

# Independent commission design and inclusion in Northern Ireland: Agonistic versus traditional approaches

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## Abstract

Despite their proliferation in post-conflict societies, independent commissions represent an understudied area. Although recent studies have begun to address this gap, questions remain about best practice in commission design, particularly in terms of fostering inclusion. This paper contributes to a burgeoning literature on commissions by comparing two different approaches to commission design: agonistic and traditional. These two approaches offer competing visions for peace and inclusion in Northern Irish society. This paper compares the goals and aims and decision-making processes of two independent commissions: one (the Northern Ireland Human Rights Commission) with a traditional design and one (the Commission for Flags, Identity, Culture and Tradition) adopting an agonistic design. It then shows the implications of these differences for fostering inclusion. The paper illustrates that agonistic commissions have the potential to foster deeper, more transformative inclusion, whereas traditional commissions focus more on cohesion and reinforcing existing norms.

## Keywords

Agonism, independent commissions, Northern Ireland, peace, post-conflict, contestation, identity

## Introduction

Although independent commissions have become an increasingly common component of transitional justice and peacebuilding strategies, their role in and effect on the post-conflict space remains unclear. Recent scholarship has started to explore the role of independent commissions in post-conflict settings (see Walsh, 2017), but many aspects of independent commission design are still understudied. A core gap centres around the impact of different approaches to independent commission design and the effects of these different approaches on inclusion. As recent research illustrates, inclusive commissions are critical to fostering durable peace (Cuhadar and Druckman,

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forthcoming); understanding best practice for designing inclusive commissions therefore has significant implications for peace.

This article contributes to addressing this gap by comparing a traditional independent commission model with an emerging trend in independent commission design: an agonistic institutional approach. This agonistic approach, backed by theoretical principles such as an embrace of contestation and the rejection of consensus as a desirable end goal, offers an alternative to mainstream transitional justice strategies underpinned by liberal values. Recent scholarship has identified an emerging trend of agonistic transitional justice; of 637 peace agreements coded for agonistic indicators from 1990 to 2019, the 9 agreements with 10 or more agonistic indicators present are all from 2007 onwards (with a median year of 2015; Murphy and Walsh, 2022: 1396–1397). Building on these findings, this article compares empirical examples of both traditional and agonistic independent commission design in Northern Ireland and explores their approaches to inclusion. After outlining the theoretical differences between agonistic and traditional approaches, I illustrate the ways in which these differences manifest in the goals and aims and decision-making processes of two independent commissions in Northern Ireland. Based on discourse analysis of documents related to the transitional justice process as well as original interview data, I demonstrate the different roles played by the Commission on Flags, Identity, Culture and Tradition (FICT Commission) and the Northern Ireland Human Rights Commission (NIHRC), two independent commissions with a major focus on cultural issues and legacies of conflict. The article shows that the two models of commission design lead to unique approaches to peacebuilding and fostering inclusion: whereas traditional commissions like the NIHRC offer a clear path for action through the entrenchment of existing norms, agonistic commissions like the FICT Commission focus more on deeper inclusion based on recognising multiple narratives and on the transformation of underlying conflict dynamics. Although both types of commissions serve important peacebuilding roles, then, the agonistic model is more conducive to fostering transformative change.

## **Traditional approaches to post-conflict independent commission design**

One challenge in studying independent commissions stems from the ambiguity involved in identifying these commissions. Independent commissions must hold some form of special public authority (Walsh, 2020) and must not be ‘merely a department or administrative office of a larger bureaucratic entity’ (Thatcher and Sweet, 2002: 2). Independent commission positions should not be filled through direct election by the people and should not be managed by elected officials (Thatcher and Sweet, 2002), as tying the institution’s work to political cycles would prevent it from making credible commitments to stakeholders (Bovens and Schillemans, 2020). Post-conflict independent commissions, moreover, should serve some function directly related to the peace process, such as peace agreement implementation or an administrative role related to peace agreement reforms (Walsh, 2020). With these parameters in mind, I turn to a discussion of the features of traditional independent commission design.

The most prevalent approach to peacebuilding and transitional justice emerges from the dominant liberal peace paradigm (Joshi et al., 2014; Van Leeuwen et al., 2012). Although the exact parameters of a liberal peace and liberal peace’s relationship to liberalism are contested (Joshi et al., 2014), conceptualisations highlight a range of common features including promotion of the rule of law (Joshi et al., 2014), emphasis on the individual as the ‘sovereign actor’ (Van Leeuwen et al., 2012) and the idea of reconstruction and reintegration as a ‘return to normal’ (MacKenzie, 2012). In addition to some of these broader features, a liberal peace rests on several underlying

tenets which ultimately differentiate it from an agonistic alternative, including an emphasis on unity and universal values, an ultimate goal of consensus and a desire to minimise dissent (Murphy, 2023; Murphy and Walsh, 2022). This article builds on this conceptualisation and demonstrates the empirical form that these features take in post-conflict independent commissions.

The key characteristics of a traditional approach, backed by liberal peace principles, are closely interconnected. Liberal peace rests on the idea of objectivity and the ‘rationality of individuals and collectives’ (Joshi et al., 2014: 366). Following from these underlying principles is the idea that unity and consensus are both possible and desirable, as they should be achievable through rational action. With this focus on unity comes extensive provisions, both in the design of peace agreements (see Murphy and Walsh, 2022) and their implementation, aimed at fostering cohesion (Joshi et al., 2014: 371). Van Leeuwen et al. (2012) also note liberal peace’s ‘promotion of universal values as remedy for local problems’ and its ‘lack of attention for (collective) identity’ (293–294). Although liberal peace also allows for dissent, particularly along predefined facets of identity (such as static consociational arrangements, for example), dissent itself should – under a liberal peace paradigm – ultimately be minimised in favour of focusing on areas of commonality. This focus also leads to shallow engagement with intersectional identities, as the focus of liberal peacebuilding efforts remains on constructing a new, unified national identity (Murphy, 2023). Given the dominance of the liberal peace paradigm, with its core principles ‘hardwired into international conceptualisations and practices of peacebuilding’ (Joshi et al., 2014: 365), traditional post-conflict independent commission design has also centred on the goals of unity, consensus and minimal dissent.

In the context of independent commissions, liberal peace tenets such as an emphasis on consensus include consensus-based decision-making requirements and a focus on moving *beyond* differences. Recent quantitative scholarship has explored the relationship between peace and consensus-based decision-making, highlighting its potentially detrimental effects in reaching negotiated settlements (Johnson, forthcoming) as well as its positive effects on ensuring conflict non-recurrence when implemented within independent commissions (Neudorfer and Walsh, forthcoming); this article contributes to this debate using in-depth, qualitative analysis. I consider these empirical manifestations in depth in the discussion of the NIHRC, but first I provide an overview of the theoretical underpinnings of an agonistic alternative to independent commission design.

## Conceptualising an agonistic alternative

In contrast to liberalism, agonism<sup>1</sup> rejects the idea of inherent objectivity and instead focuses on the relational nature of identity (Mouffe, 2016). Identities do not exist independently of power in an agonistic conception; instead, identity and power are mutually constitutive (Mouffe, 1989). Under this relational understanding of identity construction, reaching an uncoerced, non-hierarchical consensus is ultimately impossible because it would require ‘the constitution of an “us” that would not have a corresponding “them”’ (Mouffe, 1989: 6). The idea of an environment in which consensus could be achieved through rational deliberation, free from power differentials, would also be impossible in an agonistic conception.

In addition to rejecting the idea of consensus as a valuable end goal, agonism outlines the importance of an active cultivation of contestation and dissent through institutional outlets. Because agonism views power as a constitutive part of identity and therefore ineradicable, institutions must create ways to transform power instead of aiming to eliminate it (Mouffe, 2000). This transformation can only be achieved through the institutionalisation of ongoing contestation; it is through contestation, agonists argue, that we are able to see and challenge the ways in which power can foster exclusion (Mouffe, 2000; see also Björkdahl and Selimovic, 2016: 331). This embrace of

contestation and dissent allows for the expression of identities, but also for their transformation into forms more compatible with sustainable democratic practice.

Agonism's unique treatment of collective identity and societal divisions has spurred interest into its application to the post-conflict sphere. Agonistic reconciliation centres on transforming enemies, who must be destroyed at any cost, into adversaries, with whom one may disagree vehemently but whose right to exist one respects (Schaap, 2006: 268). Strömbom (2020) argues that an agonistic peace must foster recognition of fluctuating identities and institutional inclusion. This idea of agonistic recognition emphasises the need for pluralism through the fostering of a multiplicity of narratives (Rumelili and Strömbom, 2021). In an environment where tensions between groups remain high and the idea of fostering a united identity is inimical to vast segments of a society, agonists argue, an approach centred on promoting multiple narratives and avoiding consensus is best poised for success in preventing a recurrence of violence.

Given these theoretical underpinnings, the next step in understanding an agonistic approach to post-conflict independent commission design becomes operationalisation. This article uses Murphy and Walsh's (2022) indicators of an agonistic transitional justice to analyse post-conflict independent commission design. Based on agonistic theory, Murphy and Walsh develop five indicators of agonistic transitional justice: no consensus, creation of space, multiple narratives, intersectionality, and institutionalisation of dissent. I briefly describe these indicators before explaining their use in determining whether an independent commission has adopted an agonistic approach.

Murphy and Walsh's indicators are arranged from least to most stringent. The most basic indicator of an agonistic presence ('no consensus') is the absence of language aimed at working towards consensus. In the context of independent commission design, this indicator might take the form of a mandate that does *not* adopt a consensus-based decision-making structure or *avoids* stating 'cohesion' or 'unity' as a main goal. The second indicator ('creation of space') requires the provision of material space in which agonistic encounters, which allow for contestation, identity renegotiation or simply the voicing of different identity facets and narratives (Björkdahl and Selimovic, 2016), could take place. For independent commissions, the 'creation of space' indicator might include creating meeting spaces for groups and individuals to voice dissenting opinions or share their unique narratives. The next indicator ('multiple narratives') requires an 'active fostering of multiple narratives of actors' that go beyond a unified hegemonic narrative (Murphy and Walsh, 2022: 1387). For a commission, this could take the form of including multiple perspectives on conflict events in its reports or providing explicit recognition of the multiple narratives about the underlying causes of conflict. The fourth indicator ('intersectionality') requires going beyond inclusion of multiple identities to consider the ways in which different identity facets intersect; provisions displaying this indicator must actively highlight the 'multiple and intersecting boundaries along which identities coalesce and are contested' (Murphy and Walsh, 2022: 1387). Mouffe (1989: 44) has noted that agents inhabit 'a diversity of communities' that are constructed 'at the intersection of [their multiple] subject-positions'; recognising these intersectional identities is key to understanding the 'gradations of power and exclusion' (Nagle, 2022: 1352) at play in relational interactions. Murphy (2023) has demonstrated the ways in which agonistic intersectionality appears in the work of the Colombian Truth Commission, which incorporated narratives highlighting specific forms of harm faced by, for example, Afro-Colombian women during the conflict. The final and most stringent indicator ('institutionalisation of dissent') centres around an active fostering of avenues for voicing dissent and encouraging contestation. In the context of independent commissions, an institutionalisation of dissent might take the form of institutional provisions for recording dissent and reopening decisions to future debate and contestation. An institution need not display all five of these indicators in order to be considered agonistic; a more agonistic institution, however, typically displays evidence of multiple indicators.

## **Independent commission design in practice: empirical examples from Northern Ireland**

Given these theoretical foundations behind approaches to independent commission design, I now turn to an empirical example of each approach from the Northern Irish case to illustrate the ways in which these principles take shape in practice and the effects of each on the Northern Irish peace process. After a brief background on the conflict in Northern Ireland and an overview of the NIHRC and the FICT Commission, I illustrate the difference between traditional and agonistic commissions by comparing across two core dimensions: goals/aims and decision-making processes, focusing on the implications of these differences in working towards inclusion.

The conflict in Northern Ireland centred around an ethno-national divide leading to decades of violence and over 3500 deaths. Although often superficially framed as a division between Catholics and Protestants, the Northern Irish conflict was also predicated on violence stemming from disagreements over Northern Ireland's constitutional status. The two main conflict parties were themselves diverse, fractioned and heterogenous. The parties included the Catholic/nationalist/republican (CNR) faction, who were pushing for a united Ireland and independence from the United Kingdom (UK); and the Protestant/unionist/loyalist (PUL) faction, who wished to remain part of the UK. After a prolonged period of violence and unrest dating back to the late 1960s, the conflict reached an official end with the signing of the Good Friday/Belfast Agreement in 1998 (The Agreement Reached in the Multi-Party Negotiations (Good Friday Agreement or Belfast Agreement), 1998). In addition to this agreement, the Northern Ireland peace process has included several other agreements, including the 2006 St Andrews Agreement. Additional steps to address the legacy of conflict are under consideration at the time of writing, as the new Labour government has promised to repeal and replace the controversial 2023 Legacy Act.

The analysis below is based on semi-structured interviews with the chief executive of the NIHRC and both joint chairs of the FICT Commission as well as discourse analysis of approximately 120 documents related to the Northern Ireland peace process. These documents included the full corpus of agreements related to the process, reports from civil society organisations, government agency reports, and publications from the commissions themselves; these reports included the FICT Commission's final report and reports from the NIHRC on parading, dealing with the past, and culture. To assist in identifying patterns in the discourses, I coded documents using a mixture of inductive and deductive codes; the deductive codes were based on Murphy and Walsh's indicators as described above. Inductive codes, based on recurring themes within the documents and interviews, included references to identity shifts, a process-oriented approach and a recognition of complexity. Interviews were conducted virtually during the COVID-19 pandemic and lasted between 40 and 70 minutes; interview questions varied slightly between interviewees, but included questions about how the institutions decided on priority issues and how the interviewees thought their institutions handled disagreement. I then coded the transcripts using the same combination of inductive and deductive coding. The results below represent trends emerging from analysis of the discourse found in documents and interview transcripts.

### **NIHRC background**

As a 'forward-looking' agreement, the Good Friday/Belfast Agreement placed a strong emphasis on both reforming existing institutions and creating new ones to transform the political process in Northern Ireland (Campbell and Ní Aoláin, 2003: 889). One of the newly created institutions, initially outlined in Strand Three of the Agreement and subsequently established by the Northern Ireland Act 1998, was the NIHRC. The NIHRC is an executive non-departmental public body

(NDPB) and conforms to the United Nations (UN) Paris Principles' standards for formal and functional independence for national human rights institutions. The code of governance for the Commission notes that it 'is, and must be seen to be, independent from the Government in setting its policies and in the exercise of its statutory duties' (NIHRC, 2023: 5). The NIHRC's powers and duties include: reviewing the adequacy and effectiveness of human rights practice in Northern Ireland; advising bodies such as the Northern Ireland Executive, the UK government and the Northern Ireland Assembly on protection of and compliance with human rights standards; conducting investigations on human rights issues; promoting awareness of human rights in Northern Ireland; providing legal assistance; monitoring and reporting on the implementation of international human rights treaties; and working with other human rights institutions in Ireland and the UK (NIHRC, 2024). During the 2023–2024 period, the Commission consisted of 6 commissioners and 24 permanent members of staff (NIHRC, 2024: 51). The Commission is currently headed by Chief Commissioner Alyson Kilpatrick.

Within its human rights remit, the NIHRC has a variety of work centred around the conflict and its legacy. The Commission's outputs include reports and advice on dealing with the past, implementing transitional justice provisions and addressing issues around culture broadly as well as flags and symbols more specifically. The NIHRC's approach to these areas differs clearly from the approaches of the FICT Commission, as discussed in the following sections.

## **FICT Commission background**

Unlike the NIHRC, which was set up in the early stages of the peace process, the FICT Commission did not begin its operations until 2016. The Commission was initially outlined in the Stormont House Agreement, which called for the creation of a 'Commission on Flags, Identity, Culture and Tradition [to be established by June 15] to report within 18 months of its being established' (Stormont House Agreement, 2014). Although the implementation for the Commission's creation was stalled, the 2015 Fresh Start Agreement reiterated a commitment to establishing the FICT Commission to deal with contested issues. Comprising 15 members, the Commission included 2 joint chairs drawn from outside political parties, 7 members appointed by leaders of political parties and 6 additional non-political appointees. Issues within the Commission's remit included murals, bonfires, the flying of flags, and other expressions of individual and collective identity and culture. The Commission completed its operations with the release of its final report in December 2021. The release of the report was accompanied by controversy over the cost of the Commission's operations, which totalled over £800,000.

In addition to the differences in origin and basic structure as compared to the NIHRC, the FICT Commission was also unique in its time-limited scope as a commission. Whereas the NIHRC is designed to operate indefinitely, the FICT Commission was created to work in a temporary capacity. Although the New Decade, New Approach agreement outlined provisions for the creation of an Office of Identity and Cultural Expression to 'promote cultural pluralism and respect for diversity, build social cohesion and reconciliation and to celebrate and respect all aspects of Northern Ireland's rich cultural and linguistic heritage' (New Decade, New Approach Deal, 2020) and the creation of the office was laid out in the Identity and Language (Northern Ireland) Act 2022 (2022), the office had not been created at the time of writing.

The main differences between the NIHRC and the FICT Commission come, however, in the underlying design of each and in the effects of these designs on inclusion. I now turn to a comparison of agonistic versus traditional design across two main dimensions, goals/aims and decision-making processes, and explore the implications for how each design type affects inclusion. These differences are summarised in Table 1 below.



**Table 1.** Summary of differences in commission design.

	Liberal model (NIHRC)	Agonistic model (FICT Commission)
<b>Goals and aims</b>	Cohesion, reconciliation (framed in opposition to contestation)	Recognising multiple narratives, creating public space for dissent
<b>Decision-making processes</b>	Consensus-based, presenting a united front based on existing norms	Preserving points of contestation, creating arena for critical engagement with existing standards
<b>Approach to inclusion</b>	Inclusion through equal application of institutionalised rights	Inclusion through the creation of space for varied, multiple, and contesting narratives and identities

NIHRC: Northern Ireland Human Rights Commission; FICT Commission: Commission on Flags, Identity, Culture and Tradition.

### *Goals and aims*

Agonistic and traditional commissions present two contrasting visions for peace. The NIHRC and the FICT Commission illustrate the differences between these visions in practice through their institutional goals, both implicit and explicit. In line with a traditional embrace of cohesion, the NIHRC focuses on promoting reconciliation (often framed in opposition to contestation) and fostering points of commonality through adherence to existing human rights conventions. The FICT Commission, in contrast, aimed to provide outlets for articulating multiplicity and a full spectrum of identity expression.

The NIHRC's core mission centres around promoting and adhering to a human rights framework. This framework is rooted in the idea of universal norms and standards; human rights advocacy often seeks to 'universalize' (Mutua, 2002: 3), and, in its report making a case for a bill of rights in Northern Ireland, the NIHRC notes that countries choose to have a bill of rights because 'there are certain values which are so basic that they wish to put them beyond the reach of any government' (NIHRC, 2012: 6). The primary goal of ensuring human rights compliance is also tied to secondary goals of dealing with the legacy of conflict by working towards reconciliation and cohesion. The NIHRC plays an active role in legacy issues by advising other bodies working on issues of identity and culture to ensure that 'the public authorities in question are clear as to where the human right standards are that apply to them and their work and the views of the commission' (interview with David Russell, chief executive of the NIHRC, personal interview with the author, 2020). In its reports on issues such as culture and flags, the NIHRC highlights relevant elements of human rights law, existing conventions and empirical examples from similar cases; these selected excerpts illustrate the mainstream goals adopted by the NIHRC. In conceptualising reconciliation, for example, the Commission's culture report describes a Macedonian project which 'became a source of cultural contestation, instead of cultural reconciliation' (NIHRC, 2014: 18). The report reiterates this framing of contestation in opposition to reconciliation, describing this increased contestation as the ultimate consequence of 'compromise[d] peace-building efforts' (NIHRC, 2014: 14). One of the challenges of the post-conflict setting, the report notes, is ensuring the right to culture without creating further contestation (NIHRC, 2014: 21); instead of allowing for contestation, the report highlights suggestions aimed at 'elaborating policies and approaches aimed more at promoting integration and cohesion' (NIHRC, 2014: 10).

This cohesion can require adherence to a specific identity or vision of identity. The NIHRC's culture report, for example, draws on the Council of Europe's Framework Convention on the Value

of Cultural Heritage for Society 2005 and its goal of ‘promot[ing] an understanding of the common heritage of Europe, which consists of: all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity’ (NIHRC, 2014: 12). The NIHRC’s report on flags also highlights the European Union commitment to promoting ‘European identity, citizenship and social cohesion’ (NIHRC, 2013: 17). These examples illustrate the nature of the NIHRC as embedded in a human rights framework that views cohesion and reconciliation (which is framed in opposition to contestation) as core goals.

Whereas the NIHRC highlights reconciliation in the form of avoiding contestation as a core goal, the FICT Commission places strong emphasis on the importance of contestation and multiplicity in fostering a resilient and peaceful society. In conceptualising shared spaces, the FICT Commission final report notes that ‘the discussion of public space in our context is important, but not because it precludes conflict and contest [. . .] People have the right to use public space for that purpose’ (FICT Commission, 2021: 78). In opposition to liberal ideas of neutrality and objectivity, the final report notes that ‘in recognition of the diverse society in which we live, the Commission does not believe all public spaces should, or can, be neutral’ (FICT Commission, 2021, 86). In contrast to the focus on cohesion and the perpetuation of ideas of a ‘European identity’, furthermore, the FICT Commission dealt explicitly with multiple identities and the internal multiplicity involved in identities throughout its work. The Commission summarises this view early on in its final report, noting that

cultural identity is too often presented as being neatly divided into two opposed identities. Such an analysis ignores the rich and complex identities and cultural heritages that we share, and that this is further enriched by a wide range of ethnic and faith communities. (FICT Commission, 2021: 8–9).

This stated need to acknowledge the varied, plural identities and their saliency to Northern Ireland demonstrates an agonistic embrace of multiple narratives; the Commission highlights this embrace in one of its recommendations to ‘explor[e] multiple narratives’ in the creation of a new history unit in schools (FICT Commission, 2021: 47). This pattern also extended to the Commission’s interactions with broader society. The Commission ‘gave people good opportunities to put forward sometimes very sophisticated and very legitimate arguments about their identity and the flying of flags’ (Neville John Armstrong, joint chair of the FICT Commission, personal interview with the author, 2020). The Commission’s goal, these measures suggest, was not to reach agreement at any cost, but instead to create an environment in which identities could be expressed, contested and transformed.

These differences in aims demonstrate one of the main divergences between traditional and agonistic commissions. Whereas the former focuses on promoting cohesion, the latter is centred around acknowledging and disseminating multiple narratives. These differences, in turn, lead to differences in the decision-making processes of each institution.

## **Decision-making processes**

The need to work towards cohesion, in the case of the NIHRC, or inclusivity through the fostering of multiple narratives, as in the case of the FICT Commission, results in different operating procedures. These fundamental goals affect both the decision-making processes and the responses to disagreement in each institution. The NIHRC’s emphasis on cohesion in working towards implementing universal human rights standards leads to a consensus-based decision-making structure which seeks to minimise dissent, while the FICT Commission’s acceptance of multiplicity translates to a preservation of dissent and an encouragement of contestation in its decision-making processes.



The NIHRC's code of governance and standing orders for meetings showcase the centrality of consensus and cohesion within the Commission's operations. The NIHRC seeks to present a united front; commissioners are expected to 'represent the views of the Commission as a whole and not publicly criticise it' (NIHRC, 2023: 11). The Commission 'seeks to debate issues to achieve consensus on major decisions' (NIHRC, 2023: 13). Although the NIHRC makes its meeting reports publicly available, the standing orders for meetings specifies that the 'nature of the deliberations of the Commission at ordinary and special Board meetings will not be disclosed outside the Commission by Commissioners' (NIHRC, 2019: 6). In addition, matters agreed at Commission meetings 'may not be re-opened at a subsequent meeting within three months, unless the majority of Commissioners agree to do so' (NIHRC, 2023: 13). These decision-making processes highlight the importance of presenting a consensus-oriented, united front for the Commission's operations, thereby underscoring the universal agreement on human rights norms.

The FICT Commission shares many (liberal) foundations with the NIHRC. Its final report references many of the same human rights framework documents as the NIHRC reports. The key difference between the NIHRC and the FICT Commission, however, is that the latter uses these standards as a starting point for further engagement and contestation rather than as an end in itself. Instead of trying to reach consensus on the promotion of existing norms, the FICT Commission's decision-making structure was more deconstructive. This shift in aims and decision-making structure in the FICT Commission's work (from its initial, much more liberal foundations to its agonistic execution of aims and decision-making processes) illustrates that agonistic measures can develop from a dissatisfaction with the ways in which liberal standards do not map onto realities for individuals or address the issues faced by them. In contrast to the NIHRC, the FICT Commission displayed a uniquely agonistic welcoming of and openness surrounding dissent and contestation. The Commission itself served as 'an arena where there was change taking place through argument and debate' (Dominic Bryan, joint chair of FICT Commission, personal interview with the author, 2020). The Commission's work included over 162 meetings with stakeholders and the engagement of over 1000 individuals (FICT Commission, 2021: 6), indicating a broader engagement with a greater number of narratives and opinions. The final report itself also clearly delineates points of remaining disagreement, highlighted in the report as areas 'where challenges remain' (FICT Commission, 2021: 2). One of the joint chairs noted this pattern throughout the Commission's operations, concluding that 'you can create debate, you don't necessarily have to go to agreement [. . .] we sat around, we argued, we all got much more knowledgeable on the topics' (Dominic Bryan, personal interview with the author, 2020). Although the FICT Commission did not provide 'easy answers', it did offer 'three years of consistent arguing, discussing, manoeuvring in a space' (ibid). The other joint chair echoed this sentiment, noting that the members of the Commission would not try to come to an agreement on contentious issues but would move on and come back to them later; for some of these issues, he expressed doubt as to 'whether we will ever have agreement on them' (Neville Armstrong, personal interview with the author, 2020). This approach demonstrates the ways in which an agonistic rejection of consensus and embrace of dissent can take shape empirically: the FICT Commission found areas of agreement when possible, but ultimately allowed for continued contestation and disagreement.

Comparing the goals and aims and decision-making processes of the two commissions illustrates the core differences between traditional and agonistic commission design. Overall, the NIHRC exemplifies traditional commission design through its consensus-based decision-making, explicit focus on developing cohesion, and minimisation of public dissent. These facets of the NIHRC's operations highlight its commitment to the integration of identities to create a shared society. In contrast to this emphasis on cohesion and consensus, the design of the FICT Commission's operations and final report production highlight its uniquely agonistic characteristics. In its initial

approach to dealing with identity, the Commission's acceptance of varied identity facets that go beyond the CNR/PUL divisions illustrates its agonistic embrace of multiplicity. In moving beyond the human rights doctrines that framed its operation, the Commission also encouraged contestation and created spaces in which actors could both resist the tendency towards consensus and express varied and conflicting identities. These distinctly agonistic features offer insight into an alternative approach to independent commission design. Rather than operating as a normalising force, the FICT Commission served as an arena for fluidity, deconstruction and transformation.

### **Agonistic versus traditional approaches: implications for inclusion**

Ultimately, the FICT Commission and the NIHRC offer starkly different visions for independent commission design, which also correspond to differences in patterns of inclusion. Having established these differences in approach, I now outline the distinct implications of each of these approaches on inclusion and the unique roles played by each type of commission. Although traditional commissions are able to draw on existing liberal norms to advocate for the equal application of predefined rights, fostering inclusion based on equal treatment under the law, agonistic commissions centre around inclusion of a broader range of perspectives with a greater potential for transformative change created by renegotiating underlying dynamics and norms.

The fundamental difference in approaches to commission design corresponds to the distinct roles each commission is intended to play and the forms of inclusion they prioritise. Commissions designed with a traditional approach, such as the NIHRC, focus on reinforcing existing norms, many of which are firmly rooted in liberal principles; in the case of the NIHRC, these norms are human rights standards enshrined in existing conventions and legislation. The vision of inclusion embraced by the Commission, then, is one of inclusion through equal access to pre-existing rights. Appeals to inclusion within the guidance provided by the Commission centre around, for example, regulating flags and symbols to achieve a 'balance between the reasonable interests of all groups in society' (NIHRC, 2013: 19). Promoting a 'good and harmonious working environment' should entail prohibiting the display of 'flags, emblems, posters . . . [etc.] . . . which are likely to give offence or cause apprehension among particular groups of employees' (NIHRC, 2013: 24). The NIHRC's culture report describes a 'more inclusive symbolic landscape' as one that 'communicates a mutuality' (NIHRC, 2014: 14). Inclusion, in this discourse, centres around 'equally benefit[ing] each of the groups that were party to the conflict' (18). Ultimately, these visions of inclusion underscore a need to work towards common goals; the NIHRC's flag report notes that 'Dialogue among Civilizations constitutes a process to attain identification and promotion of common grounds among civilizations, recognition and promotion of the inherent dignity and of the equal rights of all human beings and respect for fundamental principles of justice' (NIHRC, 2013: 7). This vision of inclusion follows clearly from a goal of working towards reconciliation, where reconciliation is itself rooted in finding common ground and is opposed to contestation.

This model of appealing to existing human rights standards and fostering inclusion through equal access to universal rights has clear benefits for independent commission design. Recent examples from the Northern Ireland case illustrate the utility of this approach; in outlining the problems with the 2023 Legacy Act, which was opposed by virtually all groups in Northern Ireland for its inadequate provision of justice for victims and their loved ones, the NIHRC highlighted specific rights within the European Convention on Human Rights (ECHR) that the Act violated (Northern Ireland Troubles (Legacy and Reconciliation) Act, 2023). The articulation of these violations created opportunities for legal challenges. The recent ruling of the Belfast High Court that the Act breaches ECHR articles and the promise of the new Labour government to repeal and replace

the Legacy Act illustrate the power of this rhetoric. Article 2 of the ECHR, which the Act violated, guarantees the universal right to life; demonstrating that not all citizens had their right to life guaranteed under the Legacy Act provisions served as an effective counter to an approach that did not serve victims or their loved ones.

The example above of the Legacy Act challenges demonstrates that the mainstream approach to commission design has clear benefits. Inclusion based on the idea of equal rights under the law also has its limitations, however. McEvoy (2008) has described these drawbacks in the context of the valorisation of legalism within transitional justice. McEvoy (2008) argues that the ‘messiness’ of human realities are translated through rights discourses into ‘the legalese of international standards, legal certainties and political objectivity’ (22). This emphasis on objectivity and standards that persist independent of context, in turn, reduces the potential of human rights institutions to prevent future violence (McEvoy, 2008: 22–23). Appeals to human rights standards, moreover, are often used to prioritise a retributive focus within transitional justice programmes (at the expense of potential alternatives; McEvoy, 2008: 24–25). Although rights rhetoric can be useful, scholars have shown that, ‘in contrast to the notion that human rights are universal and invariant’, they can be used for both emancipatory and repressive purposes (Corredor, 2021: 62). Other research has found that when human rights discourse is limited to presenting codes of conduct, it has limited transformative potential (Schlenker and Iturralde, 2006: 50). Even where human rights discourse encourages diversity and difference, the acceptable range of diversity is limited to forms compatible with the liberal paradigm (Mutua, 2002: 3–4). Although human rights are framed as apolitical and beyond contestation, this framing obscures the political nature of deciding which rights are prioritised and when; the decision to ban burqas in some western contexts, for example, has been justified as an important step in cultivating an ‘inclusive’ society (even as it actively excludes non-liberal norms (Mégret, 2012)). Although appealing to human rights discourses can create clear avenues for action, then, these discourses can also uncritically uphold patterns of domination found in supposedly ‘neutral’ or ‘apolitical’ rights. This trend is not always inherent in rights discourses, but it is clear in, for example, the NIHRC’s replication of calls for adherence to ‘European identity’ and minimisation of contestation and dissent.

The alternative to this traditional approach to commission design also has its own implications for fostering inclusion. One of the primary benefits behind an agonistic approach to commission design is its potential for deeper inclusivity in comparison to traditional approaches. While still allowing for the expression of PUL and CNR identities, the FICT Commission also problematised their privileging over other (and/or intersecting) facets of identity. The Commission’s final report, for example, notes that focusing solely on the PUL/CNR distinction ‘exaggerates the sense that our society is composed of two distinct and homogenous blocks of people and ignores the complexity and diversity of identities, beliefs and attitudes’ (FICT Commission, 2021: 13). To address this issue, the Commission argues that citizens are entitled to ‘discover and forge their own sense of identity [and] to self-identify their own cultural identity and the right to change their choice’ (19). Finally, the Commission ‘believes that everyone has the right to determine their own cultural identity and have it recognised [ . . . ] Respect for, and resourcing of different cultural identities should be our ambition’ (26). This emphasis on multiplicity stands in sharp contrast to the strong importance given to finding commonality in a more traditional commission.

This focus on multiplicity, moreover, highlights the deeper level of inclusion fostered by agonistic commissions; rather than stopping with the presence of conflict parties, an institution like the FICT Commission demands a more varied and representative arena for expressing identities. This approach takes human rights standards as a starting point, but uses consultations with a broad range of actors to highlight the ways in which these standards should be renegotiated to take into account a greater range of experiences. In discussing public space, for example, the

Commission recognises that ‘in practice, legal and operational restrictions mean that not all of these [public] spaces are open to everyone all the time’ (FICT Commission, 2021: 78); the Commission then recommends that government initiatives be restructured to ensure that public events and artistic endeavours ‘reflect the diversity of identities that make up the population our society’ (FICT Commission, 2021: 86). This emphasis on encouraging multiple narratives, present throughout the Commission’s operation as well as in the recommendations in the final report, has the potential to encourage wider inclusivity by interrogating rather than uncritically upholding existing standards.

In addition to creating dedicated space for expressing collective identities, an agonistic approach offers additional advances in conceptualising inclusion. An agonistic institutionalisation of dissent, for example, provides a non-violent outlet for expressing vehement disagreement with other groups. As discussed earlier, one of the FICT Commission joint chairs remarked on the Commission’s role as an institution that provided ‘consistent arguing’ and ‘create[d] debate’ (Dominic Bryan, personal interview with the author, 2020). In an agonistic understanding, this space for voicing dissent is crucial to avoiding an antagonistic environment in which one group views the other as an entity to be destroyed (Van Bouwel, 2009: 125). As the example of the NIHRC shows, the alternative to the fostering of dissent is exclusion of narratives that undermine the supposed universality of human rights norms. The appeals to reconciliation as the opposite of contestation ultimately leads to the marginalisation of issues and actors that will never conform to consensual agreement. Young (1996: 126, quoted in Van Bouwel, 2009: 123) describes this phenomenon:

When discussion participants aim at unity, the appeal to a common good in which they are all supposed to leave behind their particular experience and interests, the perspectives of the privileged are likely to dominate the definition of that common good.

Although the mainstream model does allow for progress on areas with some degree of agreement, it does not provide a solution for including contentious groups and issues in institutional proceedings.

An agonistic alternative, as the FICT Commission illustrates, does offer this solution. Mouffe argues that institutionalising dissent can prevent the growth of far-right extremism: without this institutionalised dissent, ‘citizens that do not have the possibility of choosing among real alternatives within a democratic system [. . .] turn to right-wing populists in their dissatisfaction’ (Van Bouwel, 2009: 124). In the post-conflict environment, moreover, the stakes are potentially even higher. Post-conflict states, with their (often recent) history of violent conflict, are at risk of returning to violence if conflicts cannot be regulated within institutional structures. With their emphasis on providing outlets for expressing dissent, agonistic approaches have been described as forms of ‘conflict regulation’ (see Westphal, 2019). This description fits the role of the FICT Commission, which created an arena for contestation with its internal members, but also with the public itself. This model allows issues and actors excluded through consensus-focused institutions to come to the fore.

The vision of inclusion adopted by agonistic approaches is linked to their transformative potential. As discussed above, one distinguishing feature of an agonistic approach is its embrace of varied perspectives on contested issues. Although this inclusion is valuable for the sake of inclusivity itself, it also has critical repercussions for the possibility of fostering transformation within post-conflict societies. By allowing deep debate on contested issues, commissions adopting an agonistic approach can engage more holistically with the root causes of conflict. In contrast to more traditional approaches, which tend to uphold existing norms that reinforce rather than

challenge power dynamics, agonistic approaches are more suited to disruption, deconstruction and 'radical break[s]' (Schaap, 2006: 272). The FICT Commission's problematising of the separation of Northern Ireland society into a binary division between the PUL and CRU communities, for example, highlights the potential of agonistic commissions to consider overlooked factors contributing to conflict. Removing the expectation of reaching consensus also allows for exploratory, tentative changes to identity and forms of engagement without the pressure of achieving predefined objectives.

As is the case with the NIHRC and traditional approaches to commission design, however, the strengths of the FICT Commission's agonistic approach are accompanied by drawbacks. The focus on prolonged, perpetual contestation has the potential to give the impression of agonistic commissions as slow-moving, inefficient and lacking in tangible progress. In the case of the FICT Commission, these criticisms have already emerged; media coverage of the FICT Commission described its potential to become an 'expensive misadventure' (McCambridge, 2022). Although aspects of these critiques are at least partially contextual, the response to the Commission is indicative of potential drawbacks to agonistic approaches. If the desired outcome of an independent commission is to reach clear decisions on specific issues, an agonistic approach will inevitably disappoint; these commissions are poorly suited to provide definitive points of action to be implemented without further discussion. This lack of tangible points of action can make quantifying the work of agonistic commissions more difficult, as does the focus of agonistic commissions on *processes* rather than outcomes. Critics of the FICT Commission have highlighted the Commission's failure to provide a definitive 'action plan' going forward (McCormack, 2021).

Although these critiques illustrate demonstrable patterns of agonistic commission behaviour, they also highlight aspects of the peacebuilding and transitional justice sphere that advocates of agonistic peace deliberately attempt to problematise. Members of commissions designed with a more agonistic approach would likely agree that their institutions can be slow and do not reach definitive conclusions on divisive issues; in discussing the FICT Commission, for example, joint chair Dominic Bryan described the Commission's final report as 'the start of a process, not the end of one', noting that 'these issues will not go away but will return again and again' (Bryan and Hennessey, 2022). This framing demonstrates recognition that cultural issues and identities cannot be 'solved', but must instead be constantly renegotiated. Development of this process and further renegotiation have been hindered by a complete lack of progress on implementing the recommendations of the Commission, however, meaning that the potential of the Commission to effect change through its legacy has been minimal. Ultimately, an agonistic commission is specifically created to move away from a view of transitional justice and inclusion as box-ticking exercises. Whereas a commission like the NIHRC is designed to create avenues for action in line with existing norms, an agonistic commission is instead created to allow for iterated processes of contestation and inclusion of a wider range of narratives and perspectives. These agonistic processual expectations come without corresponding expectations of what the outcomes will look like: identity change need not, for example, result in a more unified society, meaning that inclusivity based on a true embrace of difference can continue *ad infinitum*. The 'flaws' pointed out by critics of agonistic design, then, may not be points of contention between agonists and architects of traditional commission design; the true disagreement, rather, centres on what the underlying goals of transitional justice strategies should be and how inclusion should be approached. From a traditional perspective, these goals include moving beyond differences to foster greater unity and social cohesion, focusing largely on areas where agreement already exists. Agonistic commissions certainly perform poorly when evaluated based on these metrics. If we instead view transitional justice as an opportunity to change the *processes* through which we approach peacebuilding, however, the supposed 'lack of progress' made by agonistic commissions becomes less concerning. In



addition to showcasing an alternative approach to commission design, then, agonistic commissions illustrate the importance of deeper inclusion to foster transformative peace.

## **Conclusion**

Ultimately, the two models for independent commission design presented reflect not only differences in institutional design, but completely distinct visions for inclusion in peace processes. Although each has its own strengths and drawbacks, the example of Northern Ireland suggests that the two approaches can, and likely should, work in tandem. A traditional approach centres on the idea that transitional justice should mobilise members of a post-conflict society around points of agreement. Although this agreement may be difficult to reach, it does offer the possibility for greater perceived progress on certain issues. Employing a traditional model is useful for achieving development on norms that are already entrenched; in the case of the Legacy Act, for example, drawing on human rights standards helped create a platform around which groups and individuals could take action. The emphasis on cohesion does, however, have the potential to contribute to exclusion and marginalisation in its downplaying of dissenting voices, which can ultimately increase the risk of a return to violent conflict. In contrast, agonistic commissions offer the possibility for deeper inclusivity, transformation and conflict regulation by creating arenas for voicing dissent. This agonistic vision for commission design is predicated on the need for a radical break with the past rather than a return to normalcy. This vision illustrates the utility of employing agonistic models where there is a recognition of the inadequacy of existing norms in either capturing lived experience or addressing problems effectively. Although agonistic commissions are less likely to be able to produce final decisions on specific issues, proponents of an agonistic approach would argue that this singular focus on outcomes rather than processes limits the inclusive and transformative potential of transitional justice strategies. Combining these two very different approaches in a single context may seem impossible, but the example of Northern Ireland demonstrates how agonistic and traditional commissions can work alongside one another. The NIHRRC plays a critical role in achieving compliance with international norms in Northern Ireland (and worked with the FICT Commission itself to ensure the Commission was informed by these standards), while the FICT Commission offered spaces for engaging a wide range of actors in contestation on highly divisive issues. As agonistic approaches to commission design are still novel, further research is needed to examine agonistic commissions comparatively. The Northern Ireland case, however, shows the possibility of fostering deeper inclusion through agonistic approaches.

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## Note

1. Although many theorists have conceptualised agonism, I draw specifically on Chantal Mouffe's conceptualisation throughout this article.

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