



Northern Ireland
Assembly

Ad Hoc Committee on a Bill of Rights

OFFICIAL REPORT (Hansard)

Briefing by Professor Dominic Bryan

28 January 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Emma Sheerin (Chairperson)
Mr Mike Nesbitt (Deputy Chairperson)
Ms Paula Bradshaw
Mr Mark Durkan
Miss Michelle McIlveen
Ms Carál Ní Chuilín

Witnesses:

Professor Dominic Bryan Queen's University Belfast

The Chairperson (Ms Sheerin): I welcome Professor Bryan to the meeting.

Professor Dominic Bryan (Queen's University Belfast): Thank you very much for your invitation. I will speak for just a few minutes, and then I am open for any questions that you might like to ask. I know that you have a tricky job.

Along with two of my colleagues, Dr Neil Jarman and Dr Michael Hamilton, who is at the University of East Anglia, I have offered you a short paper that we have called 'Notes on Human Rights AND culture and a Culture OF Human Rights'. We are thinking about the problem of giving human rights to culture and creating a culture of human rights as two different things. The paper does not address directly the question of whether there should be a bill of rights for Northern Ireland; rather, we hoped that it would be helpful to make some comments about the difficulties when employing human rights in the area of culture and cultural identity and the development of a culture of rights.

The paper makes clear how important, we believe, the development of a culture of human rights in Northern Ireland is for encouraging justice and equality, particularly in a deeply divided society like ours. Whilst it is important that legally enforceable rights exist, it is also important that people have the knowledge, resources and confidence to access those rights. However, reflecting the expertise and interests that Michael, Neil and I have and in the context of our strong support for a culture of rights, we caution against overly providing particular protections for the identity and ethos of both communities in Northern Ireland. To regard aspects of culture as permanently characterising particular groups can only serve to entrench and institutionalise difference by elevating the salience of these two communal blocs. Such a focus not only overlooks the rights of members of other groups but flattens the rich diversity within the groups and presents an obstacle to shared cultural celebration and exchange. We hope that you find the paper useful.

The comments that I will make from here on in are my own. First, they do not represent the views of Neil and Michael. Secondly, you will know that I was formerly the co-chair of the Commission on

Flags, Identity, Culture and Tradition (FICT), so it is important that I stress that these opinions in no way represent the findings of that commission. Lastly, I want to make it clear that I am not a lawyer. I do not have the expertise on a bill of rights that many of the people whom you have spoken to and will speak to have, not least my colleague Professor Colin Harvey, who will follow me. My expertise, if I have some, is as a social anthropologist with knowledge and understanding of how culture, cultural identity and notions like community work and as somebody who has worked for 30 years on issues of contested cultural identities and the development of better social cohesion.

There are many better than me to answer the question how a bill of rights in Northern Ireland might improve access to human rights. However, I believe that not enough was done after 1998 to develop symbolic representations of the agreement and the attempt to bring peace, equality and justice for all. I believe that a bill of rights for Northern Ireland would have symbolically underpinned a sense of citizenship for everyone in Northern Ireland, which is important. The comments that I have to make concern how symbolically important that bill of rights is, as opposed to how it might function, which is other people's expertise.

That is my opening statement.

The Chairperson (Ms Sheerin): Professor, thank you very much. Thanks also for the paper that you provided to us. It was short and snappy, very easy to follow and interesting.

One of the first comments that you made was around a culture of rights, which I know that the paper focuses on. You referred to the importance of rights being out in the open and of people being aware of their rights and able to access their rights. This week, we have had the release of the mother and baby homes report for the North. A week ago, we had the same report for the Twenty-six Counties. There has been lots of commentary around that, but we know that the reason why these institutions existed, and the reason why many people in society either actively helped to foster that environment or turned a blind eye to it, was because we lived in a society where church and state collaborated to use institutionalised misogyny as, basically, a method of controlling people; that was the policy and the mindset.

In the space that we are in today, we still have rights deficits, particularly for the two groups that were predominantly affected by those institutions, namely women and children. Will you comment on the notion of a right that exists and is in the law but that people cannot access? I am thinking of women's healthcare. We have issues with provision of women's healthcare in the North. It is there in a legislative framework but cannot be accessed by people on the ground.

Professor Bryan: This has been key for me when I have looked at these things over the years. We can discuss whether we have a bill of rights for Northern Ireland or whether we use the European Convention or the Act as appears in the UK; obviously, those become issues. However, it seems to me that the key is that people are able to access those rights. It is equally important that they understand those rights, so that it becomes a part of our society that people know the sorts of rights that they have and feel confidence in those. To me, that underpins all sorts of ideas of citizenship. It tells us, perhaps, that we need to improve something in our education system. It tells us how we need to talk about our society, and that is true of all of us. Academics, politicians — everybody needs to embed that idea of rights. You can see examples where that has worked quite well. I have looked at policing over the years. The application of rights in policing in Northern Ireland is not without its problems, but it has been part of the success of reform in those areas. It is about thinking about where that access, confidence and resourcing comes from.

One of the difficulties is that different groups in our society feel differently about human rights. You mentioned a number of very significant groups. Look even at what I might call the political communities or political groups in our society. They have experienced the importance of rights in different ways. We could go over the history, but the nationalist community has seen them in one way and the unionist community has seen them in another way. It seems to me that we also need to think about rectifying the way that rights are viewed. Some thought needs to be given to that sort of area as well.

The Chairperson (Ms Sheerin): I take on board everything that you are saying. That is key when we are having this conversation. Rights can be seen as an abstract notion until people are aware of how exactly those rights will impact on them or of what rights they have, or should have, access to.

You have spoken about a culture of rights. Will you give us some idea of how we can ensure that people do not view rights as a zero-sum argument where, if one person gets an increase in their rights or is helped to access their rights, another group loses out? To me, rights are for everyone. They are universal, and everyone should be on a level playing field.

Professor Bryan: Therein comes the difficulty. Very often, when people claim rights, they claim them almost as if they are an absolute. They say, "I have the right to do this", or, "I should have the right to do that", whereas, of course, within a legal system, those rights exist as part of a balance. That is where education and understanding come in. That is where we need to start thinking about how those things work. That improves when you see the functioning of it. To give the most obvious example, when I started doing my research, I was all over parades. That was a very good example of an area where rights would, should and could be so important in helping us through those problems. However, they are more complicated than simply, "I have the right to parade", or, "I have the right to deny you the right to parade". There is a complexity to it. If people see those things being worked out over time — in some senses, I think that this has been true — they begin to trust in a system and understand how those various checks and balances work. That is when a culture of rights becomes successful.

The Chairperson (Ms Sheerin): Brilliant; thanks for that. This is my last question. I do not want to over-egg the pudding or go over old ground, but a lot of the conversations that we have had have been about socio-economic rights. I made remarks earlier about healthcare rights, and I am thinking of communities such as the trans community in the North, who technically have a legal right to gender identity services that is not being fulfilled at the minute. One of the things that we hear is that, if those things were stated in a bill of rights and legislation, you end up raising people's expectations because they feel that they should have access to a right, and then, when the reality of resource, budget and any of those things come in to play, they end up not being able to access the right. My thinking is that we should be striving to achieve those things and trying to dismantle the barriers. How can we find workarounds to ensure that people access their rights, as opposed to saying, "Well, we can't do that right now, so we're going to forget about it"? Do you have comments on that?

Professor Bryan: Again, I am not a lawyer, but, having watched the failure of the process of trying to get a bill of rights over 20 years, my feeling is that the key area to looking at rights is access and understanding. The period of trying to come up with a bill of rights in Northern Ireland has been hampered by people, understandably, wanting to get everything into the bill of rights, so that it become a space where really important, contested parts of our society — you mentioned ones around gender and sexuality — are played out. The difficulty is that you cannot solve all of those problems by coming up with a bill of rights. The danger — I wonder whether the process previously, totally understandably, has fallen into that trap — is that you try to solve every problem through that process. I put this forward not as a lawyer, but I wonder whether a simpler or more basic bill of rights is required and it is the accesses and processes thereafter — the legal system — that begin to build our culture of rights.

The Chairperson (Ms Sheerin): Thank you very much, Professor Bryan. I think that Mark has joined the meeting. Mark, are you not on mute? We have a wee bit of —.

Mr Durkan: Sorry about that, Chair.

The Chairperson (Ms Sheerin): You are 110; you are grand.

Mr Durkan: My father called me; he was looking for directions to the vaccination centre.

The Chairperson (Ms Sheerin): It is brilliant that he is getting that.

Mr Nesbitt: Dominic, thanks for engaging with us. Your brief led me to the area of the potential for unintended consequences. You said that human rights are better when it is about the state rather than trying to resolve issues between conflicting communities and that, in fact, group or communal rights can actually exacerbate the divisions in communities. Can you expand on that?

Professor Bryan: We have particular circumstances in Northern Ireland which the agreement, and legislation since, has attempted to alleviate. In doing so, it identifies, in our case, two particular groups — nationalists and unionists — and attempts to deal with them. Understandably, our legal system has to try to do that; that is what makes us different. We could have an interesting discussion about it making us different from the rest of the United Kingdom and the Republic of Ireland, which opens up some nice debates. However, there are dangers in attempting to detail the rights attested to both

groups in too much detail. We may start to think about nationalists having a culture, for example, and unionists having a culture when, in fact, the two groups, broadly speaking, have the same culture. Culturally, they are almost identical. They have different cultural identities, but that is a different thing. Within that, there are aspects that they see as important, but inevitably, since it defines their group, they become a part of contestation, and I warn against making a bill of rights overly specific about all those things, because those things change over time. As an anthropologist, I know that culture is not static. What groups feel is important at any one point is not static; it changes over time. I am not suggesting that you should not have things that protect these groups, broadly based on individual rights, but one should be careful about having an over-detailed set of rights connected to specific areas of cultural identity, if that makes sense.

Mr Nesbitt: Yes. I would like to expand on the identity piece, because, as you know, the Belfast Agreement says that you can be British, Irish or both. I am probably in the group that supports John Hewitt's idea of multiple identity: Ulsterman, Irish, British, European. Of course, Hewitt explained why that was important. He said, "If you deny me any part of that mix, you diminish who I am". I suggest that a lot of people in Northern Ireland feel that Brexit diminished their multiple identity by denying their sense of Europeaness. If we protect all of that in a bill of rights and we take that logic to the nth degree, would that have made Brexit illegal to the extent that it denied people's sense of Europeaness?

Professor Bryan: Mike, you are going into legal stuff that is beyond my expertise, but you are absolutely right that cultural identity is complex. We can even look at unionism: there are those in unionism who see themselves as Irish and unionist, and there are those who see themselves as definitely not Irish. That tells us an important thing about the way social groups work. Those cultural identities are complex and therefore difficult to pin down legally.

Let me give one example of that and how it is difficult. I do not know the exact words, but the parades legislation says things like, "Whether a parade can take place is dependent upon the impact on the life of that community". All right; that seems a quite sensible thing, and we have to work that out. Of course, that is fine until you try to work out what is meant by "community". Then it starts to become a lot more important. We have had legal cases around parades issues that tried to determine what is meant by "community" in that legislation. I am suggesting that, on your British/Irish issue, it is important to have a legislative underpinning to a sense of citizenship; a right to be Irish and British, in that legal sense. I would worry about anything that restricted the diversity within those groups of people to be both and/or other, if you like. One has to be careful not to be overly prescriptive in how one looks at that.

The Chairperson (Ms Sheerin): I think that you are muted, Mike.

Mr Nesbitt: Oh, sorry. That is very interesting, Dominic. Thank you very much. Thanks, Chair.

The Chairperson (Ms Sheerin): No problem. That happens to me all the time, too. You have to hit the wee button twice.

Ms Ní Chuilín: Thank you, Dominic. Following on from what you said, my assumption is that equality legislation is also very important. As you know, we do not have a single equality Act, as England does. In your opinion, should there be equality legislation within the bill of rights?

Professor Bryan: Again, I am going to be a bit of a cop-out, Carál, in the sense that I am not sure that my expertise allows me to say exactly how that would work in a bill of rights. What I would say is that the protection for the groups that we are talking about — both the political communities that are central to the agreement, but to all groups — revolves around a sense of equality. Societies are better if they can be made more equal. One of the papers that were written for the Committee, perhaps by one of your research colleagues, identified principles that it said were written into the Good Friday Agreement. They included equality; mutual respect; protection for civil, political, social and cultural rights; a culture of tolerance; and non-violence. I read those and thought that that quite well sums up what you need to feel are in a bill of rights, rather than the particular defining of cultural identities. In that sense, and in answer to your question, equality is central to moving forward on this. If people feel that they have rights and that they have equal access to those rights, then, regardless of the state we are in, you have people who feel that they are citizens of that place.

Ms Ní Chuilín: This is more a political commentary than a question. The reason I asked was probably on the premise that, as you said, it is about knowledge and access to rights, and that in itself became very political. The number of people who have had to access legal redress to address a denial of rights is why we are here, frankly. My firmly held belief is that equality trumps good relations all day long, and that is in legislation as it is. Sometimes it is politically expedient to put good relations above equality, because dealing with denial of rights is too contentious. That is why I asked the question. In my opinion, the rest of it is open to interpretation, and it needs to be very definitive, and that is where I completely agree with you.

When you are leaving things out, that is when people will feel aggrieved. For example, you had the women's sector and others who felt that they were left out. We had an interesting briefing last week from the Human Rights Commission on horizontal and vertical rights. Those are terms that I do not know about at all. For me, everything just goes back to equality. If citizens feel a sense of equality and there is genuine inclusiveness, that is the centre, and everything else comes from that.

Professor Bryan: I would want to find a way to understand how good relationships work with equality. I would probably take your point that equality is what is most important here. I nevertheless think that we have issues in our society — we could go into historical reasons for those — and they need to be dealt with and understood, and part of that feeds into what we call "good relations". It is not an easy balance and relationship to have, and maybe the section 75 legislation has it right in some senses. It slightly unevenly balances it. The important thing for politicians to do, and for people to think about, is to get that balance right. Whatever society we are in, we need to work on the relationships in this society.

The Chairperson (Ms Sheerin): Sin tusa, Carál; is that you? Is that you, Carál?

Ms Ní Chuilín: Sorry. Here, I could go all day on this, but we will just leave it there.

The Chairperson (Ms Sheerin): No problem. Paula, I pass over to you.

Ms Bradshaw: Than you, Chair, and thank you, Dominic, for your presentation. I want to look at the terms of reference of the Committee, specifically the wording on the particular circumstances for Northern Ireland. Can you give some broad thoughts on that and then home in to your areas of specialism of parades and flags? I do not want you to undermine the work of the FICT Commission, but could you give a general commentary on how we could grapple with those issues through this process?

Professor Bryan: Paula, it is so interesting to try to work out what is particular about Northern Ireland. The way the question has been set up for your Committee to look at is really quite good. I read some of the papers that have been produced on that question, and they were really good; it was really interesting how they started to identify. From a sociological point of view, Northern Ireland has a very distinctive social and political culture that has been borne out of ethnic conflict. We know from around the world that that sort of conflict drives certain sorts of behaviours and ways of being, as well as the structure of politics, and that it needs to be looked after in particular ways. In that sense, we are undoubtedly a different society from much of the rest of the United Kingdom — not totally, but we have differences — and, interestingly, much of the Republic of Ireland. Those relationships that we have are not going to leave us any time soon.

We are different in the sense that we have to take cognisance of everything that flows from that. For example, it means that we tend to have more contests over culture. As we have seen in America and Britain over the past year, they all have their contests. I have done some work in the southern United States, and it is fascinating to see some of the similarities. When you have those sorts of divisions, you have forms of cultural contestation, and symbols become more important than they are in societies where you have less division. That means that, whilst the conflict and the differences are not about the symbols, the differences are very real political ones that are understood emotionally through those symbols.

That is why we have to start thinking about the best ways of mitigating those contested symbols. That involves having good legislation, although it does not need to appear in a bill of rights, because that would make it too complicated. We just need good legislation, good access to legislation, and a good understanding of rights.

You also need other forms of social cohesion. It is as much about all those events — all the things that we do together — as it is about the things that divide us. If you increase the social cohesion in your city or in Northern Ireland, you will probably be better able to deal with the contested times rather than it appearing as if they will pull us apart, as it has at times.

My broad approach is to look at good mechanisms for dealing with that contestation but equally look at what we share and what gives us cohesion. In some senses, that allows us to have our differences more easily, if that makes sense.

Ms Bradshaw: When you first started responding, I was thinking that we have been talking about the potential for a robust preamble to our bill or rights to set the context, but as you went on I thought, "I'm not sure we will ever agree the wording for it, because there might be a contest about its emphasis." Do you have any thoughts on how we can contextualise a bill of rights *[Inaudible]*?

Professor Bryan: I am not going to give any great secrets away, but when we were writing the report for the Commission on Flags, Identity, Culture and Tradition we had many a discussion on robust preambles, and, speaking from experience, they are difficult to do. I might feel that I can do it, but the minute we start terming this place, we get into difficulties. That is why I think that a broad visionary statement about the rights that all human beings have and that we should look towards tends to be a better way of going about it, rather than trying to discuss how we got where we are now. In a sense — I am thinking this through — it is probably better to look to a future than to try to run over the past, if that makes sense.

Ms Bradshaw: That makes perfect sense. Thank you.

The Chairperson (Ms Sheerin): I do not think that any other members have raised their hand, but I will bring you in alphabetically. I know that Mark is on the call. Do you have any questions?

Mr Durkan: Not just now, Chair. Thank you.

The Chairperson (Ms Sheerin): You are 100%. What about Michelle?

Miss McIlveen: No. Thank you. Everything has generally been covered. Thank you very much for your presentation. A point was made about how you rectify the way in which rights are viewed, and you covered that fairly well throughout. I had written down a few notes. Are we now looking at, from your perspective, a high level set of principles, as opposed to something very specific in drilling down into particular groups?

Professor Bryan: Michelle, that is my broad position. It is important to look at the groups and communities in our society that, for whatever historical reason, feel as though rights are not for them or that they have deficits around it. Trying to work out how we end up with a sense that we all have rights and have access is just as important as what those rights look like.

Miss McIlveen: OK. Thank you.

The Chairperson (Ms Sheerin): I think that everyone has had the opportunity to ask questions. Professor Bryan, thank you very much for joining us again this afternoon via webcam. I know that we are in strange times —

Professor Bryan: We are.

The Chairperson (Ms Sheerin): — and we do not get any more used to these meetings, no matter how many of them we have to do. Thank you very much for your presentation.

Professor Bryan: Best of luck with your work as well.

The Chairperson (Ms Sheerin): Thank you very much. Good man. We will let you take your ease now.