**DO NATIONALISTS AND UNIONISTS HAVE DIFFERENT CONCEPTIONS OF WHAT ARE HUMAN RIGHTS?**

**Human Rights Consortium Festival**

**Queen’s University Belfast School of Law**

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**Councillor Jeffrey Dudgeon MBE with Declan Kearney MLA of Sinn Fein and Sophie Long of the Green Party/PUP. Introduction by Professor Brice Dickson former NIHRC Chief Commissioner**

Jeffrey Dudgeon: Human rights are a post-war concept, best exemplified by the European Convention on Human Rights (ECHR).

Predating that is a line of connection back to the 1689 Bill of Rights and, obliquely, a century later the 1789 US Bill of Rights.

Civil and religious liberty for all is their watchword, being a central tenet for all Unionists and Protestants not just for those in the Loyal Orders. And that belief is grounded in individual conscience.

The contemporary approach is best exemplified by the Preamble to the European Convention on Human Rights. Often ignored, it proclaims that “Fundamental rights and freedoms are best maintained by an effective political democracy and a common understanding and observance of human rights.”

Certainly maintaining an “effective political democracy” is the core component of our fundamental rights and freedoms. More human rights must not be allowed to replace or erode that.

This creates a significant point of distinction between Unionists and nationalists or separatists (and their radical allies). We cannot have politics done through human rights. That is elitism and the road back to autocracy.

The line will be fine – but significant social and economic rights are too far over the line, something I will come to later when I address the Northern Ireland Bill of Rights notion that is so close to the minds of many in this room.

Am I a human right activist? When so described, I know it sounds wrong because I am a Unionist. I may let myself be described as such to annoy some people, but I am much more than that. Anyway Unionists are perceived as against human rights. I recognise that to the extent I have even unconsciously absorbed the perception!

Our “effective political democracy” is currently Westminster and local councils – the latter which are still shorn of normal local government powers like education, culture and health even parking. In Belfast where I am a councillor, we got planning powers back in 2015 but so much more should have been returned. We were then denied the promised regeneration powers in a Stormont stitch-up. Local government and councils, I can tell you, work.

Pointlessly, Sinn Fein boycott Westminster, as they once did the Dail. With the elimination of the SDLP and the UUP from the House of Commons we have only the DUP there. No Irish nationalists. But that is not the DUP’s fault.

I was reminded of the power and force of Westminster by Seamus Mallon last Friday at Notting Hill – the DFA consulate in Belfast – when at a book launch he spoke fondly of his memories of 20 years of political action in the House of Commons. To my mind, Westminster is a living market place where MPs come to trade. The Stormont mausoleum has never been that, nor will it ever be.

There is a core background reason that marks Unionists and their attitudes out as distinct, something not respected by nationalists nor accepted by those Protestants of a progressive outlook who decry the strong conservatism in that community dominant since the 1880s. Unionism is about protecting the status quo and has been for a century. It is a movement with a single aim and purpose. It would be better if it did not do politics but since partition and the imposition of Stormont it was obliged by London to concentrate only on the very thing that divide us.

Without the broader involvement of the main British political parties, as was apparent and valuable in the 19th century in the north, we have been fated to live out a perpetual ethnic conflict.

Unionism has to be defensive. It can only lose once and is therefore understandably obdurate and intransigent. Not nice to look at, which is why I try to do it with a smile, and by giving respect to opponents. But we don’t have a single friend in the radical, leftist, international community, unlike Irish nationalism. That leads to having differing outlooks and responses. It is an experience increasingly shared by the United States, and obviously Israel, and will have increasing consequences.

It inevitably makes Unionism intrinsically conservative not progressive except in a small number of individual cases like Montgomery Hyde, MP for North Belfast from 1950 to 1959, and a rare advocate in the Commons in the 1950s for homosexual law reform and an end to capital punishment. My hero.

So-called liberal Protestants who are easily influenced by the cries of nationalism peel off in every generation and are lost or emigrate.

A huge factor in the apparent difference between Unionists and Republicans on rights is the failure of the human rights community in its broadest sense to address paramilitary violence.

The community has eschewed the use of international agreements and consortia to undermine paramilitarism. The failure to write about it, research or campaign about it, is a stain on its reputation.

There has been and will be no greater denial of human rights in our lifetime than the 3,700 in this small area, not to mention the countless injuries and the destruction of property on a vast scale.

The anniversary of the murder of Edgar Graham was only last week. He was shot yards from where we are sitting. Like myself, he was an elected representative for the UUP in South Belfast, and also a law lecturer at this university. His murderers have never been arraigned, nor will they be. His death has been the subject of no inquiries, resolutions or protests. An editorial in the News Letter on Friday was the only public mention. The same applies to the assassination of the South Belfast MP, Robert Bradford (and the caretaker at the Finaghy community centre). Both killings were contrary to the spirit of the ECHR and of course the letter.

Does Article 2’s ‘Right to Life’ only apply to the 10% killed by the state, lawfully, in most instances? This is worth pursuing in academic circles.

I example most recently the academy’s silence over the OTR letters issue but there are so many more.

Pro-union (for want of a better phrase) cases at the Strasbourg court can be counted on the fingers of one hand. Indeed only one comes to mind – an early 1980s Article 2 right to life case concerning the sectarian murder of UDR soldiers on the border. It fell at the first hurdle.

At that time, the concept of non-state actors like the IRA being held culpable at Strasbourg (or through the work of Amnesty) had not got off the ground. It has a little since and should – by use of the ingenuity we are familiar with in modern jurisprudence, be advanced a great deal more.

In extenso, ECHR’s Article 2 interestingly reads:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

It is the unbalanced Strasbourg interpretation of this Article on which the Legacy industry bases its ceaseless demands for more inquests to be reopened.

As I tell people, law is not about truth, justice or fair play. It is rare that any of these can actually be achieved in the elaboration of the legal system.

Law is essentially about stability and civil peace, about a system of civilisation and a structure of independent courts that enable people who have nothing in common, or indeed conflicting interests, to accept living together – without resort to violence. That measure is then normally reserved to the state. However we went through some forty years of war where peace was not the case. Law and human rights almost died.

There is also a costs imbalance involving the use or misuse of legal aid which should be addressed, perhaps by this university. It makes unionist human rights case infrequent.

I have difficulties with what is called ‘the equality agenda’. I believe in equal opportunity. Also in diversity. However when it comes to a conflict between human rights and equality, human rights should be allowed to trump equality. Not the other way round.

The balance is heading in the wrong direction, especially as the concept of equality is now inextricably the agenda of one party.

I turn now to the Bill of Rights which never materialised. Some will know I played a role in the Bill of Rights Forum, another NIO talking shop that led nowhere.

On that occasion the UUP, DUP, and Alliance Parties were united in their rejection of the attempt, alongside that of the NIHRC, to bring about ‘An All Singing All Dancing’ Bill of Rights.

To set the record straight, there was no commitment to legislating any Bill of Rights in the Belfast Agreement nor indeed did the particular circumstances mentioned mean anything more than adding a few local aspects e.g. on parades – had a Bill come to pass.

The agreement did provide for the Northern Ireland Human Rights Commission (NIHRC) to give advice to the Secretary of State on:

‘The scope for defining in Westminster legislation rights supplementing the ECHR reflecting the particular circumstances of Northern Ireland – and reflecting the principles of mutual respect and parity of esteem.’

But NIHRC took, in my view, a misguided and quite unduly expansionist view of this very specific brief.

Finally, it tendered the required advice and the advice was rejected by government. And that ended the matter. Deceptively twisting the remit or pretending there was a promise to enact a Bill in the Good Friday Agreement only angers Unionists. The ECHR remains in place as a hugely effective safeguard for us all but its rulings are not divine and can go awry.

NIHRC caused a fissure with the Unionist community over this, and if the human rights community seeks further expansion as a result of the Stormont House Agreement that will cause yet more resentment in the community.

Did Unionist (or liberal voices dissenting from the prevailing NIHRC ideology) receive any, or any fair, participation in university seminars and conferences? Of course not.

The Bill of Rights issue exemplified the overplaying of a hand which helped bring rights into disrepute.

NIHRC has been a disaster in its first three manifestations although the 4th seems an improvement, reverting to key 1960s matters where we were left out of reform.

Would that it now took up those issues that so frighten the Equality Commission and are a legacy of London pandering to the Catholic Church, which was always allowed a bye-ball by the Northern Ireland Office and London.

I instance the exception for all teacher appointments in our fair employment laws and the failure to extend the 1998 Northern Ireland Act’s Section 75 sexual orientation protection to schools. Sinn Fein – you will recall – used the much-hated Petition of Concern to block the reform of the teacher exception law. These issues have no traction amongst the bien pensants in Belfast.

Unionists have been too polite, and nervous of appearing sectarian to address them forcefully while abortion is the key issue for the next decade. Back to the 1960s again.

My final point is that the Unionist view seems never to receive academic articulation: Were there any ‘Unionist’ human rights academic lawyers ready to challenge the expansionist views of, for instance, the NI Human Rights Commission?

Is it possible for someone outside of the current conventional wisdom to get a job at QUB or UU? Could a Unionist activist let alone a DUP member work in one of the law departments?

Don’t be silly, it is impossible. There is no chill factor in operation. It is a freeze factor.

There is a monoculture especially in Legacy matters and a complete reversal of the previous situation where our law schools were timid and unadventurous.

In conclusion, one area where I would like to see you use your experience and knowledge is in relation to human rights in wartime. We have now reached the position where the state and its agencies are incapable of using hard and effective methods internally yet they and the military are given an almost free hand abroad. Even with self-imposed restraints, casualties and destruction abound. That balance needs reset. It might mean fewer rights (and their enforcement) locally but a greater and necessary trammelling of military actions.