**NEW YORK IRISH CENTRE**

**OUTING THE PAST**

**A CELEBRATION OF IRISH LGBT HISTORY**

***DUDGEON vs UK***

***STRASBOURG 1975-1981***

**TALK BY JEFFREY DUDGEON**

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Thank you for the kind invitation to speak during the ‘Outing the Past’ celebration and for the work put in by Tarlach and others in getting me here and putting me up, and to the New York Irish Centre and the Irish Consulate for their facilities and funding. They have been very generous.

I was asked to speak about my landmark case at the European Court of Human Rights at Strasbourg, which I will.

Firstly, I hope - behind me - a backdrop of related photographs is being displayed, illustrating my life and times and involvement in gay politics. Somewhat chronological, I will not be tying my remarks precisely to the images, or describing them. Perhaps they will at least entertain those more visually inclined.

The older you get, the more history you consume and your back view gets longer and longer. My gay sensibility dates back to 1960 which amazingly is nearly sixty years ago.

History starts just before you become a teenager, so for someone 18 today it starts about 2014! For me it was 1959 which predates the limited 1967 law reform in England, and, two years later, Stonewall.

It is worth remembering that in law books and in parliamentary debates, homosexual behaviour used to be referred to by the Latin formula “peccatum illud horribile” – ‘that horrible crime’ “inter Christianos non nominandum” ‘not to be named among Christians’. Men in early Victorian times when convicted of sodomy were hanged in public, something enthusiastically applauded by crowds.

I was born in Belfast in 1946 into a middle class, Protestant family, I was easy, early, about being a homosexual but utterly petrified about revealing it.

The anger which made me a rebel, radical and reformer came from that memory of being unable to find a gay family, and of being sexually oppressed, which was pretty powerful for a teenager.

My generation acted on our anger usefully but we were building on foundations made in earlier times urbanisation, the churn of the 2nd World War particularly in the US, through criminal trials like that of Lord Montagu of Beaulieu, and the publishing of homosexually-involved literature.

As a teenager, reading James Baldwin ‘Giovanni’s Room’ and John Rechy’s ‘City of Night’ with its huge cast of American characters, I was trained, eager and willing but had nowhere to go. Social fears stymied me, as it had previous generations.

I broke out when I was nineteen to a tiny gay scene in Belfast but it was the comradeship forged in organisations half a dozen years later that provided me with my people and my home.

From being a student in Dublin at Trinity College, came larger and broader horizons, even bumping into Rock Hudson one evening in Bartley Dunne’s ‘Bohemian’ pub.

The Ireland of Wilde and Casement was closer to the surface than most realised (and Casement and his diaries were to take over my spare time and more, for some twenty years, but only from 1998).

From 1974 in the Belfast Gay Liberation Society, based at Queen’s University, emerged the Northern Ireland Gay Rights Association (whose name evoked NICRA’s) and Cara-Friend, and many attempts at law reform, through Stormont and Westminster, then via a court challenge in Europe.

I won what was an historic case at the European Court of Human Rights at Strasbourg. It forced the decriminalisation of homosexuality in Northern Ireland. My case was the first, positive gay result at the Strasbourg Court. It was a precedent, and the necessary, initial step for others to come, including Ireland and Cyprus and the former Soviet states.

And not just in Europe but in the US, in Lawrence vs Texas 2003, where it was quoted in the Supreme Court.

Justice Anthony Kennedy wrote the majority opinion which said the Court held that homosexuals had a protected liberty interest to engage in private, sexual activity; that homosexuals' moral and sexual choices were entitled to constitutional protection; and that moral disapproval did not provide a legitimate justification for the Texan law criminalising sodomy.

He added: "The petitioners, Lawrence and Garner, are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime." Kennedy reversed an earlier assumption, in the words of Chief Justice Burger's that "Condemnation of [homosexual practices] is firmly rooted in Judeo-Christian moral and ethical standards." He reviewed the history of legislation that criminalized certain sexual practices citing the Model Penal Code's recommendations since 1955, the Wolfenden Report of 1957, and the 1981 decision of the European Court of Human Rights in Case 7525/76 Dudgeon v United Kingdom.

Until my case, gay men were subject to a penalty of up to life imprisonment in Northern Ireland for acts that were legal in the rest of the UK. Two Irishmen, one famous, Oscar Wilde, and another infamous, Edward de Cobain, the MP for East Belfast where I was born, were early, prominent victims of the new 1885 gross indecency law. That law was still in force in Belfast a hundred years later.

In 1967, after a campaign led by Leo Abse MP and initiated in the House of Commons in the 1950s, particularly by the Ulster Unionist MP for North Belfast, Harford Montgomery Hyde, the law was reformed, in a limited way. Hyde is a hero of mine and I have written a booklet on him available on Amazon.

Northern Ireland in the 1970s was just waking up to a culture of human rights. Kevin Boyle who became my first barrister, had been involved in the Ireland v. UK case, decided in 1978. It ascribed, not torture, but inhuman and degrading treatment to certain British military actions in Northern Ireland. Also until the mid-1960s, UK individuals could not file cases at Strasbourg, only states. Just a handful were therefore taken before me.

I and 25 others had been arrested in 1976 in an attempt to destroy the first campaigning LGBT organisations in Northern Ireland - Cara-Friend and NIGRA. Every committee member of our two fledgling groups, women excepted (and it was nothing to do with Queen Victoria that women were excepted from the law) was taken in by a zealous police force intent on stamping out what they rightly saw as a conspiracy. The local Director of Public Prosecutions finally ordered that I and five others were to be charged with adult consensual relationships.

A Freedom of Information request I made much later to the Northern Ireland Office revealed that it was only by a sliver of luck that I was not brought to court, along with my Canadian boyfriend from Prince Edward Island. Our letters were to be used as evidence. A note on my file said: “The DPP (NI) decides to prosecute, but the relevant papers were retrieved from the out-tray at the last moment.”

The Attorney General in London, unusually, had vetoed a Northern Ireland prosecution. These raids, none the less, gave our Strasbourg case invaluable traction.

My landmark judgment opened up the concept of gay rights as human rights. Until then we were a community at the edge of the law. In many European countries, barely tolerated; outlaws in others. Now we were no longer criminals, but humans with rights. A good start, having been unmentionable.

In the UK, we went from criminalisation to legal equality, in a remarkably short span of time. The accusers are now becoming the accused in a rapid turn round of public sentiment.

Returning to my case, I won on Article 8 of the Convention, “Everyone has the right to respect for his private and family life, his home and his correspondence.” But we knew we were going to win on that Article, the penalty of life in prison was just so extreme. Being a radical, I pushed to open up the Article 14 discrimination aspect which obliged, unfortunately, a change of lawyers and the briefing of Lord Gifford as lead barrister; and gay advocates Terry Munyard and Paul Crane, assisted by Peter Ashman, then of Justice.

The Court hearing which I attended, silently, in April 1981 was unusually held before a full panel of 19 judges. In October, judgement was given. The Court held by 15 votes to 4 that the UK was in breach of Article 8. They stated the “restriction imposed on Mr. Dudgeon under Northern Ireland law, by reason of its breadth and absolute character, is, quite apart from the severity of the possible penalties provided for, disproportionate to the aims sought to be achieved.”

The judgements carry several minority opinions on either side of that ‘mittel-Europ’ consensus, one which is secular and progressive, but not radical. They remain interesting. The dissenting Irish opinion by Judge Brian Walsh reads well as a defence of traditional values. He was earlier a Supreme Court judge in Dublin, finding against David Norris and repeating his decision in David’s later Strasbourg case. Indeed in 1988 he scraped home by only eight votes to six, the minority suggesting he was not a victim, as he had not been prosecuted.

But by 14 votes to 5, they decided in my case that it was not necessary to examine it under Article 14, stating there was no useful legal purpose in determining whether I had, in addition, suffered discrimination for reasons of gender and residence as I had already won my case on grounds of the violation of my private life.

We fought hard but lost. So it was a step too far for 1981. Understandable perhaps, but I was right to be radical and try to break new ground. Others, to come, were to achieve in that department. We took the case and won it because we were angry. Coming from an angry part of the world helped.

But victory came at a price. The UK objected to every item of my costs and managed to get Strasbourg to reduce them by a third, on a technicality - to £3,000 for a seven year case. Hardly a large amount, but they were determined to take me down a peg. Damages for my arrest and the breach were not awarded.

My case was just the fifteenth in Europe where a violation was found, only the thirty-fifth judged by the Court, and the fifth of any sort won against the UK. There have been some fifty successful gay-related judgments since, most against the UK, on the age of consent and gays in the military for example, not to mention David Norris’s follow-on case in Ireland. These victories include adoption, residency and gender reassignment.

To date there have been more than ten thousand cases judged at Strasbourg. Thousands more have been lodged, particularly from the former communist countries and Turkey. Many, many remain unheard in a six figure backlog.

The UK had cynically maintained that horrendous law up to 1981 knowing it would be overturned at the European Court. And it still avoid reforms like equal marriage, relying on the local courts or ultimately the Strasbourg court to do the needful.

I salute comrades and friends from those days who worked in NIGRA to advance our rights –and the fund raisers who included Gay News and the ‘Glad to be Gay’ singer Tom Robinson.

I was feted at an annual Gay Pride dinner in Belfast’s Europa Hotel - the most bombed hotel in the world for my ‘Outstanding contribution to the LGBT community in Northern Ireland’. It was actually the city’s gay bar in the 1970s as no other customers dared go out at night. Later the UK itself gave me an MBE for services to the gay community, presented by Princess Anne.

So I am a prophet with honour in my own country and amongst my peers, even if out of step at times with the views of some younger LGBT cadres. As is inevitable for an old radical.

We have advanced immeasurably, way beyond anything we imagined, although freedom brings its own set of problems.

It is interesting, if vexing, that my opponents have so prospered, being elevated as I discovered recently, to great things.

The leaders of the ‘Save Ulster from Sodomy’ campaign, DUP leaders Rev Ian Paisley and Peter Robinson, became successively First Ministers of Northern Ireland before retirement or overthrow.

But Ulster was not saved from sodomy. They lost, as I like to remind the DUP, until two years our governing party alongside Sinn Fein.

Then they effectively, through the existence of Stormont blocked and impeded all gay law reform and equality measures except one – the gay pardons legislation at Westminster which Arlene Foster and Martin McGuiness agreed in 2016 could include Northern Ireland.

She later told me it was the right thing to do but they would not sing about it. Ironically, although whipped, the reluctant DUP MLAs were not called on to vote, as Jim Allister of the Traditional Unionist Voice (TUV) could find no seconder to oppose the motion.

It has to be said for the DUP, the purpose of Stormont is not to go backwards but to stop reform in moral areas which is why I have never supported legislative devolution. But if you do accept that reality you must understand it enable parts of a unitary state to do things differently.

Ironically, Peter Robinson’s wife Iris, also an MP, was to be disgraced. She had on radio and in parliament called homosexuality a sickening abomination, stating, “just as a murderer can be redeemed by the blood of Christ, so can a homosexual,” and, adding, “there can be no viler act, apart from homosexuality and sodomy, than sexually abusing innocent children.”

Shortly afterwards, she was exposed as having had an affair with a teenage boy, forty years her junior. She resigned from parliament. Her husband later lost his Westminster seat and then his leadership.

However the DUP remain dominant if adjusting to modernity as their base broadens. They will not yield on equal marriage and abortion rights otherwise they could no longer distinguish themselves credibly from the Ulster Unionist Party, my political home.

What became of the two UK lawyers who argued at the European Court of Human Rights for the criminalisation of gay men in Northern Ireland?

Mr Nicolas Bratza, who resisted my case for the London government, became, as Sir Nicolas Bratza, the President of the European Court of Human Rights, while Brian Kerr who acted for the Northern Ireland Government became our Lord Chief Justice as Lord Kerr and is now on the UK Supreme Court. I know he is ashamed of his part but he was effectively a state prosecutor. Backing bigotry did them no damage.

The worst consequence of my fame was a terrible series of attacks on my house, culminating in a breezeblock coming through my living room window, hospitalising one occupant.

But otherwise I have prospered in a quiet way, even getting a job in the local Ministry of Health in the 1980s, dealing latterly with screening and public health issues like hospital infection. And I was promoted several times. During a career break, I wrote a long book on executed Irish patriot Roger Casement and the authenticity of his famous diaries. Its first edition was published in 2002. I also worked for an MP for three years and was able to get elected as a Belfast City councillor in 2014. I am due to appear before my voters again a couple of months on 2 May.

I have faith in the European Convention on Human Rights but human rights should not replace politics. One example is abortion law where Strasbourg has not ruled that for a woman to be allowed an abortion is a human right, despite peripheral aspects like the right travel from Ireland to the UK being accepted as rights. Maybe that will not hold in the change of mood sweeping Catholic but not orthodox countries. But equal marriage for Northern Ireland will probably come through a UK court judgment.

We can always go backwards in courts or start to fail to go forward. This happened recently with the Ashers cake case in Belfast when, as judged by the UK Supreme Court, human rights and freedom of expression trumped equality, despite overt discrimination. This overturned lower court decisions so we must always be prepared for that eventuality.

Thanks again for listening.

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