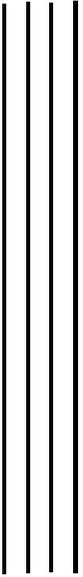


DISCRIMINATION —
— *PRIDE FOR PREJUDICE*



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NORTHERN IRELAND SOCIETY OF LABOUR LAWYERS
(Affiliated to the Northern Ireland Labour Party)



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PREFACE

THIS PAPER forms one of a series of publications by the Society advocating law reform in Northern Ireland. So far publications on Public Order and the Special Powers Act have appeared and these have prompted a widespread response.

It was realised at the outset that the subject of this paper was an exceptionally important one, touching as it does both upon the tragic differences in our local community and the need for protection by the law of Northern Ireland of certain basic international human rights.

The paper has been in course of publication while the terrible events of the Bogside, Belfast and elsewhere are at their height. Against this background of shame and terror for the whole of Northern Ireland, and with the allegations and counter-allegations of discrimination, intimidation and murder assuming daily a more frightening character I have endeavored, perhaps unsuccessfully, to avoid an overdramatised approach. The issues involved are much too serious and such an approach quickly serves oversimplification and distortion. Whatever the merits or shortcomings of what follows it remains my earnest desire that the urgency and sincerity of the plea is not clouded.

The Society do not pretend that the introduction in Northern Ireland of the legislation here proposed provides a simple panacea for all the existing conflict and troubles in Northern Ireland — but who can doubt that even a palliative would be welcome.

J. BRIAN GARRETT

AUGUST, 1969.

Chairman

A FEW PERSPECTIVES

NORTHERN IRELAND with a population of one and a half million or so, is, after all, a rather small place. Some 5,242 square miles of a North Eastern tip of an island of similarly limited size and population it is very far from cosmopolitan in composition. Unlike the rest of the United Kingdom, of which it is part constitutionally, Northern Ireland probably has not more than a couple of hundred coloured inhabitants and of these the greater part are either students, doctors or in the catering trade. There is no coloured immigrant problem as in Great Britain although there are clear indications of race and colour consciousness, happily not developed, in the community. Due to the marked shortage of employment for even the local inhabitants relatively few foreigners arrive to set up home in Northern Ireland.

In a world of turmoil and racial conflict, Northern Ireland might at first sight appear to be an ideal place to find a harmonious and integrated, if not thoroughly outward-looking, community. But as all must know such a picture is quite the opposite of the truth. For many Protestants and Roman Catholics in Northern Ireland a neighbour of the other religion is seen and, more damagingly, treated as a different creature neither to be trusted nor assisted. Prejudice, distrust and fear on both sides are all too apparent and deep: attitudes which have proved fertile ground for discriminatory actions in such fundamental matters as the provision of a job, the allocation of a house or the acceptance of a tender: public and private spheres have both been tainted.

Of course far from everyone or every organisation is given to such practices. Often no doubt upon investigation many allegations of discrimination have no substance in fact but serve rather to harden and sometimes warp individual attitudes. But it cannot be denied that almost ghetto-like streets, roads and whole areas, overwhelmingly Protestant or Roman Catholic as the case may be, are to be found. Even in newly built housing estates these characteristics have been perpetuated and allowed to flourish unchallenged. It is also undoubtedly true that these conditions have contributed to the unquestionably genuine desire among some people to remain or move to "our area, near our schools, our churches, our shops, etc."

In statistical terms the 1961 census gave the following as the breakdown of the inhabitants in religious terms :—

RELIGIOUS PROFESSION	PERSONS	PER CENT
ROMAN CATHOLIC	497,547	34.9
PRESBYTERIAN	413,113	29.0
CHURCH OF IRELAND	344,800	24.2
METHODIST	71,865	5.0
BAPTIST	13,765	1.0
CONGREGATIONALIST	9,838	0.7
UNITARIAN	5,613	0.4
OTHERS	23,418	1.6
NOT STATED	28,418	2.0
TOTAL	1,425,042	100

It is perhaps too late to apportion blame for the existing situation. The underlying factors are complicated, historically and socially. But it is not too late for the people of Northern Ireland to reject the ugly divisions and to embark upon a determined course to outlaw discriminatory practices where they exist and whether they are founded on a person's creed, colour, ethnic origins or otherwise. It is in this spirit the Society have approached the problem.

In what follows no claim is made for the originality of the proposals or the simplicity of the task. Nor is it suggested that the introduction of the legislation proposed for sanctions against those who incite the hatred of one citizen against another and effective

anti-discrimination machinery will alone remove the underlying prejudices and fears. But there is a measure of wisdom in the argument that "Legislators make citizens good by forming their habits" (Ethics, 11 ; i 5: 1103b2). There is too (perhaps surprisingly) considerable truth in the argument of Mr. William Craig, then Minister of Home Affairs, when in the debate on the Private Members' Bill introduced by Miss Sheelagh Murnaghan M.P. (Human Rights Bill—the fourth of its kind introduced by that energetic Member) he had this to say :—

"The law cannot make people good, it cannot even stop them from behaving badly, all it can do is punish them when they can be proved to have committed specific anti-social acts."

(N.I. Commons Debates: Vol. 68: 601)

What, of course, Mr. Craig failed or refused to recognise on that occasion was the relevance of his own argument in the particular context in which he spoke. Acts of discrimination are by very nature essentially anti-social acts and for that reason the law can and should have an important part to play in outlawing them. The argument of Dr. Claire Palley in her enlightening article, "Constitutional Devices in Multi-Racial and Multi-Religious Societies" (N.I.L.Q. Vol. 19 P. 381) accurately deals with the issue :—

"The objection that one cannot legislate to change "the hearts and minds of men" is a red herring, when the law seeks to hit at actions not at attitudes."

A further argument sometimes encountered by those who seek to introduce anti-incitement and anti-discrimination laws of the type here proposed is that such legislation infringes upon and endangers the freedom of the individual. Such an argument should not be summarily dismissed. It must be conceded that the Orwellian dangers for a modern world of the acceptance of an uncritical uniformity leading to the gradual erosion of individuality and the freedoms of the individual are real. Serious consideration must certainly be given to any measures which involve new criminal offences or civil restraints; and this is so irrespective of whether the measure in question deals with incitement, discrimination or otherwise. But it should be recognised that freedom of speech and action should not be allowed to grant immunity to those who seek to damage their neighbour by their inflammatory words or discriminatory acts.

The common law system has produced many safeguards for the individual in his freedom against oppression and injury. It is significant to note, however, that one of the essential qualities of our common law system is the recognition of the rights of others. This feature is apparent in many areas of the law which show the evolution of the rule that a duty of care is owed to others and this rule itself approaches, although it is not co-extensive with, the Christian ethic and the teachings of other religious and social thinkers.

Acts of discrimination are in fact anti-social in two senses. First they offend against the fundamental norm required for a homogeneous society which is the root of any true society; secondly they inflict injury upon and damage the individual against whom they are directed, this damage in turn often affecting the particular individual's family and dependants and their possible contribution and attitude to society itself.

But the drafting of the new law need hold no terrors for the draftsman having regard to comparative measures available for scrutiny. The new law must, nonetheless, deal effectively with the Northern Ireland situation as it exists recognizing the scope of our international obligations on the issue whilst preserving the right of free debate.

INTERNATIONAL OBLIGATIONS

It requires little political perspicacity to establish that Northern Ireland is first a constitutional part of the United Kingdom of Great Britain and Northern Ireland, and in turn the United Kingdom is a member state of both the Council of Europe and the United Nations.

International organisations with the authority of the Council of Europe and the United Nations as well as many international agencies and organisations have long since accepted and promulgated declarations, covenants, conventions and recommendations on the subject of human rights. These bear a remarkable and significant unity of principle and in many cases much common language.

Over 20 years ago, on 10th December, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (Cmnd. 7662 of 1949). Part of the Preamble to the Universal Declaration is as follows :—

“Whereas it is essential, if man is not to be compelled to have recourse as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. . . .”

More specifically there then follow some 30 Articles setting out the universal rights and freedoms. Of these 3 in particular have special relevance to the issue of incitement and discrimination :—

ARTICLE 2 *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status . . .*

ARTICLE 7 *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against incitement to such discrimination.*

ARTICLE 8 *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or by law.*

When the United Kingdom Government subscribed to the Universal Declaration it did so, of course, not only for those citizens who live in England, Wales, Scotland, the Channel Islands and the Isle of Man, but also for all its citizens living in Northern Ireland.

Nor do the international obligations of the United Kingdom end with the Universal Declaration. It must be remembered that we have subscribed to the United Nations international Convention on all Forms of Racial Discrimination of 7th March, 1966 (Cmnd. 3126 of 1966). And with membership of the Council of Europe, the United Kingdom has become a party to the Convention for the protection of Human Rights and Fundamental Freedoms of 4th November, 1950 (Cmnd. 8969 of 1953). In addition to provisions guaranteeing basic human rights this latter Convention contains optional articles, accepted by the United Kingdom, recognizing the right of the European Commission to receive petitions not only from States, but also private individuals, groups of individuals and organisations and recognizing the compulsory jurisdiction of the European Court of Human Rights. Protocol No. 1 to the 1950 Convention has also been adopted (Cmnd. 9221 of 1954). Presently under consideration by the United Kingdom Governments are perhaps the most detailed and comprehensive of all these international measures. These are the International Covenant On Economic, Social and Cultural Rights and international Covenant on Civil and Political Rights with Optional Protocol (Cmnd. 3220 of 1967), which were adopted by the General Assembly of the United Nations and opened for signature at New York on 16th December, 1966. These two last mentioned Covenants have wide reaching significance embodying as they do greater stress on the need for the effective guarantee by law of human rights. To some extent the Economic, Social and Cultural Covenant overlaps with, and certainly supplements, the Civil and Political Covenant. Pausing, however, one should observe (inter alia) in the present context the following provisions of the International Covenant on Economic, Social and Cultural Rights :—

ARTICLE 2

1. *Each State Party to the present covenant undertakes to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of rights, recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

2. *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

The rights which are then enumerated by this Covenant include recognition of the Right to Work, the Right of All to Just and Favorable Conditions of Work and an Adequate Standard of Living, including food, clothing and housing, etc. In addition Article 26 of the Civil and Political Covenant provides :—

“All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status.”

ACTION ABROAD

FROM THE point of view of the individual it is not, of course, sufficient to reply simply on laudable declarations on the subject of human rights enunciated from time to time by the governments of the various nations. It is a sad fact that in some cases such declarations are made for reasons of propaganda or to assist national political manoeuvres. Without being ratified by and operated within the fabric of the law at national level little benefit accrues to the individuals for whom the rights are designed.

It will be seen that the United Kingdom has not yet ratified the United Nations Covenant. Thus, for example, a firm decision must be made by the Westminster Government to grasp the nettle of the position of women in economic and other affairs, including the acceptance of the notion of equal pay for equal work, etc., and equal opportunity with males. It is true that at a time of economic restriction there is an inevitable temptation to shelve this matter. But it must be accepted that International Human Rights are exactly what they claim to be; thus, with certain limited provisions relating to national security, they are not intended to be abandoned due to certain local or national exigencies of a particular period. Certainly no Labour Government should shirk its task on such an issue and happily there are clear indications the present Government will not do so.

Great Britain, under Labour, has, moreover, made an important start on the question of the protection of minorities with the introduction of the Race Relations Acts of 1965 and 1968. More will be said below in detail about these measures and the guide lines they establish for the Northern Ireland problem.

The experiment in Great Britain is, however, very far from the only example of such an approach. Mrs. Shirley Williams, M.P., in the debate on the Second Reading of the Race Relations Act 1965, dealing with anti-incitement laws, had this to say on action abroad :—

“Let me now consider the legislation in other countries, because Hon. Members opposite have been arguing as though this legislation would be a unique advance in Britain from our previous position of unqualified freedom of speech. In other countries where the minority or immigrant group is much smaller than in Britain, exactly this type of legislation applies. In the Netherlands, in Sweden, and in Norway, there is legislation against religious incitement and incitement based on place of origin or nationality. In Denmark there is a specific clause which makes it wrong to incite hatred against people on the grounds of their creed, race or nationality. In France defamation directed against a person belonging to defined race or religion, to quote the actual word is a criminal offence. The most significant example is that in the Constitution of the reborn Federal Republic of Germany. Under Article 130 incitement to hatred against sections of the population is subject to punishment and that

country more than any other has known what it is to live through the breakdown of the constitutional protection of minorities against the force of what might be an unfriendly majority."

(Commons debates: Vol 711 : 1018 and 1019)

British Commonwealth countries, too, have taken action. Thus since 1898, in India section 153 of the Indian Penal Code has provided :—

"Whoever by words, either spoken or written or by signs or by visible representations or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's Subjects, shall be punished with imprisonment, which extends to two years or with fine or both."

Perhaps, however, the most singular recent achievement, at least in the field of anti-discrimination legislation, has been the passing by the United States Congress of Title VII of the 1964 Civil Rights Act. This Title relates to employment practices and has proscribed discrimination on the ground of race, colour, religion, sex or national origin, whether perpetrated by employers, employment agencies, unions, or apprenticeship committees. Significantly it is now generally accepted that this and other measures adopted by the Federal Government of the United States, together with the legislative efforts of certain individual States and Municipalities, are proving extremely beneficial in checking existing discriminatory practices, directed particularly against the negro worker. This is not to say that all is rosy in anti-discrimination rights and practices in the United States, particular in view of the tactics of some of the Southern States.

It is, however, valuable to note before embarking on a discussion of anti-discrimination legislation for Northern Ireland what Professor Sovern has to say in his study 'Legal Restraints on Racial Discrimination' as regards the deficiencies of the United States law both in its broad exemptions and lack of sufficiently sharp teeth for enforcement. One should bear in mind too the importance of Professor Sovern's argument for the need 'self-starting' or self-initiation investigatory powers for the Anti-Discrimination Practices Board adequately backed by sufficient powers to get at the facts of a situation.

That leading nations of the world with more severe difficulties should have taken steps to deal with the problems of incitement and discrimination must surely serve as an example for a community of the size and structure of Northern Ireland.

THE RACE RELATIONS ACTS

At this stage it may be helpful to consider in some detail the provisions of the 1965 and 1968 Race Relations Acts which apply in Great Britain.

The 1968 Act in effect repealed those parts of the 1965 Act which had dealt with discrimination but which had been confined to proscribing discrimination (whether on the ground of race, colour or ethnic or national origins) in places of public resort such as hotels, theatres, public transport services, etc. In their place the 1968 Act extended the law against discrimination to the whole areas of employment, housing, and the provision to the public of goods, facilities and services. The 1968 Act also established the present machinery for conciliation and enforcement operated in Great Britain.

It is still to the 1965 Act that one looks however for the law relating to incitement to hatred.

A. INCITEMENT

Section 6 of the 1965 Act makes it a criminal offence to publish or distribute written material or use in a public place or public meeting words which are threatening, abusive or insulting with intent to stir up hatred against any section of the public in Great Britain "*distinguished by colour, race, or ethnic or national origins*" where those actions are in fact likely to stir up such hatred.

The offence carries certain maximum penalties which in the case of a summary conviction are a £200 fine or six months imprisonment or both. On trial by indictment the maximum penalties are a fine of £1,000 or two years imprisonment or both.

It is important to realise that unlike the anti-discrimination provisions the offence of incitement is a criminal not a civil one. It is furthermore only committed where there is an intention on the part of the accused to stir up hatred on any of the prescribed grounds and there is a practical likelihood of such a result. Thus, unlike section 153 of the Indian Penal Code, the concept of 'mens rea' (or guilty intention) must be present. Prosecutions for the offence do not lie with the Race Relations Board, but rather may only be instituted with the consent of Her Majesty's Attorney-General.

A similar law for Northern Ireland covering religion and also including the other grounds enumerated in the 1966 United Nations Covenants would certainly serve to curb the excesses of calculated incitement to which the population of Northern Ireland has been so exposed. Whilst tough penalties should be included for appropriate cases, it is felt that special care should be taken in sentencing policy so as to afford the opportunity to a convicted fanatic to make a public apology and withdrawal. Furthermore there is considerable weight in the view now being expressed in some quarters in Great Britain that the incitement legislation there is somewhat misconceived and by lack of prosecution, relatively ineffective. Thus the Society believe that incitement as a new criminal offence in Northern Ireland should, unlike Great Britain, be bound up very closely with the notion of public order not merely hatred.

But it is not to be assumed that every inflammatory statement would be punishable. The intention to stir up hatred must be proved by the Crown. Furthermore such a law would not prevent an antagonist denouncing a particular faith (as opposed to attacking its adherents) in the very strongest terms where such action is not accompanied by the ulterior motive of stirring up hatred against individuals practicing that faith.

As in other cases requiring the consent of the Attorney-General for the institution of proceedings, it is considered that where a private individual lays a charge a right of appeal should lie to a judge of the High Court should the Attorney-General's consent be withheld. In such cases the Attorney General should be required to show cause for such refusal.

B. DISCRIMINATION

The 1968 Act defines 'discrimination' as treating a person less favorably than another person on grounds of colour, race or ethnic or national origins, in the provision of goods, facilities and services or in employment or housing.

It should be observed that the definition includes as "less favorable treatment" the actual segregation of people thereby avoiding such devices as 'separate development' and 'separate but equal treatment' being employed to escape the operation of the law.

GOODS, FACILITIES AND SERVICES

In the case of the provision of goods, facilities and services it is unlawful for those concerned in their provision to the public or a section of the public to discriminate against a person on any of the prescribed grounds whether by refusing or deliberately omitting to provide them, or for that matter by failing to provide them on like terms to those normally made available to other members of the public.

This head would thus apply, for example, to such matters as entertainment and transport facilities, hotel and boarding house accommodation, education facilities, banking, insurance credit and finance facilities as well as the services of business professions, trades or local and public authorities.

It would be important, however, in this context that any new law for Northern Ireland preserve for the private and semi-private spheres (e.g. the maintained schools) in education the right to provide separate religious education. This right ought not to extend to racial criteria. Similarly notwithstanding the adoption of a law outlawing discrimination based on sex it would naturally be proper to be lawful to provide separate facilities in education, and certain other matters such as accommodation designed for one sex alone.

In passing it might be added that this head does not extend to private clubs where a genuine common interest exists. It would not seem a political party strictly comes within this notion of 'facilities' however undesirable it may be to maintain a virtual closed shop

such as that practised by some branches of the Unionist Party both as regards membership or the selection of candidates. One might well nonetheless, as the Society does, take exception to the philosophy behind such a practice particularly as the party system is basic to the whole structure of one's society. It might also be noted that this head does not prevent the proper exercise of commercial judgement in such matters as, for example, the ascertainment of insurance risk, creditworthiness, etc.

II EMPLOYMENT

Under this head discrimination on the part of those concerned with the employment of others is unlawful should there be a refusal to employ a person for available work for which that person is qualified. It is also unlawful to withhold on discriminatory grounds equal opportunities for training and promotion. Any dismissal on discriminatory grounds is similarly unlawful and it should be noted that trade unions, employers, and trade organisations act unlawfully should they refuse anyone either actual membership or the benefits normally accorded to existing members.

Certain exemptions have been allowed in relation to employment. Thus employers with 25 or less employees are temporarily exempted from the provisions of the 1968 Act, but this exemption is to be reduced to cases of 10 or less employees in the latter part of 1970; two years after that the exemption will no longer apply. When this exemption was created the Home Secretary, Mr. Callaghan, pointed out that it was a temporary and cautionary provision. It is submitted that in Northern Ireland any initial temporary exemption should be confined to cases where 10 or less employees are involved and that such an exemption might similarly be eliminated after a two year period from the time the new law comes into operation. Certainly in a community where so many units of employment involve relatively small numbers of employees there is a strong case for such an approach.

A further exemption granted in Great Britain is that of 'Racial Balance' whereby in certain cases should an employer wish to preserve a balance of people of different racial groups in an undertaking, he may do so notwithstanding such action is otherwise tantamount to discrimination. In a multi-racial community experiencing racial tension such a provision has merit, but particularly in the sphere of religion in Northern Ireland the dangers outweigh the merits and in any event such an exemption would betray a fundamental misapprehension of the issue. It might for example be used to prompt the continuation of the 'formula' system, ("one of them and three or four of us") so clearly inbuilt in many areas right up to public and even judicial appointments. In any event the 1968 Act makes it unlawful to use the racial balance exemption in relation to persons born or wholly or mainly educated in Great Britain—in other words the indigenous citizen is an equal citizen whatever the colour of his skin : a fortiori the position as regards religion and Northern Ireland.

Finally there are exemptions from the anti-discrimination provisions in employment in the case of private households, employment abroad, on ships and aircraft. Where however, the selection for employment of a person of a particular nationality or descent requires attributes especially possessed by a person of that nationality or descent this is not deemed to constitute unlawful discrimination. Corresponding provisions might also be made in legislation for Northern Ireland.

III HOUSING

By Section 5 of the 1968 Act, it is unlawful to discriminate in the disposal (this would include a letting as well as a sale) of housing accommodation, business premises or land or in the treatment of tenants. Again there are certain exemptions (noted below). The fact that this provision affects the private as well as the public or local authority spheres of housing should be stressed.

The principal exemption in the housing field covers the situation where a person disposing of property actually resides (and intends to continue to reside) on what constitute 'small premises' and that person also shares the accommodation with others who are not members of his household.

'Small premises' are those which either :—

A. Normally provide separate accommodation for not more than two households under separate letting agreements in addition to the landlord's accommodation, or—

B. Provide accommodation for not more than 12 people in addition to the landlord and his household. From 25th November, 1970, this number will be reduced to 6.

It is submitted that if a corresponding limit is to be prescribed for Northern Ireland in the case of small premises 6 would be appropriate and power might be added to allow this number to be reduced further in the light of practical experience.

Another exemption in the housing field is an owner-occupier disposition which is not effected with the assistance of an estate agent or the use of advertisements or notices. It is rather difficult to see the validity of any distinction between a publicised or 'agent negotiated' disposition and others, but in so far as it might be said to permit greater personal freedom in cases where the parties are not at arms length such as sales to relatives, etc., the exemption might be accepted with caution and the resulting practice carefully scrutinised.

IV ADVERTISEMENTS AND NOTICES

Section 6 of the 1968 Act makes it unlawful to publish or display discriminatory advertisements or notices notwithstanding the act to which the advertisement or notice relates is not in itself unlawful under the Act. The extension of such a provision to Northern Ireland should at long last put an end to those rather unique insertions often found in the employment columns of the local press seeking 'a Protestant Painter' or 'Catholic Barman'. In print such notices often strike a bizarre, occasionally perhaps a humorous, quality. In fact they usually signify the pernicious character of the ugly attitudes within the community.

V CHARITIES

The 1968 Act specifically provides that it does not affect charitable instruments which confer a benefit on a section of the public distinguished by any of the prescribed characteristics. An analogous provision should be included in Northern Ireland legislation, and lest there be any doubt it might remain possible to make gifts, wills, and the like conferring benefits on a particular sect or individual so far as these do not already conflict with existing law.

CONCILIATION AND ENFORCEMENT

In Great Britain the investigation of complaints of unlawful discrimination are conducted by the Race Relations Board or a conciliation committee. Where on investigation it is found that there has been unlawful discrimination an attempt must then be made to achieve a voluntary and satisfactory settlement between the parties by persuasion.

The importance of this conciliation approach rather than immediate recourse to an action in the courts is fundamental. It demonstrates that any solution to the question of discrimination involves a clear understanding that the problem is a human and deep one stemming from attitudes of prejudice. So far as is practicable a whole hearted attempt must accordingly be made to resolve the issue by agreement between those involved. Such an approach serves well the long term objective at the centre of anti-discrimination legislation, namely the elimination of discrimination by the removal of misunderstanding and ignorance.

Where appropriate the Race Relations Board or Conciliation Committee will seek a written assurance from the offending party against the repetition of the specific discriminatory conduct. In the field of employment the matter is first referred to the Secretary of State for Employment and Productivity whose duty in turn it is to establish if there is already suitable machinery within the industry involved to deal with the matter. Should such machinery not exist the Board or Conciliation Committee then must deal with the complaint. Parties dissatisfied with the result of the industrial machinery may, however, notify the Board to this effect for further consideration.

Inevitably, of course, in some cases conciliation may fail. Where this happens the Board can take the complaint to the County Court (or in Scotland to a Sherriff Court). Any such reference to the Court is dealt with by a Judge who acts with two assessors, who have special experience of race relations. The court's powers are considerable. It may

grant an injunction requiring the defendant to desist from further acts of discrimination and award special and general damages to the aggrieved party. 'Special' damages cover the actual expenses which have been reasonably incurred by the aggrieved party whilst 'general' damages are assessed at the discretion of the Court as a measure of the loss of opportunity of the aggrieved party. Damages for loss of opportunity are in effect compensation for any benefits which might otherwise have reasonably been expected but for the act of discrimination. As will have been seen the Race Relations Board in Great Britain may work through conciliation committees and in fact these conciliation committees exist in many parts of the country.

It may be significant to note at this stage the existence of investigatory powers in Great Britain where the Race Relations Board does not actually receive an individual complaint but has reason to suspect an act of discrimination has been performed. A similar power is most desirable in the Northern Ireland context. This avoids the 'communication gap' and difficulties which might be experienced by reason of the reluctance of some aggrieved persons to come forward. More particularly such a power should unlike the legislation in Great Britain, be extended to allow *policy investigations* to be carried out. These could be operated in cases where certain firms are well known for not employing a particular section of the community with the result that members of the affected section do not even bother to apply for work at such establishments. In such cases no specific act of discrimination has been performed as such ; at least not so much against any individual but rather the discriminatory practice offends against the whole basis of any anti-discrimination policy. Thus the need for policy investigations in appropriate cases.

Recalling the views of Professor Sovern, moreover, it would be valuable to create more effective investigation powers for the Northern Ireland Board than exist in Great Britain or the United States so that on showing cause the Board might be able to obtain from the Court an order requiring an individual or firm to produce employment records, etc. Balancing this, in any case where the victim of discrimination indicates that he does not wish an investigation to be pursued, his or her wishes should be respected.

Finally, a further valuable improvement on the system operated in Great Britain would be to include in any Northern Ireland legislation the right, in appropriate cases, for individual complainants to obtain legal aid in connection with the preparation and submission of complaints.

TOYING OR TACKLING

Apart from the Race Relations Board and the various Conciliation Committees, in Great Britain the 1968 Act created a Community Relations Commission, whose function is not that of discrimination investigator or prosecutor, but rather the general promotion of the underlying spirit of the legislation, viz., the fostering of harmonious community relations. Such promotion work is unquestionably valuable and should in conjunction with the machinery designed to grant effective remedies to aggrieved parties here suggested, be put in operation in Northern Ireland with adequate financial assistance akin to the position in Great Britain.

At the time of writing, the Northern Ireland Government have announced their intention of establishing a Community Relations Commission, but no details of composition or terms of reference of this Commission have been made available. If, as is feared, the establishment of such a Commission means that no compulsory anti-discrimination measure is to be introduced giving aggrieved individuals a proper remedy, then little will have been achieved. The creation of a toothless body paying homage to an ideal is merely toying with the subject when those directly affected could be granted real protection and remedy by a measure which tackles their grievances with vigour. To leave the individual citizen who suffers from a discriminatory act without effective remedy or right of restitution is to overlook him. Furthermore to grant remedies in the public sphere and omit the private from the scope of anti-discrimination legislation would be an admission of lack of purpose and an invitation to those bent upon perpetuating divisions in Northern Ireland.

The Society believe there is a very great need for the creation of a Community Relations Commission, but that this body should operate as a separate, albeit related, wing of the work of a fully empowered Anti-Discriminatory Practices Board. The Anti-Discriminatory Practices Board itself should have a full time salaried Director/Chairman of the highest ability, preferably with legal qualification. There should be a permanent, but not necessarily very large, secretariat. The Director/Chairman (who need not necessarily be from Northern Ireland) should have a working knowledge of the local situation. Other members of the Board, with a maximum of 11, should be drawn from as wide a section of the Northern Ireland public as possible including, desirably, the Trade Unions and main Churches. Membership of the Northern Ireland Anti-Discriminatory Practices Board would best not be based on any formal system of nominated representatives but rather appointments to the Board should depend on the single criterion of individual merit and integrity. Beyond doubt the Board most likely to succeed in its task will be the one most readily capable of establishing wide and immediate respect.

The Board should also be empowered to establish and appoint district conciliation committees to involve citizens in the various districts in Northern Ireland able and eager to work at district level.

DISCRIMINATION AND RELIGION

As has been seen religion as such was not included as one of the prescribed discrimination grounds in the 1965 and 1968 Acts in Great Britain although many Members at Westminster (and for a variety of reasons, not least the relevance to Northern Ireland) were of opinion that religion should have been so included.

The main reason for the omission of religion lay perhaps in the fact that religion was not considered to exist as a significant ground of discriminatory practices in Great Britain.

But it is submitted that even were this the situation, it leaves open the ugly prospect of discrimination being levelled against members of the Jewish faith or Sikhs expressly on the religious, rather than any ethnic or racial factor. In any event in the case of the Jewish community Judaism is said to be a matter of faith not race.

The argument about the 'non-problem' of religion has quite obviously no relevance for Northern Ireland. Here religious discrimination and the countless allegations of such discrimination are continually levelled against individuals, private firms, public bodies and the Northern Ireland Government itself. It is considered that in each of these areas all too many of the allegations have a firm basis in truth. Where else could one imagine a country's two most recent prime ministers (Captain Terence O'Neill and Lord Brookeborough) having in one case stood by while his wife advertised for a Protestant domestic help in the local press and in the other publicly declared that members of a particular faith (R.C.) ought not be employed as they are not to be trusted and in any event are the enemies of the state.

It must, nevertheless, be borne in mind that the area of true religious debate should not be confined. Religion is a subject which touches upon fundamental questions about man's existence and purpose; through the centuries argument about religion has been fierce; from time to time it has been violent. It may be of interest to note the remarks of Sir Dingle Foot, M. P., then Solicitor-General, when winding up the debate for the Government in the Commons at Westminster on the 1965 Act, he had this to say on the subject :—

"in this country ever since one can remember and long before, religion has always been a matter of controversy. There are those of Her Majesty's subjects who regard all Protestants as heretics and there are others—I am one of them—who have never regretted the Reformation.

Today there is still acute controversy about particular religious denominations. People feel very differently about the movement which is now known as Moral Rearmament. There are strong feelings about the religious group described as the Exclusive Brethren. Indeed, earlier this Session one Hon. Member opposite introduced a Bill to curb their activities. Both

the tenets and the practices of various religious denominations are the subject of violent differences and of perfectly legitimate controversy.

There is all the difference in the world between attacking a section of the Public because of the colour of their skins and attacking them because they subscribe to the Thirty Nine Articles."

(Commons Debate: Vol 711: 1043)

But with respect this is not correct. There is all the difference in the world between attacking a section of the public and, more particularly, actively discriminating against that section on the ground of their religious grouping as opposed to attacking the beliefs themselves. The distinction is fundamental since whilst the former practice deserves to be outlawed, the opportunity to engage in the latter need not, and should not, be impaired. Thus, for example, Mr. Paisley and his less temperate followers should be perfectly at liberty to reject and denounce the dogmas, structure or teachings of the Roman Catholic or any other faith for that matter. But what is now understood as 'Paisleyism', and equally its counterparts, have lost, certainly for the uninitiated, any doctrinal significance and have become mere vehicles for hate. In their train, discriminatory practices ultimately follow.

To be sure there is a distinction between religion and race, since after all one may change one's religion but one cannot alter one's racial or ethnic origins. But such an argument is superficial. The plain truth is that very few people ever change their religious grouping, though their religious zeal may alter dramatically at times. In any event as exemplified by the United Nations and other Declarations on the subject of human rights, discrimination should not be tolerated whether it is based on grounds of religion, race or otherwise.

As has been indicated earlier, the law should recognise and protect the right of individuals to choose and pursue separate religious education.

A further factor in this section must be taken into account in the context of Northern Ireland so as to prevent any avoidance of the new law. Thus it would be necessary (and in keeping with the International Covenants) to ensure that discrimination were not perpetuated by the use of the device of grounding discrimination on political rather than religious criteria. It must be remembered that at the present time in Northern Ireland it is undoubtedly true that the great majority of the Roman Catholic population is anti-Unionist (but not necessarily pro-Nationalist) whilst a similar preponderance of Protestants are anti-Nationalist. Religious differences are presently, and have been for many years past, inextricably interwoven with the different political views

It is very important that the new law outlaws equally incitement and discrimination based on another's political viewpoint as well as his religious faith.

THE POLICE CODE

The recent breakdown of law and order which has so seriously undermined the authority of the Police in Northern Ireland is cause for the gravest concern. It is not within the scope of this paper to analyse the truth of the allegations made both against the R.U.C. or the 'B Special' Forces, but it is earnestly hoped that the conditions will not be reproduced for such a situation to occur again.

There remains, however, an opportunity to reassure the general public of the impartiality of the Police by providing, as the Home Secretary suggested for the Police in Great Britain, that the Police Disciplinary Code be reinforced by making it an offence justifying disciplinary action should a police constable or officer be found to have discharged his duties in a discriminatory manner.

THE POINTS SYSTEM

Much publicity has recently been given to the Northern Ireland Government's proposals for a points system to be operated by housing authorities in the allocation of houses. The introduction of such a long awaited system is indeed welcome. But by itself and without effective remedies for an aggrieved party it is far from a complete protection. True, an Ombudsman for Local Government grievances would much assist in Policing

and preventing the continuation of discriminatory practices in house allocation. But such a system should not exist in a vacuum leaving any individual against whom discrimination in this field has been directed without a proper remedy. It needs reinforced by anti-discrimination legislation capable of granting damages as well as injunctions.

It must be recognised that an inflexible points system can work injustice in some cases where insufficient account is taken of certain peculiar personal circumstances such as infirmity, mental or physical handicaps or difficulties, etc. Thus it should remain possible for say a small family in certain circumstances to be preferred to a larger one provided always the reason for the preference is based on special need or special circumstances and not on discriminatory grounds.

A further merit of anti-discrimination machinery of the type here suggested would be to check existing segregation practices producing ghetto-like estates. As in the field of employment a housing policy investigation should be made possible in cases where the Anti-Discriminatory Practices Board has not received an individual complaint but there exist prima facie grounds to justify such an investigation.

The problems of housing integration is not, of course a simple one capable of overnight cure. The established pattern will not be easily broken of families wishing to remain in 'their' areas. Housing integration should be promoted vigorously, but individual wishes must be respected.

CONTRACTS, COVENANTS ETC.,

Included in the new law, provision should be made against the validity of discriminatory conditions in tenancy agreements, covenants affecting property (e.g. prohibiting disposal to members of a specific faith), etc. To give weight in practical terms to the new law, Northern Ireland Government contracts might contain, at least for a time, specific non-discrimination clauses with penalty provisions in case of breach.

WORK PERMITS

It is contended that the extension of the law relating to employment to include employment policy investigations would have a salutary effect. One special feature of the existing law of Northern Ireland, the Safeguarding of Employment Act (N.I.) 1947 now merits separate mention. Under this 1947 Act persons who are not "Northern Ireland Workers" within the meaning of the Act are not entitled to enter employment in Northern Ireland unless a permit is issued to them to do so by the Ministry of Health and Social Services. It is possible to advance an argument in support of such a law for a province such as Northern Ireland which experiences a chronic unemployment problem and a large section of the local population is without work. Whatever the value of such a law it is worth noting that with the United Kingdom intent on seeking membership of the European Economic Community, the effect of this law will have to be carefully considered in the light of the provisions of the Treaty of Rome requiring member countries to guarantee the free movement of all workers. In the meantime, the 1947 Act would not, of course, be invalidated as such by new anti-discrimination laws, and thus provided the reasons for the refusal of a permit were economic and not discriminatory, the Ministry would continue to act lawfully. What would be unlawful would be the refusal (for example in the case of the Irish Citizens) of permits on the discriminatory considerations of nationality, religion etc.

CONSTITUTIONAL CONSIDERATIONS

From time to time the argument is advanced by some Unionist politicians that there is no need for the type of legislation here proposed in view of the existence of certain constitutional prohibitions contained in the Government of Ireland Act 1920. The proponents of this view point to section 5 of that Act :—

"In the exercise of their power to make laws under this Act . . . nor the Parliament of Northern Ireland shall make a law so as either directly or indirectly to establish or endow any religion or prohibit or restrict the free exercise thereof or give a preference privilege of advantage or impose any disability or disadvantage on account of religious belief or religious or ecclesiastical status."

As will be seen Section 5 is directed against **laws** made by the Parliament of Northern Ireland, having a religious discriminatory base. But the legislation now sought affects not Acts of Parliament but actions of individuals, firms, public bodies and the Crown. Thus such anti-discrimination legislation would be both more wide ranging and positive in character than the restrictive provisions of the 1920 Act. This distinction is on occasions conveniently overlooked, as was the case when Mr. Robin Chichester-Clark, M.P. (Londonderry), spoke during the Second Reading of the 1965 Act.

"Is it not a fact that Northern Ireland is the only part of the United Kingdom which already has inbuilt statutory safeguards against religious discrimination ? (laughter) Oh, yes Section 5 (1) of the Government of Ireland Act 1920 prohibits them from making any law which directly or indirectly gives any preference, privilege or advantage or imposes any disability or disadvantage on account of religious belief and Section 8 follows on. I believe these safeguards to be completely adequate."
(Commons Debate: Vol 711: 942)

But it is precisely because the constitutional 'safeguards' are inadequate (the 1920 Act is hardly a model Bill of Rights) that the new law is required. Should it be that any doubt exists as regards the right of the Northern Ireland Parliament to pass such a measure by reason of any provisions of the 1920 Act, there can be no doubt that the Parliament of Westminster would warmly welcome the opportunity to grant the enabling powers.

DECLARATIONS OF PRINCIPLE

The nature and temperature of the meeting of Ministers of the Northern Ireland and British Governments held at Downing Street on the 19th August, 1969, will probably remain the subject of conjecture for some time. One significant feature, however, which did emerge was the 7 point declaration on the part of the British Government in which a declaration of principle on discrimination is contained. Mr. Wilson referred to this in his television broadcast that evening when he said "all citizens in Northern Ireland irrespective of their political or religious views, will have the same rights of freedom, freedom against discrimination as all other citizens of the United Kingdom". But the '**same**' rights in the technical sense will not deal with the Northern Ireland problem so long as religion is exempted from the 1965 and 1968 Acts.

Such a technical construction, however, clearly defeats the spirit of the British Government's view.

What is needed in Northern Ireland, and with what relief would it be greeted in Great Britain, is a bold and imaginative measure to outlaw incitement and discrimination whether based on racial or religious considerations. Such legislation would at last commence the task presented by the existing situation.

This paper has been written as an expression of a socialist's approach to the subject but it must be said that it would be extremely desirable that any such new measure should command all-party support and not simply be employed as another hollow political football for any party or faction.

The need for the legislation is clearly urgent; it would assist in ensuring that Northern Ireland does not experience a further plunge into the bitter sectarian strife and terrible violence it has witnessed. It would remove much existing distrust.

It should be clearly appreciated on the other hand that the legislation alone is not an end in itself. The real goal is the elimination of the underlying sickness so that Northern Ireland may regain its self respect and be outward looking in a world beset with the horrors of racial conflict, starvation and war.

Nor would the new law be a substitute for energetic economic and housing policies and action to produce the jobs and the homes which are so urgently needed and the lack of which provide the breeding ground for the existing bigotry and discrimination.

Already, indeed for a long time they could be seen, there are indications of a desire for renewal and the rejection of old prejudices and bigotry. The Society have been particularly impressed by the example of the public declaration by Messrs., Charrington Kinahan Ltd. which appeared in the local press ('Belfast Telegraph' 22nd August, 1969) to the effect that neither religious nor political bias had entered into the determination of that Company's policy and that no such considerations were or would be entertained in the granting of employment. Many equally important signs exist.

As a contribution to this effort on the part of individuals and organisations and in an attempt to broaden and concert such efforts pending the consideration and introduction by the Northern Ireland Parliament of legislation of the type here proposed the Society have determined to sponsor a scheme to enlist groups of employers, individuals and organisations (including public bodies and authorities) to subscribe voluntarily to a similar declaration of principle. So that the scheme is not tainted by any suggestion of political opportunism, negotiations will be commenced by the Society inviting other organisations of every character to act as co-sponsors of the scheme.

MAIN RECOMMENDATIONS

1. Legislation be introduced NOW in Northern Ireland outlawing as a criminal offence intentional incitement to hatred on grounds of colour, race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (see International Covenants adopted on 16th December, 1966).
2. Incitement offences to carry penalties similar to 1965 Race Relations Act, but sentencing policy to recognise that fanaticism is a special problem and the offence to be more closely linked to public order considerations than in Great Britain.
3. Prosecutions for incitement to be commenced with leave of H.M. Attorney-General for Northern Ireland. In the case of such leave not being granted an appeal to lie to the High Court requiring the Attorney-General to show cause for the refusal.
4. Effective legislation with teeth be introduced in Northern Ireland NOW outlawing discrimination on any of the grounds noted at 1. above.
5. The outlawed discrimination areas to cover goods, facilities and services, employment and housing.
6. The legislation to bind the Crown, public bodies, private firms and individuals.
7. Anti-Discrimination provisions in the field of employment to be phased into operation on numerical unit basis (save in public sphere).
6. Phasing of housing provisions where owner is resident in 'small premises'
9. Discriminatory advertisements and notices to be unlawful.
10. Charitable dispositions, wills, settlements and gifts conferring benefits on a particular section or individual distinguished by race, religion, etc., to be valid so far as the existing law presently permits.
11. Separate private (including Maintained Schools) religious education not to constitute discrimination.
12. Police Code to be revised to allow disciplinary action where police duties discharged in discriminatory manner.
13. Anti-Discriminatory Practices Board to be established with full time, salaried Director/Chairman and permanent Secretariat. Members of Board to be appointed on individual merit alone. Board to have power to create District Conciliation Committees.

14. Anti-Discriminatory Practices Board and District Conciliation Committees to act on individual complaints, but to have power in absence of such complaint to initiate employment and housing policy investigations.
15. Where discriminatory practice established conciliation procedure to be pursued. Where conciliation fails the Board to refer complaints to High Court Judge, whose powers to include granting of injunctions and awards of special and general damages. Judge to act with two assessors.
16. Community Relations Commission with adequate financial support from Northern Ireland Government to be established for general community relations promotion.
17. Enabling powers to be sought from Westminster Parliament, if required, for the legislation.
18. Northern Ireland Government and public authority contracts to include non-discrimination clauses with penalty provisions.
19. The Society to sponsor Anti-Discrimination 'Declaration of Principle Scheme' on lines of recent Charington-Kinahan Advertisement and to invite co-sponsors for the Scheme and open same for ratification by all individuals, organisations and public bodies.