

BILL OF RIGHTS PROPOSAL

Note from Jeff Dudgeon (UUP Panel delegate) to Richard Haass panel chairman

Dear Richard,

You mentioned a Bill of Rights and the Northern Ireland Human Rights Commission (the Commission or NIHRC) at our two Panel meetings to date.

I pointed out initially that the Commission had never been a friend to Unionists. Indeed in its first manifestation, despite being required to be representative of opinion in Northern Ireland there wasn't a single politically engaged Unionist appointed, although Protestants of a non-unionist disposition were.

(This is a problem we have also faced with the Parades Commission. The NIO by using supposed 'competences' and a peculiar form of transparency ensures Unionists don't make the cut.)

You also perceptively stated at our second panel plenary that you had heard a number of calls for a Bill but didn't understand "if you had a Bill of Rights what would be different as a result".

I therefore thought it useful for you to be aware of the background to the calls for a Bill. I suspect you may not want to read any more history, but it is a good example of the danger of *bien pensant* thinking. It is also instructive in relation to current matters before us.

Firstly from the list of people and groups you have seen, I realise you will have been told many times that a Bill was promised in the 1998 Belfast Agreement.

It wasn't so promised.

The Commission (NIHRC) was simply tasked in the Agreement with a remit "*to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland.*" [my emphasis]

NIHRC's first Commission wrote several extensive reports when trying to work-up the required advice but they did not meet with political or cross-community acceptance. The NIO then set up a Bill of Rights Forum (2006-8) composed of the five parties and a swathe of representatives from the 'community and voluntary' sector, under an Australian chairman. I was part of the UUP team.

The very specific remit about the principles of mutual respect and parity of esteem (as above) were disregarded in the Forum in favour of a drive to create the most extensive Bill possible, replete with new socio-economic and justiciable rights.

After two years discussion, no document was agreed, nor even the interpretation of the Belfast Agreement's remit. The Forum duly passed the matter on to the Commission with a report containing a myriad of proposals, the vast majority disputed by the UUP, DUP and indeed the Alliance party.

The Commission in its second formation then followed suit in 2010 with a similar proposal of ‘an all-singing all-dancing Bill’. There were two dissenters, one being Lady Daphne Trimble of the UUP and the other Jonathon Bell of the DUP, but their opinions were not even allowed to be published. The vast majority of the NIHRC’s recommendations were rejected by the then Labour Secretary of State, Shaun Woodward who said it had gone beyond its brief in the advice provided to him.

His Conservative successor, Owen Paterson MP, consulted on the NIHRC report. Eventually he said, that the previous government’s view revealed deep divisions and a lack of consensus on a way forward adding that “it would be difficult for the government to make further progress on the issue without such consensus...A legislative consent motion must be passed by the Assembly in circumstances where the government intends to bring forward any legislation at Westminster like a bill of rights – which will have a significant impact on devolved policy. Many members of the Assembly clearly have reservations about a bill of rights and it appears unlikely that any motion could be successfully passed. Building consensus is therefore crucial and I will ask supporters of a bill of rights to focus their energies on engaging with those members who are sceptical.”

Such division was revealed in a debate in the Northern Ireland Assembly with members voting by 46 votes to 42 against a motion calling for a ‘robust, enforceable bill of rights’. Stephen Farry MLA, later an Alliance Party Minister, speaking earlier in the Assembly, had usefully explained on behalf of his party, “We are concerned about the focus on collective rights at the expense of individual rights, and we see the potential for further sectarian divisions to be institutionalised in this society. We also have some concerns about how far socio-economic rights will go. We support them in principle, but we support rights based on equality of access and equality of treatment, and we are wary of measures that go towards equality of outcome and actually interfere with the rights of the Assembly.”

The human rights community or their political supporters made no effort at all to build the consensus that Paterson advised.

Indeed I think it critical that the Commission and the Forum totally failed in their duty to address the particular circumstances of Northern Ireland. They did minimal research, and entertained even less discussion, on the very matter they were obliged to examine and advise on – “Additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem.”

Had they fulfilled their legal obligation, we might have been able to have moved forward on those very areas of parades, flags and the past which the Agreement left unaddressed, and that have required your presence amongst us. A word in that direction would certainly be welcome.

The answer to your pertinent question at the panel plenary as to what difference there would be if we had a Bill of Rights is, of course, not much in relation to the national or ethnic conflict here. More work for lawyers, yes, and effectively a new layer of (rival) government and bureaucracy. All for a population of 1.8 million.

This politics-through-human-rights approach is understandable given our politics are almost entirely about the ethnic conflict. Progressives here have no political outlet like the Labour Party and thus end up trying to work through law, and human rights law, in particular and well financed by Atlantic Philanthropies. A Bill would give considerable power to that group but set them at odds with elected Unionists, and eventually Nationalists.

The lack of the Labour Party (and indeed the Conservatives in a full form) stems from the bi-partisan decision at Westminster in 1921 to keep Northern Ireland out of British politics, putting it into a sort of ante-chamber, whose only function was to address the unresolvable (if shallow) ethnic difference in the province. Hence the periodic outbreaks of armed conflict.

The Bill of Rights debate is rarely explained in a UK context where the tide is actually going out on extending human rights legislation. Indeed the current political question is whether we should withdraw from the Convention entirely. This is occurring particularly over the issue of being prevented from deporting Islamist terrorists and having to give votes to prisoners.

Neither has the debate often been placed in the context of what was going on in 1998. Prior to that year, the UK did not have a Bill of Rights directly enforceable in the domestic courts. The matter was a point in discussion leading up to the Belfast Agreement which actually coincided with the UK-wide Human Rights Act (HRA) that incorporated the ECHR into domestic law. Unionists accepted the HRA as achieving the human rights commitments of the Belfast Agreement – but other parties and most local rights activists wish to go much further.

That is why there is continuing debate about a separate Bill for Northern Ireland (although no insistent public clamour for that, despite activists' claims). But the Unionist position is that the HRA, while it exists, duly fulfills all necessary human rights requirements. The desire of the activists is to circumvent the Assembly and Executive and use the courts to achieve 'reforms' from their agenda – knowing they cannot achieve wide party political support otherwise.

In essence, the call for a Bill of Rights although heavily supported by the SDLP and Sinn Fein is about a different politics, and could add little or nothing to the resolution of current issues. As you know, on judicial and police matters, even without a local Bill of Rights, there is an army of cases relating to the Past going before the courts and other investigative organs like the Police Ombudsman. He has some 170 pre-2000 RUC cases alone on the go.

On another topic, I was interested to hear your view of President Woodrow Wilson at our last plenary, particularly because I heard much the same opinion the weekend before at a lecture given by journalist academic Robert Schmuhl of Notre Dame at a conference on Roger Casement. This was in Tralee where I also gave a paper. I wonder is this a new or reopened aspect of the discussion around the 1st World War?

Best regards and until next week,

Jeff Dudgeon

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