

***“They might as well be walking around the inside of a biscuit tin”*: Barriers to Employment and Reintegration for ‘Politically Motivated’ Former Prisoners in Northern Ireland**

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Abstract

The prisoner provisions under the Northern Ireland Peace Agreement emphasised the importance of the reintegration and civic inclusion of ‘politically motivated’ former prisoners; however, numerous barriers to full reintegration remain. Notwithstanding the fact that these prisoners were released as part of a peace process, based on principles of conflict transformation and reconciliation, there were still numerous conditions placed upon them as part of their release process and they continued to hold a ‘criminal’ record upon release. As with ‘ordinary’ ex-prisoners, these ‘politically motivated’ former prisoners have subsequently faced numerous obstacles in their attempts to reintegrate back into society, particularly in the area of employment. Recognising that they needed to deal with the consequences of imprisonment, ‘politically motivated’ former prisoners formed numerous self-help organisations to assist in the reintegration process and have mobilised to lobby for protection against the discrimination and unequal treatment experienced by ex-prisoners seeking employment. This article explores the remaining barriers to employment for ‘politically motivated’ former prisoners and the consequences of these barriers. The article moves to assess how prisoner groups have subsequently used a ‘rights based’ discourse to engage local government in their struggle to overcome existing obstacles before finally concluding that any piecemeal attempt to remove barriers to full reintegration will only impede the longer term conflict transformation process in Northern Ireland.

Keywords: Reintegration - Employment barriers – ‘Politically motivated’ former prisoners - Northern Ireland.

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Introduction

In the past 15 years, Northern Ireland has emerged from a three-decades long conflict between groups loyal to the British state and republican groups seeking a unified Irish state, and has become a model for transitional justice practices internationally (see Campbell et al., 2004; McEvoy, 2007; McEvoy and Shirlow, 2009). A central part of this transition has been the release of individuals on both sides of the conflict serving time in prison as part of their participation in paramilitary activities during the conflict. It is estimated that as many as 30,000 were interned or imprisoned (see Jamieson et al., 2010), most famously in Long Kesh and the H-Blocks of the Maze Prison made infamous by the hunger strikes of 1981 (See McEvoy, 2001). A central component of the 1998 Belfast/Good Friday peace agreement² was the release of both Loyalist (including members of the Ulster Volunteer Force (UVF), Ulster Defence Association (UDA), and Loyalist Volunteer Force (LVF)) and Republican prisoners (including members from the Provisional IRA, Official IRA and the Irish National Liberation Army (INLA)). The prisoner provisions under the peace agreement also emphasised the importance of the reintegration and civic inclusion of Republican and Loyalist ex-prisoners or 'politically motivated' former prisoners³ (PMFPs) in this transitional process. However, 15 years on and those released under the political settlement continue to experience issues around their educational, psychological and emotional needs (see Shirlow and McEvoy, 2008; Jamieson et al., 2010), and are confronted with many legislative barriers which hinder the reintegration process. In May 2012, a review panel reported on the various structural barriers to full reintegration and noted that the existence of legal barriers has continued to place ex-prisoners in a disadvantaged position since their release (OFMDFM, 2012).

In consequence to such barriers the PMFP community, through community based self-help organisations have mobilised, utilising the 'rights' and 'equality' discourse to challenge the remaining legislative obstacles to their full reintegration. Much has been written on the role that the struggle for equal rights plays in the mobilisation of both individuals and communities in challenging social exclusion and the presence of societal power imbalances. For example, Gearty has argued that 'the law is the means through which aspirations are made real' (Gearty,

² The Belfast/Good Friday Agreement had as its political objective to bring an end to the conflict, which lasted 30 years. The proposals included plans for a Northern Ireland assembly with a power-sharing executive, new cross-border institutions involving the Irish Republic and a body linking devolved assemblies across the UK with Westminster and Dublin. There were also provisions in relation to the decommissioning of paramilitary weapons, the future of policing in Northern Ireland, as well as the early release of paramilitary prisoners.

³ Prisoners were deemed as 'politically motivated' if they were serving a 'conflict related' sentence and were convicted of scheduled offences during the conflict in Northern Ireland. Scheduled offences are those offences listed as an appendix to the various Emergency legislation in Northern Ireland (including Schedule 1 of the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1996). Those convicted of schedule offences were members of, or had connections to, various paramilitary organisations including (but not limited to); the Irish Republican Army (IRA), Irish National Liberation Army (INLA) from the republican community and the Ulster Volunteer Force (UVF) and Ulster Defence Association (UDA) from the loyalist community. The majority of those who had 'conflict related' convictions had their case heard before a single judge in a special juryless court (Diplock court) and subsequently served their sentence in a very distinct prison regime (see McEvoy, 2001 for further discussions).

2006: 68). He further contends that rights claims are 'offshoots of the political expressions of the passing wishes of the community' (Gearty, 2006: 68). Moreover, Cornwall and Nyamu-Musembi (2004) have found that grassroots 'rights talk' and actions in post conflict societies also have the capacity to inspire, to mobilise and to restore a sense of agency to the powerless (Cornwall and Nyamu-Musembi, 2004: 1415-37). McEvoy contends that rights discourses can offer a form of mobilisation and campaigning 'from below' (McEvoy, 2007: 431). Reflecting on his previous research on restorative justice projects in Northern Ireland (See McEvoy and Eriksson, 2006), McEvoy argues that while rights do not provide the answers for all complex problems, the rights discourse provides a, 'space where dialogue about competing rights claims can occur, where power relationships can be named and where the needs of the State do not necessarily trump the needs of the individuals and communities most affected by violence' (McEvoy, 2007: 432).

In post-conflict Northern Ireland, a number of community based former prisoner organisations have provided a space for PMFPs to have their 'rights' claims considered and have mobilised to challenge the various obstacles in pursuit of full reintegration and the attainment of citizenship rights. This article aims to illustrate the impact the various legal and structural barriers continue to have on the PMFP community and in particular, it underscores the continued barriers former prisoners face in their attempts to access employment since their release. It also moves to consider some of the recent victories the PMFP community has had in challenging and removing some of these barriers.

This article draws on the findings from a wider research project on the release and reintegration of Republican and Loyalist ex-prisoners in Northern Ireland and an analyses of data from thirty-five in-depth, semi-structured interviews with Republican ex-prisoners (including the Provisional IRA, Official IRA and Irish National Liberation Army (INLA)), and Loyalist ex-prisoners (including Ulster Volunteer Force and Red Hand Commandos), and others involved in PMFP reintegration. Data was also collected through a survey with sixty-nine Republican and Loyalist former prisoners (see Dwyer, 2010). The sample groups from both the in-depth semi structured interviews and the surveys had a higher representation of members from the Republican community (interviews – sixty-eight per cent Republican and thirty-two per cent Loyalist; surveys – seventy five per cent Republican and twenty five per cent Loyalist). This imbalance was down to a number of factors including the fact that there are a higher number of Republican ex-prisoner organisations and representatives from the Republican community groups had a greater willingness to participate in the research (for further methodological discussions see Dwyer, 2010). This data was also supported by information collected at numerous informal meetings and correspondences with a range of government officials, academics and members from the community/voluntary sector, including rights-based organisations. Overall, the findings reveal the particular consequences a piecemeal legislative approach to dealing with the effects of 'conflict related' convictions can have in the longer term in regards to transitional justice. It is argued that this approach has at times undermined the wider conflict transformation process, demonstrates a resistance by the governments to follow through on the provisions set out in the Agreement and in consequence has curtailed PMFPs'

attempts to achieve full citizenship rights in post-conflict Northern Ireland, nearly 15 years after the signing of the peace agreement.

The Criminal Conviction: The Impact on Citizenship and the Right to Work

It is well established that 'ordinary'⁴ prisoners experience significant difficulties on their release from prison, including barriers to their social, economic and political reintegration (Laub and Sampson, 2001; Visher and Travis, 2003; Gadd and Farrall, 2004; Ward and Maruna, 2007). It is often the case that possession of a criminal record effectively strips the most basic rights of citizenship (Uggen et. al, 2004) and the consequences of barring ex-prisoners from citizenship rights is well documented (Metcalf et al., 2001; Travis and Petersilia, 2001; Farrall, 2004; Farrall and Sparks, 2006; Behan and O'Donnell, 2008). In particular, research on holding a criminal record and the reintegration process has highlighted numerous difficulties including psychological and emotional trauma, re-establishing family life and community relations, political participation, education and training and gaining employment (see Uggen, 2000; Laub and Sampson, 2001; Padfield, 2011; Naylor, 2011). Such challenges, including the suspension of certain 'rights and privileges' can lead to incomplete citizenship (Uggen et al., 2006: 305). Whilst citizenship can include giving rights and entitlements, it also involves inclusion and participation on an equal footing (see Behan and O'Donnell, 2008). In other words, citizenship can be viewed as a set of rights and duties (civil, political and social) as well as a set of practices (cultural, symbolic and economic) and these define an individual's membership in a polity (see Isin and Wood, 1999).

There have been numerous debates of the ideal of citizenship and what it takes to be included as a full member of the political community, and certainly over time, different qualities and values have been identified as making an individual 'worthy' of citizenship. In her analysis of citizenship, Arendt (1958) has found that in the Greek polis, those that had to work or labour in order to live were not regarded as full members of the polity, but rather full membership and inclusion was only granted to those who did not have to work. However, in modern times and with changes in values, all traditions have seemingly been reversed and the 'the modern age has carried with it a theoretical glorification of labour and has resulted in a factual transformation of the whole society into a labouring society' (Arendt, 1958: 4). Moreover, Arendt notes that there has been a 'sudden, spectacular rise of labour from the lowest, most despised position to the highest rank, as the most esteemed of all human activities' (1958: 85). For Isin and Turner (2002), the idea of the worker-citizen 'has been a foundational aspect of modern society' (2002: 8). Modernity can therefore be recognised as the putting of a person's ability to work at the very heart of their political existence. In consequence, a new form of power and governance evolved which placed the ability to work at the centre of political being

⁴ This term is used to refer to those individuals convicted and processed through 'ordinary' criminal courts (as opposed to Diplock courts), who serve their sentences in ordinary or 'traditional' prison settings. Such individuals have also been referred to locally as 'ordinary decent criminals', a colloquialism from Northern Ireland for prisoners who are not 'politically motivated', in other words do not have a 'conflict related' conviction (see McEvoy, 2001; Guelke, 2006).

and which was 'situated and exercised at the level of life, the species, the race and the large-scale phenomenon of population' (Foucault, 1978: 137).

The right to work is therefore essential 'if individual members of a particular community are to play their full part in the life of that community with confidence and dignity' (Laski cited in Ewing, 1995: 117-118). Laski contends that 'the State exists in order that its citizens may realise in their lives the best of which they are capable' therefore advocating that 'the citizen has a right to work' (cited in Ewing, 1995: 99-100). Drzewicki claims that the right to work is 'a complex normative aggregate ... a cluster of provisions entailing equally classic freedoms and modern rights approaches as well as an obligations orientated perspective made up of strictly enforceable legal obligations and political commitments' (Drzewicki, 1995: 173). Therefore, this right is best viewed as 'freedom to exercise a degree of choice in the work undertaken to maintain one's standard of living in combination with a detailed set of safeguards which operate to ensure a dignified and fair system ... in the absence of discrimination' (Smith, 2007: 308). For ex-prisoners and those holding criminal records, finding employment will not only ensure participation but can also facilitate them playing a full part in the life of the community with confidence and dignity.

The growing literature on desistance from offending supports the arguments on the central role securing employment can have on the reintegration process (see Laub and Sampson, 2001; Farrall, 2002; Visher and Travis, 2003). Moreover, whilst it is often claimed that successful reintegration can be 'measured' by harm reduction, community protection and recidivism rates (see Morgan and Owers, 2001), there is an increased understanding that reintegration is best conceptualised as a wider social process, the aims of which should centre on independent and productive membership of the community (see Laub and Sampson, 2001; Maruna and LeBel, 2003; Maruna, Immarigeon and LeBel, 2004, McNeill and Maruna, 2008; Maruna, 2011). This strengths-based re-integrative approach argues that the ex-prisoner should not be de-humanised or excluded on their return but rather should be treated with respect and afforded an opportunity to prove themselves as citizens (see Maruna, 2001; Maruna and LeBel, 2003). There is a broad philosophical understanding that reintegration is a process to create opportunity for individuals to voluntarily change the way they act and think about themselves and their relationships. Reflecting on this philosophy, Vennard and Hedderman (2009) suggests that gaining employment may initiate a 're-evaluation of a person's life' and 'trigger a readiness to adopt a new value system and pro social identity' which 'may result in long term desistance' (2009: 228). It is then through this process that 'non-political' former prisoners address their offending behaviour and subsequently deal with criminal motivations.

While such an approach resonates with the reintegration of 'politically motivated' former prisoners in Northern Ireland, it is important to note that the PMFP community make a clear distinction between those who served sentences for 'politically motivated' offences related to the conflict and 'ordinary' criminals. Notwithstanding the fact that many 'politically motivated' former prisoners face similar reintegration obstacles as ordinary or non-political ex-prisoners, they would resist the idea that they were in need of any 'treatment' or 'rehabilitation' of their

value systems or 'criminal' motivations in order to reintegrate. Although representatives of these groups are fervent advocates of equal opportunities for those with 'conflict related' convictions, they often are very resistant to participating in resettlement or rehabilitative schemes that might 'criminalise' them or lead to a conflation of their situation with that of ordinary, non-political ex-prisoners who typically face high levels of stigma in their communities. There is an understanding within the PMFP community that their reintegration is part of a wider political process and in order to fully reintegrate into post conflict society numerous structural barriers need to be removed as part of a wider conflict transformation process.

The Northern Ireland Peace Process: Prisoner Release and Reintegration

Northern Ireland is a society emerging from years of violent political conflict (referred to locally as the 'Troubles') in which more than 3,600 people have been killed and over 40,000 injured. The main participants in this ethno national conflict included Republican and Loyalist groups and state agencies, including the local police and the British Army. The non-state actors (primarily members of paramilitary groups such as (but not limited to) the Provisional IRA, INLA, Ulster Volunteer Force and the Ulster Defence Association, claiming to 'fight' on behalf of their constituent communities, were responsible for almost 90 per cent of these deaths, and a majority of their victims were civilians (see McEvoy et al., 2006). The conflict which began in the late 1960s, formally ended in the mid-1990s and a peace agreement was finally signed in 1998.

Under the terms of the Belfast/Good Friday Agreement, it was agreed that the release of 'politically motivated' prisoners should be addressed. However, because the Government continued to formally resist the idea that the conflict and those in prison as a result should be afforded 'political' status, prisoners were released through a legalistic framework which set out both the conditions for release of prisoners on license and the mechanisms for prisoner recall (see Dwyer, 2007). All those belonging to paramilitary organisations on ceasefire were eligible for release and to date 452 'qualifying' prisoners have been released under the provisions. However, distinct from a 'blanket amnesty', those released (similar to all PMFP released throughout the course of the conflict), continued to hold a 'criminal' record and could have their licenses revoked if they re-engaged in criminal/terrorist activities. As noted, 'politically motivated' former prisoners draw a strong distinction between former prisoners who were convicted of 'ordinary crimes', and those who had served sentences for 'political motivated' activities. They consistently assert that it is their political ideology and military focus, which sets their experience apart from the experience of the 'ordinary' prisoner (see Shirlow and McEvoy, 2008). Republicans in particular, understand the prison experience as a collective continuation of the struggle, where comrades both within and outside the prison provided support which led in turn to a very different incarceration experience to that of ordinaries (see McEvoy, 2001). Given the views of PMFPs of themselves as 'political', they refused to use the re-integrative services provided by government agencies and other government sponsored organisations (including the Probation service)⁵, as they are viewed as catering for the *rehabilitation* of 'ordinary' former prisoners:

⁵ For recent discussions on the Northern Ireland Probation Service, see Carr and Maruna (2012).

‘I am no social misfit needing rehabilitation. I’ve never committed a criminal act in my life and I won’t be treated like a crim. If I were to go to the likes of Probation looking for help, I’d be practically admitting that I wasn’t a political prisoner. It would go against everything I believe in. I do need help but I am not going to criminalise myself to get it’ (Republican former prisoner, cited in O’Neill, 1998).

As a consequence to their subsequent refusal to utilise the services of traditional reintegration agencies, a plethora of prisoner ‘self-help’ groups (largely based on paramilitary factions) have been established, wherein former prisoners staff, manage and deliver services to their colleagues (see Dwyer and Maruna, 2011). These organisations have been engaged in exploring both the individual and collective consequences of imprisonment including risks to physical and mental health, institutionalisation, family dislocation, addiction, education, job training and securing employment (see Grounds and Jamieson, 2003; Shirlow and McEvoy, 2008; Jamieson et al., 2010). Prisoner groups have consistently worked on addressing the remaining barriers and by lobbying within the context of obtaining citizenship rights and equality, they have put the issues arising from such barriers on to the political agenda. The prisoner provisions in the Belfast/Good Friday Agreement clearly emphasised the importance of the civic inclusion of ‘politically motivated’ former prisoners by stating that,

‘The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education’ (The Belfast/Good Friday Agreement, 1998).

This issue was raised again within the 2006-2007 St. Andrews Agreement,⁶

‘The Government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners’ (St. Andrews Agreement, 2006).

Although the equality provisions in the Belfast/Good Friday Agreement represented a key development in the efforts to create a more equal society and constituted a shift from ‘an anti-discrimination to a mainstreaming approach’ (McCrudden, 2001: 103), the PMFP community contend that the effort to create a more equal society has failed to fully consider their equality rights. Although there exists evidence of PMFPs resisting the ‘criminalisation’ policy during their incarceration (see McEvoy, 2001), and they received the de facto recognition of their political status through the early release legislation, there has been a continued battle to resist criminalisation since their release. In consequence to the various remaining barriers, numerous

⁶ The St Andrews Agreement (2006) was an agreement between the British and Irish governments and the political parties in relation to the devolution of power to Northern Ireland. Other key elements of the agreement included the full acceptance of the Police Service of Northern Ireland by Sinn Féin, restoration of the Northern Ireland Assembly and a commitment by the Democratic Unionist Party to power sharing with republicans and nationalists in the Northern Ireland Executive.

proposals have been put forward by prisoner groups in order to deal with what has been termed continual or 'residual criminalisation' (see Shirlow and McEvoy, 2008). These have included lobbying for the inclusion of PMFP as a protected category in the proposed Bill of Rights and Single Equality Act in Northern Ireland (see Dwyer, 2010). In their submission to the Bill of Rights consultation, a republican former prisoner group stated:

'The fact that possession of 'criminal' records impacts on our client base in precisely the same way as common criminals, it is entirely wrong and contrary to the commitment of the Good Friday Agreement, the St Andrews Agreement and the political and historical reality of the conflict' (Tar Isteach⁷, 2010).

However, it has been finally proposed that there should be no distinction made in the equality laws between political and non-political former prisoners. It has been recommended that provisions should be drafted to include provisions guaranteeing that, 'no one shall be unfairly discriminated against by any public body on any ground such as ... *irrelevant criminal record*' (Equality Commission, 2010). Although, many PMFP groups would support a change in policy for all former prisoners, they still maintain that the background to PMFP convictions and arguments for the 'right' to reintegration, are set within a very different context:

'Whatever 'rights' we are successful in getting for ex-prisoners, we are very happy that other ex-prisoners will have those rights as well. But we are very specific in saying that political ex-prisoners are a different category, they went through special legislation, they went through special courts, they were put in special jails and they were released under special legislation' (Project Coordinator of a Republican Former Prisoner Group, Interview with Author).

Therefore, whilst there is an underlying understanding that changes are needed for all former prisoners, PMFP groups assert that because of their political history they need to continue to separate their particular 'rights' issues from non-political former prisoners, particularly, when PMFPs encounter very *particular* barriers as a result of their 'conflict related' conviction. In consequence to holding a 'criminal record', former prisoners are faced with numerous legal barriers, including accessing finance, accessing consumer credit licenses, securing service contracts, applications for taxi and bus operator licences, difficulty accessing insurance and mortgage facilities, inability to adopt children, inability to get compensation for tort claims against their person or property, restrictions on travel to the U.S.A, Canada, and Australia, and bars on employment in the civil service sector. While all these issues are the focus of PMFP campaigning, for the purpose of this article an emphasis is placed on employment related barriers. As one Loyalist ex-prisoner told the author:

⁷ Tar Isteach (which means 'come in') is a Republican former prisoner community based organisation in Belfast. It provides welfare rights advice, counselling, youth work, training to former prisoners, their families and the wider community.

'Most problems centre around economics. They [ex-prisoners] couldn't get into a job and support their families or whatever to establish themselves. If those problems could be sorted, a lot of the emotional problems would take care of themselves. That's my opinion' (Former Prisoner and Project Coordinator of a Loyalist Former Prisoner Group, Interview with Author).

Barriers to Employment: The Experience of the 'Politically Motivated' Former Prisoner

Similar to the experience of non-political former prisoners, PMFPs consistently experience high levels of long-term unemployment and recent research carried out by both community groups and academics has illustrated the extent of this problem. Reflecting on the growing research on employment exclusion for PMFP, Rolston argues that 'employment difficulties were part of a package of experience for ex-prisoners which has been termed "residual criminalisation"' (Rolston, 2011: 37). Furthermore, despite the commitment to the reintegration and inclusion of former prisoners within the Belfast/Good Friday Agreement, they continue to 'experience labour market exclusion and legislative barriers regarding their inclusion into economic life. Resulting low income may also predict psychological morbidity, the extension of social exclusion, poor life chances and negative impacts upon their families' (OFMDFM, 2012: 15). Various studies have highlighted significant difficulties in accessing employment (Shirlow, 2001; Grounds and Jamieson, 2003; Gormally et al., 2007; Shirlow and McEvoy, 2008), and research carried out in 2010 found that PMFP are four times as likely to be unemployed as others in Northern Ireland. This has been as a result of numerous factors, including the refusal of employers to employ them, security concerns, as well as various legal barriers (Jamieson et al., 2010). Research investigating both Loyalist and Republican former prisoners found that 76% felt that 'holding a criminal record' undermines their ability to gain work for which they are actually qualified (Shirlow and McEvoy, 2008), and in the current study 96% of the respondents from the survey felt that their prison record hindered their prospects of finding work (Dwyer, 2010). One former prisoner stated:

'Essentially, I felt blocked out, in that I stopped applying. I really did. I was going through this whole charade filling out application forms, sending them in and putting on the back, I do not have a criminal record because I do not regard myself as a criminal in any way. I see myself as a victim of the 'troubles', but there is no point bluffing because there was always means and ways of checking your record' (Republican Former Prisoner, Interview with Author).

Others commented:

'A couple of security firms were looking for workers just to go around different sites ... and I remember putting down no criminal record and on three different occasions them getting back to me, saying 'we know you have been in fucking jail ...' (Republican Former Prisoner, Interview with Author).

'When employers found out I was in prison they didn't want to employ me. As a result, I ended up in low paid jobs with employers who treated me like shit' (Loyalist Former Prisoner, Interview with Author).

'It was difficult to get employment because of my prison record. I live in a rural area where everyone knows about me being in prison. It is also majority Catholic as are the employers in the area. When I did get a job there were problems with colleagues' (Loyalist Former Prisoner, Interview with Author).

Prisoner groups have emphasised that the difficulties PMFP experience in gaining employment have far-reaching effects for many communities across Northern Ireland. One project worker stated:

'I think you would find it very hard to find a family in the area who doesn't have family or friend who isn't an ex-prisoner, so you'll find that quite a lot of them actually work on the black economy, they're drawing the dole and doing bits and pieces as well, roofing and brick laying, things like that. What we're trying to do is to build their confidence, so that they no longer have to do that, and then through our lobbying work we can help change legislation so that they can access whatever type of work they want to ...' (Project Coordinator of a Republican Former Prisoner Group, Interview with Author).

For many former prisoners it is difficult to accept their continued exclusion from certain areas of the employment sector given that a number of those in the local Assembly and the Northern Ireland Executive hold a 'criminal record'. At least 17 Members of the Legislative Assembly have 'conflict related' convictions, this includes the Deputy First Minister Martin McGuinness and Junior Ministers Gerry Kelly and Jennifer McCann. PMFPs also act as Special Advisors to Members of the Executive and serve as local councillors throughout Northern Ireland (Tar Isteach, 2010). One former prisoner highlighted this paradoxical situation:

'There are people in power; there are people in administrative positions, people within these areas of government, who have prison records. Am I different from them? I certainly am not and I went out and have proven my merit in that I have enhanced my prospects for employment by doing something, it is not an easy thing to do' (Republican Former Prisoner, Interview with Author).

In response to what they would deem as a contradictory situation, prisoner groupings continue to contest their exclusion, campaigning for full citizenship rights and protections against discrimination in securing employment. One former prisoner told the author:

'What we would argue is that this is a human right. It is a human right, my right, to go out and get a job without discrimination' (Republican Former Prisoner, Interview with Author).

Whilst there are a number of current legislative instruments that aim to afford protection to former prisoners or those holding a criminal record generally, these laws throw up significant difficulties in their application to PMFPs. For example, there are equality mechanisms, designed to *ensure* equality in the area of employment, but as I argue in the next section, even these indirectly *discriminate* against PMFPs.

Difficulties Overcoming Structural Barriers and the Question of Legislative Protection

One principal way in which the law in Northern Ireland affords protection to persons with criminal records is through the enactment of 'spent convictions' or 'clean slate' legislation. This legislation deems certain convictions to be 'irrelevant' after a certain period of time therefore allowing a level of discretion not to disclose a criminal record. The Rehabilitation of Offenders (Northern Ireland) Order 1978 (which largely replicates the Rehabilitation of Offenders Act 1974, England and Wales) allows certain persons who have not been subsequently reconvicted to be considered as 'rehabilitated' persons and their convictions treated as 'spent' (see Padfield, 2011). The significance of this legislation was that it meant that such persons did not have to disclose 'spent' convictions on job application forms. Moreover, employers are not entitled to ask about 'spent' convictions or to use information regarding a 'spent' conviction to reject job applicants or subsequently sack employees. However, the Order only applies to sentences of 30 months or less, which can become spent and rehabilitative periods are up to 10 years if the sentence was more than 6 months. Moreover, the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 makes certain exceptions in terms of professions, employment and occupations to which the 1978 Order does not apply. These include working with children or vulnerable adults; professions that are regulated by law; posts involving national security and financial services.

The legislation has faced a number of criticisms (See McEvoy, 2005), but most relevant to the PMFP is the rehabilitation period related to the nature and period of the sentence. The 1978 Order only applies to persons who have received a sentence of 2½ years or under, however at least 75% of the prisoner population in Northern Ireland were long-term prisoners and therefore cannot qualify under this legislation. Moreover, given that a high proportion of the employment in Northern Ireland lies in the areas of the civil service, policing and the administration of justice, the exception clauses also have a further impact on former prisoners in Northern Ireland.

There have been significant recommendations for change in the corresponding legislation in England and Wales (Home Office, 2002). After a significant Home Office review, the UK government have proposed dramatically amending the Rehabilitation of Offenders Act 1974, including shortening the period during which offenders are obliged to tell potential employers about their criminal record. The reforms would see the time after which the convictions of medium term prisoners are 'spent' reduced from ten years to four. The convictions of short term prisoners, serving sentences up to six months, would be spent after two years instead of the current seven (NACRO, 2012). The local Northern Ireland Executive has yet to consider such recommendations, however a recent review of the criminal records regime in Northern Ireland

has found that such changes would be necessary. If changes are not considered in Northern Ireland, this would result in various anomalies in employment checking across the UK, which could 'potentially put Northern Ireland citizens in a worse position for employment purposes ... which would be unfair' (Mason, 2011: 24).

Various nongovernmental reform organisations in Northern Ireland have further noted that both the current legislation and any recent recommendations for change fail to consider both the Northern Ireland context and the commitment to former prisoners made in the Belfast/Good Friday Agreement (CAJ, 2012; NIACRO, 2012). The organization known as NIACRO (the Northern Ireland Association for the Care and Resettlement of Offenders) has stated that the current legislation 'does little to protect individuals' and stressed that they have found an *increase* in the likelihood of those holding 'conflict related' convictions being barred from employment (NIACRO, 2012). During the recent review of the criminal records regime in Northern Ireland, the reform group Committee on the Administration of Justice (CAJ), likewise raised concerns about those with criminal records arising from the conflict. They stated that PMFPs are routinely denied employment and stated that these issues should be given serious consideration in order to fulfil the commitments made under the Belfast/Good Friday Agreement (CAJ, 2012: 5). (At the time of writing neither the proposals nor updates to the rehabilitation law have yet been passed into legislation).

The Denial of Employment: The Impact of Fair Employment Legislation

A further legal obstacle to gaining employment can be found in legislation, which again paradoxically, is primarily designed to *ensure* participation and equality in employment. The Fair Employment and Treatment (Northern Ireland) Order 1998 makes it unlawful for an employer to discriminate against any person who is seeking employment in Northern Ireland on the grounds of religious belief or political opinion. However, Article 2(4) provides that any reference to a person's political opinion does not include opinion, which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear. In consequence, this legislation has significant repercussions for the PMFPs seeking employment. Article 2(4) (as well as other provisions including the lawful discrimination against those who may be a threat to national security and public order, which includes those who have been members of a proscribed organisation), results in the inability to gain legal redress when blocked from employment. In other words, PMFPs could lawfully be discriminated against when seeking employment and would also find no protection from the Rehabilitation of Offenders Order, insofar as their exclusion from the employment process is based on their particular *type* of conviction rather than the length of their sentence. The effect of this legislation is that no 'conflict related' convictions, regardless of length, can ever be spent (McKeever and O'Rawe, 2007).

In response to the impact of this law, a number of PMFPs, with the support of former prisoner groups have brought claims before the Fair Employment Tribunal (FET) and the courts⁸. One significant case brought before the FET in 2005 was appealed through the courts and was eventually heard in the House of Lords in 2009. In *McConkey & Anr v The Simon Community*, the House of Lords, on an appeal from the Northern Ireland Court of Appeal, gave judgment that a refusal to employ as a consequence of actions taken to support political opinion did not amount to unlawful discrimination. The case was based on the claim of unlawful discrimination against two former Republican prisoners who applied to positions in the Simon Community Northern Ireland, a charity that provides services to homeless people. The two applicants, McConkey and Marks had applied for the position of residential support worker and night worker respectively, but were rejected on account of their paramilitary convictions for serious offences (which came to light following pre-employment checks, prior to which a provisional offer of employment was made to McConkey; and the panel deemed Marks the successful candidate at interview). Both issued complaints to the FET for discrimination against The Simon Community on the grounds of their former political opinion, as connected with the affairs of Northern Ireland. The Tribunal rejected their complaints. However, the Tribunal accepted that at the time of the application for employment McConkey and Marks did not accept the use of violence for political ends connected with the affairs of Northern Ireland and concluded that they had been unlawfully discriminated against. However, the Tribunal proceeded to apply Article 2(4) and they 'reluctantly' (own emphasis) came to the conclusion that 'the claims of each claimant, which would otherwise have been successful, must fail in view of the provisions of Article 2(4). McConkey and Marks appealed the decision of the Tribunal to the Court of Appeal where the case was subsequently dismissed.

Coiste Na n-Iarchimi⁹, the Republican former prisoner group led an appeal to the House of Lords in February 2008, and in May 2009, the House of Lords finally dismissed the appeal. It was agreed that when McConkey and Marks had applied for employment with the Simon Community they no longer approved of nor accepted the use of violence for political ends connected with the affairs of Northern Ireland. Their previous involvement in violent crime had come to the attention of the Simon Community when it was proposing to offer them employment. As a result, it had decided not to employ them. The House of Lords was satisfied that the Simon Community did not refuse to employ the appellants because of their former political beliefs, but because of a concern that employing them might pose risks for the vulnerable people who were cared for by the Simon Community. The Lords' decision however, was based predominately upon the Fair Employment and Treatment (Northern Ireland) Order 1998. It was agreed by the parties that discrimination on the grounds of political opinion must cover, both present and past political opinion. Accordingly, it was held that the Simon Community had not discriminated against McConkey or Marks as it had refused to employ two

⁸ See *Grant Morrow v Sperrin Lake and Health and Social Services Care Trust* (Case Reference Number 411/02 FET).

⁹ Coiste na n-Iarchimí (Coiste) is a network of Republican former prisoner organisations based in both Northern Ireland and the Republic of Ireland. Their work involves coordinating the activities of local projects which provide various services to the former prisoners, their families and the community. The aims of Coiste are to work for the full integration of Republican former prisoners 'into the community and to facilitate the contribution of prisoners both to the creation of peace and justice in Ireland and to the overall social fabric of the country; to deepen the mutually beneficial links with community organisations, employers and other groups' (Coiste, 2003).

individuals who had approved of the use of violence to further Republican ends. The House of Lords also commented that even if the Simon Community did indeed dismiss the appellants because of their former approval of the use of violence for political ends, it was *lawful* for them to do so.

In terms of the Northern Ireland peace process and the government's commitment to the reintegration of PMFPs, this decision was viewed by many as controversial and strengthened calls from various sources for the law to be amended (see Equality Commission, 2010; CAJ, 2010; Tar Isteach, 2010; NIACRO, 2012). Furthermore, prior to the case being heard in the House of Lords, there had been various steps taken to review the process of accessing employment for PMFPs and promote inclusive recruiting procedures for those with 'conflict related' convictions.

Recruiting People with 'Conflict Related' Convictions: The Efficacy of Voluntarism?

As a consequence of the government commitments under the Belfast/Good Friday Agreement and the St Andrews Agreement, the Office of the First Minister and Deputy First Minister (OFMDFM) issued *voluntary* guidance in May 2007 to assist employers to follow best practice in recruiting people with 'conflict related' convictions. '*Recruiting People with Conflict Related Convictions: Employers Guidance*' was published for employers in the public, private and voluntary sectors. The guidance advises employers to disregard any 'conflict related' conviction, which pre-dates the 1998 Agreement, unless it is *materially relevant* to the post. The guidance also set out that the onus of 'demonstrating incompatibility would rest with whoever was alleging it and the seriousness of the offence would not, *per se*, constitute adequate grounds' (OFMDFM, 2007 Para.2.6). Finally, the guidance outlined details on the formation of a tripartite review panel, which could receive complaints from individuals, raising issues in regards to holding 'conflict related' convictions. Whilst the guidelines are voluntary, the working group proposed that if they were not followed after a review period of 18 months, a legislative approach would be considered.

Although the guidance was published in May 2007, a tripartite review panel was not formally set up until August 2010. The panel comprised of a representatives from OFMDFM, the Irish Congress of Trade Unions, the Confederation of British Industry and an independent chair. The panel was tasked with considering individual cases, gathering evidence regarding the acceptance and adoption of the guidance and producing a final report (which was released in May 2012). The panel reported that there is a general lack of knowledge and comprehension among diverse groups, individuals and bodies of the continuing barriers faced by people with conflict-related convictions, which in part explains why a range of barriers continue to exist for PMFPs (OFMDFM, 2012). The panel concluded that as a consequence of the existing fair employment legislation ex-prisoners have developed a 'fatalistic attitude', assuming that applying for work is a 'worthless exercise'. Indeed, one former prisoner told the author:

'I know some people that are chimney sweepers and have the best qualifications and I know ex-prisoners that are sitting on dumpers in building sites with the best

qualifications, and a lot of boys who studied in jail done degrees in jail and got first class honours, *they might as well be walking around the inside of a biscuit tin, because they are not going anywhere with them*' (Republican Former Prisoner, Interview with Author).

The Panel found a 'very uneven and contradictory policy and employment landscape' for PMFPs and stated that the Fair Employment legislation 'obviates any potential for the Guidance to achieve its intended goals' (OFMDFM, 2012: 34). They subsequently concluded and recommended that the Employers' Guidance should be complemented by legislative change and recommended removing Section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998/allowing Article 2(4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998. It was suggested that the removal of the statutory basis for discrimination of people with conflict-related convictions would mean that ex-prisoners should have 'equality of opportunity to access the labour market unless their conviction is manifestly incompatible with the job ...' (OFMDFM, 2012: 35). The panel warned that the 'continuance of the status quo would result in continued anomalies within employment and wider society and allow for the general exclusion of ex-prisoners in relation to employment' (OFMDFM, 2012: 36).

Whilst there have been slow, protracted moves towards the inclusion of PMFPs in the area of employment, there remains a resistance to acknowledge the political content of their past convictions. The *Recruiting People with Conflict Related Convictions* document is certainly aimed at providing equality in accessing employment; however, any new measures need to be set within a legislative framework if they are to have a serious impact on any discriminatory practice. Without any serious enforcement mechanisms, it seems likely that any attempt to provide equality of opportunity for former prisoners will remain piecemeal and will operate on an ad-hoc basis. If this does continue to be the case, it is likely that former prisoner groups will continue to support legal challenges through the courts¹⁰.

Conclusions

The equality provisions in the Belfast/Good Friday Agreement represented a key development in the efforts to create a more equal society. However, members of and those representing the PMFP constituency would contend that these equality efforts have failed to fully consider the reintegration of 'politically motivated' former prisoners. Various former prisoner organisations have mobilised utilising the rights and equality discourse to challenge the remaining legislative obstacles and have been successful in providing a space for PMFPs to have their 'rights' claims

¹⁰ Other cases include: *Department of the Environment for Northern Ireland v. Thomas Beggs*, January [2002]; *Re McComb, an Application for Judicial Review* [2003] NIQB 47; *Morrow v. Sperrin Lakeland Health and Social Care Trust*, the Fair Employment Tribunal, Case ref: 411/02FET, September 2004; and most recently a former prisoner won a judicial review case which challenged the Security Industry Authority licensing rules which prevented him from applying to become a doorman (*Doherty, re Judicial Review*, May, 2012).

considered. They have also been effective in keeping the issue on the wider political agenda, maintaining that not only is this issue pertinent to the overall conflict transformation process, it also opens discussions on the role of former prisoners in their attempts to participate in post conflict Northern Ireland. Harvey (2001) has stated that the purpose of 'rights in Northern Ireland is to ensure both participation and protection' (Harvey, 2001: 116). The former prisoner constituency would therefore claim that in order to guarantee rights to all, and to ensure participation and protection for all, former prisoners also need to be given the opportunity to participate in civil society and exercise their citizenship rights. There is an understanding that citizenship should be understood as an evolving concept (Uggen, et al, 2004) and the theoretical and practical conditions for inclusion and exclusion may change over time depending on the changing political, economic, social or cultural circumstances in which it operates. Therefore, if the ability of individuals and/or groups to make claims for inclusion in the rights of citizenship or call for the creation and enforcement of new rights depends on the political, economic and social environment, it might be expected that changes brought about in a post-conflict society would also impact on the theory and practice of citizenship. However, nearly 15 years after the signing of the peace agreement it remains the case that the former prisoner community continue to be excluded from different areas of civic and political life.

This article underscores the continued structural barriers PMFPs face in post-conflict Northern Ireland and in particular, it has illustrated the specific obstacles PMFPs face when attempting to access employment. If the ability to work is at the centre of political being (Foucault, 1978) and can ensure participation in the life of the community with confidence and dignity (Laski, 1938), then it may be argued that any remaining barriers faced by PMFPs could lead to feelings of exclusion and marginalisation in Northern Ireland's new political dispensation. This is significant in the context of the peace process considering the role many former prisoners have played throughout the process. For example, various peacebuilding initiatives by former prisoners within and between communities in conflict have been vital at different stages of the Northern Ireland peace process. Prior to the ceasefires in 1994, many prisoners and former prisoners were engaged in preparing their communities/constituencies for the political process, and both Republican and Loyalist former prisoners were heavily involved in bringing about a cessation of hostilities (see McEvoy, 2001; Shirlow and McEvoy, 2008). Former prisoners have continued to be instrumental in keeping communities 'on board' during the peace process, particularly in working class communities where there has been little change in the socioeconomic conditions of the communities since the signing of the peace agreement (see Dwyer, 2012)¹¹. Therefore any remaining legislative barriers impeding the full participation of the PMFP community in society could significantly impact on the wider conflict transformation process.

¹¹ It would be wrong to suggest that all PMFPs have engaged in either peacebuilding activities or community-based initiatives. Furthermore paramilitary organisations continue to operate in various forms throughout Northern Ireland. The Agreement resulted in a splintering in the Republican movement and new groups, which opposed the peace agreement, continue to be involved in an armed campaign. However, it is interesting to note that of the 452 prisoners released under the Agreement, nearly 15 years later, fewer than 20 have returned to prison.

While piecemeal initiatives to overcome such barriers, such as guides for employers and legislative amendments may offer some immediate relief for PMFPs, such measures are arguably of limited long-term utility, particularly when it has recently been established that they continue to 'experience labour market exclusion ... social exclusion' and 'poor life chances' (OFMDFM, 2012: 15). Therefore, in a context where the bulk of illegal arms have been decommissioned, when all of the main paramilitary groups have largely disappeared from the political stage, and when efforts to 'deal with the past' continue to feature heavily in public conversations, it is argued that the time is right for following through fully on the logic of the peace process. In short, this would require the removal of remaining re-integrative barriers and allowing for the opportunity for full civic, political, economic and social reintegration for 'politically motivated' former prisoners, particularly in regards to accessing employment. This would also represent putting in place one of the final pieces of the conflict transformation jigsaw some forty years after the outbreak of political violence in Northern Ireland.

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