***DETAIL***

**The case for a bill of rights**

**By Colin Harvey**

There is an uncomfortable and troubling truth about our peace process. Amidst all the centenary reflections, and attempts to laud our undoubted achievements, core expectations remain unfulfilled. These might be helpfully grouped under the shared and better society label – but not in the ‘soft power’ way that is frequently understood. There is a hardened realism to the observation, anchored in anxiety about the practical consequences of not making progress. The stalled nature of much of this, and its continuing burial under a thin narrative of economic advance, is reaching alarming proportions. The tangible and damaging failure to couple sustainable economic progress with social justice should trouble us all.

What is being referred to? Read the Belfast/Good Friday Agreement again. What do you notice? All those references to equality and rights, with the necessary implications for social justice and sharing society on a secure basis. The problem is that to a disturbing extent it remains work in progress. The much hailed jigsaw is incomplete, the lost pieces remain lost, as the required selling job for Northern Ireland forges on regardless of embarrassing facts on the ground. As utterly understandable as it is (we all desperately want this place to succeed), the tone jars; is too self-satisfied, and people sense it and know it.

One example is our Bill of Rights process. The struggle for enhanced human rights protection is decades old, and gained formal recognition in the Agreement, and what followed. But the Agreement was modest. Let’s not forget that the European Convention on Human Rights was being delivered anyway by the Labour Government via the Human Rights Act 1998, and ‘Convention rights’ thus became an embedded dimension of devolution too (through the Northern Ireland Act 1998). The new institution – the Northern Ireland Human Rights Commission – replaced the limited Standing Advisory Commission on Human Rights (and for various reasons always risks falling back into that narrow mould). The Irish Government – in recognition of the concept of equivalence – undertook to mirror the guarantees. The substantive new beginning would arise from what was to follow: our Bill of Rights, among other things. As we approach 15 years from the Agreement one conclusion stands starkly there: despite evidence that all communities here are united on its importance, the fresh start was not delivered, the new beginning never commenced. How long can we pretend otherwise?

How did it come to this? The Agreement provided the mandate for the process, making plain that our document should be European Convention plus, draw on international and comparative experience and reflect our particular circumstances. The job of providing the advice fell to the Northern Ireland Human Rights Commission. After an extended process, involving much difficulty, disagreement and ultimately dissent, the Commission offered considered advice to government in 2008. As a Commissioner at the time, my view is necessarily a distorted one, but informed commentators internationally and locally felt the Commission produced an impressive document. The longstanding party political discord was once again evident, and remains an impediment (given the cross-community party political logic that underpins our politics). It stands in intriguing contrast to evidence that communities here are united: people want a Bill of Rights.

The Northern Ireland Office response in November 2009 was widely seen for what it was – a disrespectful and rushed rebuff to an exhaustive and participative process. The reactions to the NIO mainly confirmed what the Human Rights Commission had heard throughout: people in Northern Ireland across all communities wanted a Bill of Rights worth that grand title, even though – as demonstrated in Assembly debates and elsewhere – their political representatives might not. And here a problem rests. The Agreement shifts the focus post-advice to London, but in the context of devolution the British Government places cross-community political consensus at the heart of any next steps. With unionist scepticism about the Commission’s proposals still evident, stalemate persists.

In a recent update Hugh Swire MP, the NIO Minister of State, indicated that the First Minister and deputy First Minister – and all party leaders – were written to in September 2011, with a response awaited. The parties here may well feel the responsibility rests squarely with the NIO, or even with the new London-based process (discussed below). The recent comments of the Tánaiste, Eamon Gilmore, at the Alliance Party Annual Conference (linking the Bill of Rights debate to progress on a shared society), suggested that the Irish Government is once again taking an interest. The reaction these remarks received underlined where the current impasse still rests and the NIO can thus highlight the lack of party consensus as the root cause of the problem.

How should we read this? We are trapped in ‘pass the Bill of Rights parcel’ territory – with calls for the Secretary of State to map out a way forward met with the cross-party fault-lines here. This circular flow is, of course, awfully convenient, and guarantees inertia. How will forward movement now be achieved? Who cares enough to take a bold step? Even in these challenging times might both governments, as guarantors of ‘full implementation’, forge a new path for the next phase? What does the response to the Tánaiste’s comments tell us? Who is going to take responsibility and display public leadership in advancing our Bill of Rights?

As the Northern Ireland process was progressing, and following an intense debate in Britain about the Human Rights Act 1998, combined with vigorous attacks on the European Court of Human Rights, a new UK Bill of Rights Commission was established in March 2011. The result of a carefully crafted Conservative-Liberal Democrat agreement, this new Commission is charged with reporting before the end of this year on the creation of a UK Bill of Rights. The Commission has an Advisory Panel – to hear from the devolved regions – but as yet no Northern Ireland nominations have been received (the First Minister and deputy First Minister were invited to do so). Whether this odd politically engineered device will hold together (one member resigned in March) is a matter of speculation. How this Commission will satisfy any political side will be intriguing to watch, but it is probably best advised to stick to offering credible thoughts on what a decent, modern Bill of Rights looks like. Although the document produced in Belfast is not a bad reference point for them, our process has an integrity, complexity and clarity all its own. It is hard to believe that the UK Commission is the answer to our dilemma.

The solid progress made in Northern Ireland must be acknowledged. We have come far and there is much to welcome. But the celebratory rhetorical tone is just not merited. Too much remains undone, and there are growing signs of a disturbing complacency eroding the existing accountability mechanisms. Losing momentum on unfinished business is bad enough, going backwards is worse.

The new beginning to human rights never really arrived. It lines up in the queue of outstanding shared society commitments aimed at promoting a socially just Northern Ireland; the only sort of equal and shared society worth having. It looks bad now (people have noticed); how will it look in 100 years? The grand PR will only disguise this ‘inconvenient truth’ for so long.

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