

Rights Empower and Bind Citizens

Submission to Northern Ireland Assembly Ad Hoc Committee on a Bill of Rights

The origins of a Bill of Rights are many – the French National Assembly 1789 issued the *Declaration of the Rights of Man and the Citizen* with delegates citing The Magna Carta and other constitutional documents such as the United States' *Declaration of Independence*, but ultimately rejected appeals to these ancient charters of liberties and instead based the declaration on the principle that the rights of man were natural, universal and inalienable. A Bill of Rights has always therefore been considered a constitutional document.

The declaration did echo the Magna Carta in certain key aspects, such as subordinating the monarchy to the rule of law. Jefferson's influence is clearly discernible in Clause 1, 'Men are Born Free and Remain Free and Equal in Rights'.

The Universal Declaration of Human Rights after the Second World War led to the European Convention of Human Rights and the European Court of Human Rights, which were largely incorporated in the UK Human Rights Act 1998 and the contemplation of a Bill of Rights for Northern Ireland in the GFA.

The ad hoc committee on a Northern Ireland Bill of Rights was created to deliberate on the creation of a Bill of Rights that is faithful to the stated intention of the 1998 Agreement in that it contains rights supplementary to those contained in the European Convention on Human Rights (which are currently applicable) and that reflect the particular circumstances of Northern Ireland - as well as reflecting the principles of mutual respect for the identity and ethos of both communities and parity of esteem.

On December 3rd 2020, the committee heard from Mr Justice Richard Humphreys. The minutes record that he proposed that any Bill of Rights could be part of a broader constitution for Northern Ireland (via a Northern Ireland Constitution Act enacted at Westminster) that could help provide stability.

Part of Mr Humphreys' briefing, it appears, suggested a Law Commission in Northern Ireland that might provide a space to allow cross-community legal dialogue.

In Professor Brice Dickson's submission to the committee, *Getting a Yes to a Bill of Rights for Northern Ireland*, he observed that he had previously believed that a comprehensive Bill of Rights "enacted by the UK Parliament, as required by the Belfast (Good Friday) Agreement, it would, I hoped, become a central pillar of the governance arrangements here, ensuring that, whatever political difficulties might lie ahead, the people of Northern Ireland would still be able to fall back on a wide range of rights, if necessary by going to court to vindicate them. "

Professor Dickson went on in his written submission to say that in the absence of a comprehensive Bill of Rights being agreed "the enactment of even a short Bill of Rights would also send a signal to the world that the peace and reconciliation process in Northern Ireland is still moving forward."

Professor Dickson also went on to say that some unionists "may have been disturbed by the provision in the Belfast (Good Friday) Agreement which says that whatever rights are protected by a Bill of Rights in Northern Ireland must also be protected to a similar extent by equivalent laws in the Republic of Ireland."

It is my contention that nobody should be frightened by rights that apply equally to us all.

Professor Dickson also went on to say that he now believes less is more. "I now believe we need a Bill of Rights that addresses directly the issues that were referred to in the section of the Belfast (Good Friday) Agreement dealing with a Bill of Rights and two or three other issues that were mentioned elsewhere in that Agreement. I think that a new law – let's call it the Human Rights (Northern Ireland) Bill – should be enacted by the UK Parliament to deal with those issues and its final clause should read: 'This Act, taken together with the Human Rights Act 1998, can be referred to as 'the Bill of Rights for Northern Ireland'.' In so far as the supplementary rights are to be enforced through different mechanisms than those enshrined in the Human Rights Act, those differences should be made clear."

As highlighted, even with a Bill of Rights limited in scope it will be a challenge to frame legislation that will achieve its goals thus Justice Richard Humphreys mention of a Law Commission in Northern Ireland may be the way forward

Rights and Justice are interlinked - a Criminal Justice Review was established on 27 June 1998 by the NIO, in response to provisions contained in the Belfast Agreement. It published a substantial report in March 2000, when the Assembly and Executive were in suspension. The NIO published for consultation on 12 November 2001, its response to the Criminal Justice Review's report. The response was in the form of an Implementation Plan which also recommended in section 6.6 ,establish a Law Commission for Northern Ireland.

Jennifer Todd, Fellow at the Geary Institute for Public Policy, UCD, recently published the paper *Unionism, Identity and Irish Unity: Paradigms, Problems and Paradoxes*. She argues "the ideal is to build a political order that enables a moving cultural mosaic, where each evolving group benefits from interaction with others."

This need can be supported by a framework of individual rights for each citizen. The dynamics of identity that have changed post-Brexit require new foundations of rights, which empower and protect individual citizens and their cultures and identity.

Jennifer Todd wrote: "Thinking about unionism is helpful because nationalist assumptions, especially in the south, are challenged more effectively by the task of devising a united Ireland that Unionists and Protestants would find minimally acceptable, than they are by questioning their own attitudes to the United Kingdom."

In line with this thinking, I contend that the Republic, if it is to progress what Humphreys calls "accommodation now" should if serious about the unity of the people of the island progress the widely called for Bill of Rights for the Republic of Ireland.

The same rights are deserved by a Unionist to march in Rosstown as for a Nationalist to march in Belfast. the same interpretation and debate of how the FCNM applies in NI and RoI, these issues as well as the many others determine in the context of Brexit that the RoI should be recognised as an interested party in any law commission of NI and should make a submission to it accordingly.

(The Framework Convention for the Protection of National Minorities (FCNM) is a multilateral treaty that came into existence in 1998 and had been ratified by 39 countries by 2009.)

The political capital of unionists that is described by Jennifer Todd as "unionists accumulated cultural capital – the political culture, the habits and know-how that give citizens ease of access and mutual recognition within public institutions" is, I suggest, best protected by a clear Northern Ireland Bill of Citizens' Rights.

Jennifer Todd outlines concepts for consideration for amendments to the Republic's constitution. These concepts should be examined to determine does any Civil Rights Bill for Northern Ireland provide for these proposed protections, or give additional protections for citizens' rights and how these relate to culture and identity.

As Brice Dickson noted, The Framework Convention for the Protection of National Minorities (it was also mentioned by Dermot Nesbitt in his submission) is worthy of consideration. Its provisions require states not only to recognise certain rights, but also impose on states a number of duties which do not necessarily confer correlative rights, Dickson then outlined these in a detailed and well thoughtfully considered manner.

He further outlines the possibility of Northern Ireland being a leader in this field and indicates novel clauses from the FCNM could be included in a Northern Ireland Bill of Rights, I contend that they should also then be considered in any RoI Bill of Rights.

In conclusion, I believe Brice Dickson should be thanked by all the people of NI and the RoI for his many efforts to establish rights for all over many years and for his detailed submission to the committee. He deserves sincere thanks, as do all the other contributors.

I have made this submission as the research co-ordinator of Paul Gosling's *A New Ireland, A New Union, A New Society*. Chapter 14 is dedicated to the need for a Bill of Rights and called for its urgent creation.

I come from a background of growing-up on the Donegal border, before spending most of my life living on the Derry side of the border. The community on both sides of this border share similar values, with different aspects of the community and cultures represented on both sides. As a citizen with business interests and personal connections on both sides of the border, I thus contend that the rights demanded or argued for on one side are the same as should apply to the other. I thus conclude.

Recommendations

That a Law Commission for NI be established, as mentioned by Mr Justice Humphreys and recommended by the NI Criminal Justice Review.

That Brice Dickson's "less is more format" for the Northern Ireland Bill of Rights should be its starting point of reference.

That the RoI government should be invited as a neighbouring jurisdiction to make a submission.

That a Citizens Assembly or Law Commission should be established in parallel in the RoI to consider a Republic of Ireland Bill of Rights.

That The Framework Convention for the Protection of National Minorities (FCNM) or elements of it should be considered for inclusion in the Bills of Rights NI and The Bill of Rights RoI.

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25 January 2021

Rights Empower and Bind Citizens

Dear

Please accept my submission to the Ad Hoc Committee on Bill of Rights for Northern Ireland and give it due consideration.

I have prepared this submission having spent a considerable amount of effort to understand how Rights can give power to citizens and how citizens can best be empowered as citizens through a Bill of Rights for Northern Ireland and its implimentation

I would prefer if possible my address not to be made available to the general public as part of this submission

I you wish any clarification please email me on [REDACTED]

Yours

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