 24, at 540-41.

129. *Id.* at 541.

130. *Id.* at 540.

131. Davenport, *supra* note 16; CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12, at 3.

132. Margarita Zernova, *Aspirations of Restorative Justice Proponents and Experiences of Participants in Family Group Conferences*, 47 BRIT. J. CRIMINOLOGY 491, 500 (2007).

133. *Id.*

134. CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12, at 3.

135. Zernova, *supra* note 132, at 500.

dom in restorative justice, they argue, must be qualified by enticements, threats, and alternative courses of action.¹³⁶ The idea of “choice” to participate in a restorative justice program must be evaluated in light of the fact that the decision not to participate means dealing with the traditional criminal justice system.¹³⁷ In Northern Ireland, the alternative to not participating in CRJI or NIA is often paramilitary retaliation.¹³⁸ Therefore, in a theoretical sense, the critics of restorative justice are correct in saying that restorative justice is never as completely voluntary as its supporters claim.¹³⁹

Moreover, coercion need not come from the state’s criminal justice system; coercion can come from a variety of sources.¹⁴⁰ In Northern Ireland, the individual’s community places a large amount of coercive pressure on the individual.¹⁴¹ Even though there is no evidence of physical coercion to motivate participation in mediation or to make restitution, an offender is not as free to refuse restorative justice, knowing that he must remain in his community, close to his victim and the victim’s relatives.¹⁴² To some extent, however, an analysis of whether or not community pressure makes these programs inherently coercive is irrelevant because the purpose of CRJI and NIA is not to exist independent of, or outside of, these communal pressures.¹⁴³ Communal pressures had previously existed in the form of IRA and UVF punishment attacks.¹⁴⁴ The purpose of CRJI and NIA is to take over the functions of the paramilitary groups, to mediate these social pressures and channel them in an acceptable, non-violent way.¹⁴⁵

B. Paramilitary Front?

Another criticism of CRJI and NIA is that they are little more than fronts for the IRA and UVF, allowing these paramilitary organizations to exert more control over their communities.¹⁴⁶ This suspicion flows from the assumption that if the paramilitary groups support these projects, it must be because the projects allow the paramilitary organizations to continue exerting control over their communities.¹⁴⁷ In fact, one group has suggested that, in some instances, people associated with the restorative justice programs “use it as a cover for the exercise of paramilitary influence . . .”¹⁴⁸ The cynical interpretation is that the paramilitary groups now use these restorative justice schemes to ensure that citizens continue coming

136. *Id.*

137. *Id.*

138. *See id.* at 494.

139. *See id.* at 501.

140. *Id.*

141. CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12, at 8. The social pressure exerted by a community can occasionally take tangible forms like ostracism, picketing, and breaking windows, hardly better than paramilitary punishments. *Id.* at 8 n.17.

142. *Id.* at 8-9.

143. *See id.*

144. *See id.*

145. *Id.* at 8 n.17.

146. *Id.* at 3.

147. McEvoy & Mika, *supra* note 24, at 546. This is a variation of the argument made about other restorative justice programs allowing the *state* to exert more control over people. *Id.* at 545-46.

148. CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12, at 4.

to them instead of the police.¹⁴⁹ The more benign interpretation is that the involvement of paramilitary groups in restorative justice schemes is the natural result of moving away from a world where violence was the principal means of law enforcement.¹⁵⁰

While it would be difficult to create a system of restorative justice completely free of any influence from the paramilitary groups that controlled neighborhoods for so many years, in the years that CRJI and NIA have been operating, there have been no reported instances of violence or threats against anyone working in restorative justice.¹⁵¹ Evidence of violence or threats by the paramilitary groups against people in charge of the restorative justice projects would severely damage the credibility of these projects.¹⁵²

With wartime violence slowly becoming a thing of the past, paramilitary members have begun to merge back into society.¹⁵³ In order to achieve a mandate from the community, the restorative justice schemes must recruit from a cross-section of all of the community's groups.¹⁵⁴ It appears that the involvement of paramilitary groups in CRJI and NIA is more a consequence of their formerly large role in law enforcement than a conspiracy to maintain their hegemony.¹⁵⁵ Because violence is no longer a viable option, even if the paramilitaries are using the CRJI and NIA to maintain power, it is surely a good sign that even the groups responsible for punishment attacks are beginning to move away from the use of violence.¹⁵⁶

C. Two Tiers of Justice?

Critics of CRJI and NIA also argue that these programs create a two-tiered system of justice, leaving offenders subject to the criminal justice system.¹⁵⁷ CRJI and NIA were originally created to replace the brutal system of paramilitary punishment that existed precisely because of a lack of effective law enforcement, especially in Irish Republican communities.¹⁵⁸ Where the government was previously either unable or unwilling to prevent the paramilitary attacks and punish the responsible parties, as CRJI and NIA have gained a reputation for reducing the amount of punishment violence, the government has begun to take notice.¹⁵⁹ While CRJI and NIA are certainly better alternatives to no law enforcement, questions remains about what role these programs will play once police are available and accepted within the communities.¹⁶⁰

149. *Id.*

150. *Id.*

151. McEvoy & Mika, *supra* note 24, at 546.

152. *Id.*

153. *Id.* at 546-47.

154. *Id.* at 547.

155. *See id.*

156. *Id.*

157. CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12, at 3; Davenport, *supra* note 16.

158. McEvoy & Mika, *supra* note 24, at 536.

159. *See generally* CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12.

160. *Id.* at 10.

Several government policies make the existence of completely independent restorative justice schemes difficult. First is the Criminal Law Act of 1967, which makes it a crime for people with material information about a crime to fail to report it to the police.¹⁶¹ Another obstacle is the unwillingness of the government to concede its law enforcement power to these restorative justice groups. The government of Northern Ireland has stated that restorative justice programs will not operate in Northern Ireland outside of the involvement of the Police Service of Northern Ireland (“PSNI”).¹⁶² Thus CRJI and NIA would take their cases on referral from the police service instead of taking cases directly from members of their own communities—a directive to which CRJI objects.¹⁶³

The government has legitimate concerns about CRJI and NIA acting as intermediaries between the citizens and the police force.¹⁶⁴ The existence of such an intermediary could lead to certain information about crimes not getting to the police, despite the terms of the Criminal Law Act of 1967.¹⁶⁵ It is likely that in some cases, especially in Irish Republican communities where distrust of the police has been the norm for many years, Catholic residents would simply not report the criminal activity to the police in the first place.¹⁶⁶

The government has also realized, however, that these restorative justice schemes serve a very useful purpose within their communities.¹⁶⁷ Imposing external government regulations on these community-based schemes could have negative consequences.¹⁶⁸ It is in recognition of these competing interests that the government has recommended that CRJI and NIA be allowed to operate, but under a system of supervision and monitoring.¹⁶⁹ To this end, the British government has instituted a system of accreditation for the restorative justice programs under a series of protocols.¹⁷⁰ Under the protocols, all criminal offenses are passed by the police to the Public Prosecution Service.¹⁷¹ The Public Prosecution

161. *Id.* at 5-6. Section 5 of the Criminal Justice Act reads:

Where a person has committed an arrestable offence, it shall be the duty of every person who knows or believes 1. that the offence or some other arrestable offence has been committed and 2. that he has information that is likely to be of material assistance in securing the apprehension, prosecution or conviction of any person for that offence to give that information within a reasonable time to a constable and if, without a reasonable excuse, he fails to do so then that person is committing an offence.

Id.

162. Media Centre, *Police involvement in restorative justice schemes is non negotiable* – Hanson, Northern Ireland Office (Nov. 2, 2005) available at <http://www.nio.gov.uk/media-detail.htm?newsID=12456>. “There is absolutely no question of the Government approving [community-based restorative justice] schemes without the involvement of the PSNI. . . . The Government will not approve a two tier system of justice.” *Id.* (quoting Criminal Justice Minister, David Hanson, MP).

163. See Davenport, *supra* note 16.

164. CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND, *supra* note 12, at 11.

165. *Id.*

166. See *id.*

167. *Id.* at 10.

168. See *id.*

169. *Id.*

170. Media Centre, *Accreditation for community based restorative justice schemes*, Northern Ireland Office (Aug. 3, 2007) available at <http://www.nio.gov.uk/accreditation-for-community-based-restorative-justice-schemes/media-detail.htm?newsID=14578>.

171. Criminal Justice System Northern Ireland, *Protocol for Community-based Restorative Justice Schemes* (Feb. 5, 2007) available at

Service then refers certain low-level offenses to the proper restorative justice program for resolution.¹⁷² Not all restorative justice groups have accepted the protocols to become accredited and receive public financing. Therefore, these groups are not bound to receive cases directly from the police and may still receive cases from community members and paramilitary organizations.¹⁷³

Still, the fact that collaboration now exists between state prosecution efforts and restorative justice programs suggests that there is widespread belief that these programs play an integral role in dispute resolution.

V. CONCLUSION: LOOKING TO THE FUTURE

Paramilitary violence has essentially disappeared in the regions of Northern Ireland in which CRJI and NIA have been operating. As such, it could be said that the programs have essentially fulfilled their original purpose of creating an alternative to punishment attacks, a new form of social control and criminal justice. With paramilitary attacks increasingly unacceptable, restorative justice programs will have to adapt to remain a relevant and useful part of a legitimate criminal justice system. To that end, both CRJI and NIA will have to find a way to coexist with the traditional criminal justice system of Northern Ireland, which for many years was essentially non-existent. If CRJI and NIA want to remain viable in the future, some changes should be made.

The stipulation by the UVF that it will not use restorative justice for internal paramilitary discipline, conflicts between paramilitary organizations, and sexual or drug offenses has restricted the NIA to functioning only in the limited area of juvenile offenses. If NIA is to be more effective, the UVF should drop these limitations, thereby allowing NIA to take on a wider range of cases. With paramilitary violence becoming less and less acceptable, it is likely that the UVF will make such a compromise.

It is possible for restorative justice schemes to carve out a niche for resolving low-level offenses, for which the PSNI lacks the resources to remedy. The accreditation system currently in place appears to be a good first step to integrating restorative justice schemes into a formal system of criminal justice. The implementation of a referral system should be able to adequately address the concerns of the government regarding a two-tiered justice system, while simultaneously maintaining a role for restorative justice programs in resolving some low-level criminal activity. Also, because the protocol, by its terms, does not apply to anti-social behavior that does not reach a criminal level, restorative justice programs are presumably free to deal with this activity as they wish without any government supervision.

http://www.nio.gov.uk/protocol_for_community_based_restorative_justice_scheme__5_february_2007.pdf.

172. *Id.* The schemes are, however, forbidden from handling sexual or domestic offenses, or from handling any criminal matter not referred from the Public Prosecution Service. *Id.* To date, only five chapters of NIA have achieved accreditation. See Register of Community-Based Restorative Justice Schemes (Aug. 1, 2008) available at

http://www.nio.gov.uk/register_of_accredited_community_based_restorative_justice_schemes.pdf.

173. See Davenport, *supra* note 16.

The accreditation and protocol system could, however, pose some problems. CRJI and NIA are local programs created to deal with disputes in the best way for their communities. There is some concern that requiring all activity to pass through a formal government agency before reaching one of the programs could blunt the efficiency and effectiveness of the local programs. It will be necessary to eventually reexamine the work of CRJI and NIA in order to determine how they are functioning under the new government system and if any changes need to be made. The government will thus need to be open to reforming the protocols as needed to enhance the effectiveness of restorative justice programs. For now, however, the protocols should be an acceptable way of integrating CRJI and NIA into the formal criminal justice system of Northern Ireland.

Restorative justice has served and continues to serve a vital function in Northern Ireland—resolving disputes without resorting to the violent regime of paramilitary law enforcement that existed for many years. It remains to be seen what role these restorative justice groups will play as Northern Ireland continues to move from kneecappings toward peace.

PATRICK CODY

