



Northern Ireland
Assembly

Ad Hoc Committee on a Bill of Rights

OFFICIAL REPORT (Hansard)

Briefing by Mr Jeffrey Dudgeon

11 February 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
Mr Christopher Stalford

Witnesses:

Mr Jeffrey Dudgeon Ulster Unionist Party

The Chairperson (Ms Sheerin): We will receive a briefing from Jeffrey Dudgeon, whose case at the European Court of Human Rights in 1981 led to the decriminalisation of homosexuality in the North. Jeffrey has an extensive history in the field, given that he was a member of the Bill of Rights Forum and the Haass panel of Executive parties dealing with flags, parading and the past. He also served on Belfast City Council as a UUP councillor between 2014 and 2019. I welcome Jeffrey to the meeting. Thank you for joining us this afternoon. Would you like to give us your briefing?

Mr Jeffrey Dudgeon (Ulster Unionist Party): Can you hear me, Chair?

The Chairperson (Ms Sheerin): I can indeed. Thank you.

Mr Dudgeon: Thanks very much for listening to me and for, hopefully, having a look at my written submission. As you mentioned, many of us have met before, most notably in the Bill of Rights Forum, the Haass talks and, of course, Belfast City Council. I do not wish to repeat what I said in my submission, but I will make some comments on the key points.

You are now in the second of the three years that have been set aside to consider the issue. We are now nearly a quarter of a century on from the Belfast Agreement, so time is important. It would be fair to say that, aside from UUP members and retired judge Sir Stephen Irwin, there will be no witnesses before you who are serious bill of rights sceptics or antagonists. Obviously, a number who have given evidence have not taken a position on having a bill but have simply offered advice on the realities of whether it should be legislated for and the consequences of that, which are, often, unforeseen by advocates. Their views have been cautionary in many respects and might be perceived, in some cases, as objectively unfavourable. There remains, inevitably, a unionist/nationalist divide on the issue. Others from the centre of politics are more varied in their views or are confused, having changed those views over time.

A couple of those centrists, whom I refer to in my paper, have been critical of earlier attempts at a bill despite being part of the extended process at the time. A minimal bill, however, is still an option for them. They take the position that the Good Friday Agreement requirement was met, the slate in this area is clean and it is now for the Human Rights Commission, which agrees with that interpretation, to consider what sort of bill could be put together. That is something that is within its powers. However, it would be a decade-long task if it were ever to take shape.

A number of Committee members spoke to the commission about the importance to them of equality. There are two major interpretations of that concept: equality of opportunity, which has, for many years, been legislated for in the United Kingdom; and equality of outcome, now known to many as "equity". That has been gathering pace since the election of President Biden in the States. However, can equity be effected through human rights, and should equality trump human rights? Equity is, in many ways, a code for the redistribution or reprioritisation of resources. It muddies the waters of the human rights debate, especially for those who believe in protecting individual rights as opposed to collective rights. That is a second-order issue that is linked to maximising or minimising a bill, but it may prove to be an impossible obstacle to any political agreement.

Human rights currently trump equality law. Interestingly, that was very much to the fore in the Asher's cake case, when the Supreme Court came down unanimously against the Belfast judiciary in favour of the article 10 right to freedom of expression. That was developed in the judgment to include the right not to have to express a particular opinion, which, in this case, was the favouring of gay marriage. So preventing forced or compelled speech, due to the court's jurisprudence, is now held to be in article 10. The complexities and perhaps even contradictions in the European Convention on Human Rights (ECHR) are a little-known and rarely addressed matter. Many rights compete, while the qualifications of each right are considerable. Compliance with articles 6, 8 and 10 is a mantra that is rarely heard in our legacy debates, especially where they compete with article 2, which is the right to life, but they are increasingly under discussion and debate, not least in relation to the Police Ombudsman's powers and our desire to increase them. That is also true in relation to the NIO's legacy legislation, the precise details of which remain unknown.

Those other ECHR articles are now much more in play than they used to be. The law schools here in Belfast have yet to catch up with that development. In writing, I referred to the key issues. Do people wish to see politics done through human rights, because, as one witness said unconvincingly, "It takes heat off political issues"? Do MLAs want to use the courts to try to effect socio-economic rights, or do they see that as their role as democratically elected representatives? Who appoints the judges, given that interpretation and the text itself are paramount? If not, why bother to write such text in the first place? Then there is the problem of read-across for the rest of the United Kingdom and, indeed, into the Republic.

You have heard pious promises of a bill being the solution to the deepest of deep-seated problems, like poverty in Belfast or housing in South Africa; problems that, even with the best will in the world, would take decades to significantly alleviate. South Africa is spoken of in terms of a progressive realisation of rights, but courts cannot create resources, which is the key aspect of making real progress. Otherwise, such proposals take on a dreamlike quality, similar to a religious belief.

It should not be forgotten that human rights that are guaranteed in the ECHR also pertain to the rich and their property. The Duke of Westminster and the Prince Regnant of Liechtenstein, who are probably the richest men in Europe, have cases on property loss at Strasbourg. In the prince's case, those go back to the Second World War and the Soviet occupation of Austria. Religious rights are important, too, for Churches, obviously, especially in relation to schools. Abortion is not a Strasbourg human right.

There are significant developments in the debate that are perhaps not getting the attention that they deserve. Professor Harvey referred to one in particular, which is the continuing debate in the Government on the Human Rights Act 1998, which, in 2000, wrote the European Convention, for the most part, into UK law. Most recently, in December, the Secretary of State for Justice, Robert Buckland, appointed a Human Rights Act review committee under Sir Peter Gross. Its eight members include two Irish representatives, Baroness Nuala O'Loan and Máiría Cahill. Their job — I will quote from the remit — is to examine, first:

"The relationship between domestic courts and the European Court",

which includes how:

"the duty to 'take into account' [case law has] been applied in practice";

secondly:

"The impact of the [Act] on the relationship between the judiciary, the executive and [Parliament]";

and whether it:

"draws domestic courts unduly into questions of policy";

and, lastly, how the Act applies:

"outside the territory of the UK",

which, probably, refers mostly to Iraq and Afghanistan.

You can certainly detect in that remit a desire to narrow the extent and effect of the convention and the Strasbourg court's apparent predominance in domestic law. It does not suggest a willingness to legislate at Westminster for a Northern Ireland bill of rights, which would be unique in the UK and would push convention boundaries further out.

Another new aspect is protocol 15 to the convention, which is poised to take effect. It was the brainchild of Kenneth Clarke when he was Secretary of State for Justice. The protocol's narrowing purpose is to change the convention by adding a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the preamble, thereby maintaining the effectiveness of the court. Protocol 15 to the convention has been agreed by 46 of the 47 Council of Europe states. It is being held up by one country's failure to ratify. The change, however, is about strengthening the margin of appreciation for states and their policies as they affect human rights and encouraging decisions to be made at a lower level where possible. That has, obviously, been welcomed in Europe, which, of course, ranges from Iceland to Azerbaijan and from Russia to Portugal. The main fact is that, even if agreement was reached in your Committee, the European trend is not to widen the range of rights that are protected in the convention or in Bills and certainly not in the UK or in the Republic. Those developments also tell you that any such changes, in whatever direction, take years, if not decades, to take effect.

Thank you for listening. I hand back to you, Chair.

The Chairperson (Ms Sheerin): Thank you very much, Jeffrey, for your oral presentation and your written submission. It was concise, sharp and interesting, and I enjoyed reading it.

To follow on from your presentation, I have a couple of questions on what you said. You had your own experience with the challenge that you had in the '80s with the decriminalisation of homosexuality. From the conversation on that and the report that you gave us, I picked out a couple of concerns that you had, namely that judges can interpret legislation differently. Obviously, anything that is ever written can be interpreted differently depending on the perspective of whoever is reading and making an assessment of it. My perspective on that is that, in creating a bill of rights, we should make it as comprehensive and as clear as possible in order to ensure that rights are set in stone and that they take precedence over everything else.

Following on from that, that was a massive issue that affected the LGBT community at the time and something for which, in breaking down the barriers for those in that community, the law at that stage was a massive threat. It has taken many more years, and we are still in a situation where people who identify as LGBT will experience discrimination, threats, hate crime and all the other things that take much longer to seed out of society.

You made reference to the "particular circumstances" of the North. Again, that is open to interpretation, and there has been a lot of conversation about it, but our perception of the particular circumstances of the North in 1998 as a post-conflict society that was directly in the wake of that conflict compared with our perception of our particular circumstances now probably has adapted and changed slightly, but the North is still a place where rights for LGBT people were not awarded or secured by our Government in the North. We have particular circumstances that meant that, as a part of these islands, marriage equality was not legislated for independently. Westminster had to do that and enforce that right in the North because there were members of our Government who would not

agree to it. Would you look at that as a particular circumstance and as something that is particular to the North in the UK and these islands?

Further to that, looking at other social rights that have not been enacted here, at that time, you realised that gay people had the right not to be criminalised because of who they are, but we now have people who are trans but who cannot access healthcare, which, in law, they are supposed to be entitled to, but that has not been realised and they are at a rights deficit. Would you be able to comment on that?

Mr Dudgeon: Those are key areas, but they exemplify, in many ways, the problems of writing a precise text. When the convention, for example, was written in the 1940s, trans rights were unimaginable and gay rights were unlikely to ever advance. Matters have changed drastically over the years, and things changed. There is a problem with writing a "clear" text, to use your word, but you could certainly make it easy to understand and coherent. However, the history of law is the history of the accretion, with things being added to Acts and parliamentary impressions of things. Gradually, things can change almost beyond any sense of what they used to be. That is not necessarily something that can be achieved or organised in any sense. If you made a text too clear, you could not modernise it, and that would be a big problem.

As to the particular circumstances with LGBT, particularly on the "T" question today, marriage equality, as you said, was held up by the failure to agree at Stormont. However, that was nothing new; there has been failure at Stormont to agree on gay rights going back to the early '70s. It took particular MPs at Westminster, such as Montgomery Hyde, for example, who was a unionist MP in North Belfast, to advance the issue there.

These things take time, but they sometimes move very quickly. As I mentioned in my paper, abortion was unspoken of 10 years ago; the Bill of Rights Forum would not even address the question. However, people who now regard abortion as a human right said 10 years ago that it could not be addressed. You have all these problems, but, as in any campaign, it is a question of using all the forums that are available, be it Parliament, the courts, the media, argumentation and so on. No one campaign will be predominant, and all are important. For someone of my age, a day passes in a flash. When I was starting out on the process on gay rights, a day took a year to pass. For me, when we started that campaign in 1974, decriminalisation was seven years old in England, which is next to nothing in my terms nowadays, but it was colossal for me then. It is always the way with young people that they are impatient, understandably so, but at the same time, you have to take account of older people.

The Chairperson (Ms Sheerin): Thank you. Following on from that, you referred rightly to a unionist MP who had an impact on that issue, and you refer in your paper to unionist opposition to a bill of rights, but I think that that maybe oversimplifies the situation. I get frustrated a lot with the narrative that I find peddled in politics in the North where everything is an argument between unionists and nationalists but, actually, there are nationalists with different views on the issue, just as there are unionists with different views on it and who are on different ends of the spectrum. Just because you align yourself with a particular style — if you want to use that language on the constitutional issue — does not mean that it naturally flows from that that you are right- or left-wing. When we have a conversation about rights, there is room for us to not exclude anyone and to bear it in mind that people have different perspectives on all the issues. That is why, when we talk about the "particular circumstances", I find it so important that we bear it in mind that, on a lot of rights issues, the North is being held back because people do not properly understand or because something does not impact on them. Your having that personal experience is probably what drove you to get active on that issue. We should all be representatives for the people in our community who are at a rights deficit, regardless of whether it impacts on us personally. As politicians and public representatives who are elected to help the people in our constituencies, there is an onus of responsibility on us, and it is important to remember that when we have this conversation.

Mr Dudgeon: It is true that the particular circumstances keep changing, but they were written into the Belfast Agreement, which started this immediate process of a bill of rights for Northern Ireland. As I mentioned in the written document, they were very precise and narrow. Obviously, circumstances keep changing. The whole area of COVID restrictions is colossal in many ways; it is hardly discussed and is entirely novel, so things will change and are bound to change.

You mentioned particular circumstances in Northern Ireland, along with many current issues. Maybe I am out of touch, but I do not see that many particular circumstances for Northern Ireland, apart from

the redistribution of resources and decisions on expenditure. By and large, particularly since abortion and gay marriage were legalised, in effect, only a year ago, legislation has taken effect on the huge what are called moral, issues that are hinged, in many cases, on people's religious beliefs and that have divided people for decades in Northern Ireland. The change has been made, and there is not that much now left in those areas. There are the enormous areas of socio-economic rights and the like, but, by and large, we have advanced to a position today that is quite reasonable in European terms.

The Chairperson (Ms Sheerin): Following on from that, whilst I take your point, if you spoke to children's campaigners and people who are involved in rural and regional groups across the North, they would tell you that we can still see the impact of the conflict. Obviously, the conflict arose out of a time when one community was discriminated against as government policy, and there are still hangers-on as a result of that. We still have regional imbalance in service provision, even in road and rail infrastructure and in educational attainment. We see it in housing in particular areas and in the distribution of housing, particularly in urban areas. I do not think that that has completely gone away. It is important that, when we talk about those circumstances and about creating a bill of rights, we bring to bear the things that have not adapted and changed and that are impacting on more than just nationalist or unionist communities in the North in 2021.

Mr Dudgeon: You are right, but many of the areas that you talked about are socio-economic and rural/urban regional differences. Those will go on forever in many respects, and I do not think that a bill of rights can address them in any useful way, as I mentioned in several points. The level of attainment at school is common to certain areas, particularly in Belfast. Getting a judge to say that attainment should be equalised will not really advance the matter very significantly, because there are so many factors involved in schools, in attainment, in the location of schools and in who can and cannot be a teacher. As you know from your experience of dealing with Bills going through the Assembly, even the most minor Bill has incredible complexity, and various aspects that you probably would not have imagined were issues when you started off have to be taken into account. Again, I am just saying that those are big and serious issues, and although they are not entirely unionist/nationalist, there is, by and large, a unionist/nationalist element to almost everything, as you would expect, because politics is about, effectively, a redistribution of resources, and that matters to different people in different areas.

The same position applies: if we are dealing with individual rights, we have achieved a lot. If we are dealing with collective rights, if you can call them rights, there is a never-ending stream of options and different decisions that you can decide to make the remit of judges. I accept that, if you have a bill of rights, you create an atmosphere that people maybe take account of before an issue ever gets near a court, and that is important. Otherwise, I just do not see it advancing matters that significantly.

The Chairperson (Ms Sheerin): Thanks, Jeffrey. Your last point sums it up for me. I think of a bill of rights almost as an accountability measure and as something to strive towards. It would mean that politicians in the future would have it in the back of their mind that they have to meet certain requirements, almost like what we have with section 75 but with more weight behind it. You talked about attainment, and, obviously, how children and young people perform in school and employment and in all those areas depends on the socio-economic factors in their area.

That is it from me.

Mr Nesbitt: Before I engage with Jeff, I will declare that he has been very helpful to me in drawing up a private Member's Bill reforming the law on defamation, which I hope to introduce in this mandate. I do not think that that is a conflict of interest, Chair, but, if you do, shout.

The Chairperson (Ms Sheerin): No, not at all. Whale away.

Mr Nesbitt: OK.

Jeff, thanks for your engagement. The Chair talked about issues being unionist versus nationalist and not being homogenous. Do you think that that has something to do with the psyche or philosophy of unionism or nationalism, or is it more about a majority view versus a minority view?

I am still seeing you, Chair.

The Chairperson (Ms Sheerin): Yes. Have we lost Jeffrey? Oh, no; we have not.

Mr Dudgeon: Am I back?

Mr Nesbitt: You are back.

Mr Dudgeon: Oh, good. I am pleased to hear that you have made the decision to introduce a defamation Bill. That is really important. One of the lacks in this society is that we do not have enough freedom of the press.

When it comes to unionist versus nationalist, there are cultural differences that bring about the distinctions. I have argued that the main one, in many ways, is that unionism is about upholding the status quo while nationalism is about changing the status quo. For those reasons, people adopt different views because they cannot allow things to change; it is difficult for unionists, in many ways, to change. There are cultural differences. I am well aware of them. That is why we cannot, in many ways, get things agreed in advance.

Mr Nesbitt: As the demographics change, should unionism's view on a bill of rights change?

Mr Dudgeon: Not for that reason. There is a new demographic, which is the Northern Irish group or the centre group, if you want to call it that. That is people who think that the age-old dispute, if not over, has at least been shelved. It is a bit like what happened in the 1960s when you and I were growing up — maybe you are a bit later than me. Everything is ultimately decided by demographics. Basically, ethnic disputes are never resolved; they do not go away. They can be resolved only by emigration or liquidation, so this dispute will go on ad infinitum. You get the odd place, such as Alsace-Lorraine, where such a dispute has been subsumed into Europe, but, obviously, that is no longer an option here.

Mr Nesbitt: Is there not an argument that the best way to maintain the status quo, which you identify as unionists' objective, is to make sure that the maximum number of people living in Northern Ireland enjoy the maximum level of comfort and well-being and the sense of being recognised and that, on that basis, perhaps conceding a bill of rights adds to making people so content with Northern Ireland that they do not want to see change?

Mr Dudgeon: There is a certain essence of truth in that, although I think that most people's contentment is advanced through economic progress rather than any particular rights for Northern Ireland. As I said, there are increasingly few rights that are distinctively Northern Irish. The age-old notion — this has probably been the NIO's notion for 100 years — is to try to draw people together in some sort of unity and to concede to the harder demands of, in particular, growing minorities. That is fine up to a point, but, ultimately, you hit the problem of imminent reverse majoritarianism. I see that in the university law schools, where the unionist position has almost disappeared or is silenced. Only one view comes out now in terms of transitional justice or human rights. As soon as a majority loses its sense of majority, it is replaced by somebody becoming a majority. Maybe that is just a fact of life.

Mr Nesbitt: At the beginning, Jeff, you described yourself as a bill of rights sceptic. Could you describe a bill of rights that you could live with?

Mr Dudgeon: One that was agreed by a significant or a suitable majority. Since the Bill of Rights Forum and before, some people have advanced the idea that some circumstances are special to Northern Ireland, such as parading, segregated education and language rights. Those three issues have been addressed in different ways since or were addressed during that period. Well, parading was not accepted as a significant right by the Bill of Rights Forum. The Alliance Party, Brice Dickson and Tom Hadden have continued to advance the notion that those are very specific areas that could be advanced in a bill of rights.

In that sense, if a bill of rights of a significantly limited essence came about, it could be lived with, or I could approve of and appreciate it. However, as Dermot Nesbitt pointed out, under the Council of Europe framework convention for the protection of national minorities, language rights are relatively well protected, and, of course, the Assembly will debate and discuss a language Bill at some stage. That issue has not gone away, and a Bill is not required for that issue to be adjudged.

Mr Nesbitt: This is my final question, Jeffrey. In terms of how a bill of rights may be written up, you seem to be at odds with Sir Declan Morgan, the Lord Chief Justice, who has put a focus on the importance of the granularity of a bill of rights. You seem to be going the other way.

Mr Dudgeon: I lack knowledge of what granularity means. Can you explain it to me?

Mr Nesbitt: It is the modern phrase for really, really detailed.

Mr Dudgeon: Right. As I say, a lot of people think that sweeping, elegant phrases are one way of dealing with a bill of rights. The United States constitution started off life relatively brief but well-written and dealt with only a limited number of issues. Legislation goes into granularity — the blow-by-blow repeal of various 14th-century Acts or transition arrangements. The shorter and briefer a Bill is, the better.

Mr Nesbitt: I appreciate your engagement with this. Thank you very much.

Ms Ní Chuilín: Thank you, Jeff, for your written presentation and, indeed, for your appearance today. It is much appreciated, although it is not surprising that I disagree with a lot of it. I say that because, in my opinion, and, indeed, in my personal experience, there has been a denial of rights, and what happens is that people go to court. Last week, Mike referred to judicial activists. I do not know what his interpretation of that is, but people went to court because there was agreement to do certain things that would have improved people's rights and they were voted against and then denied.

Your premise is that nothing much has changed, or a lot has changed and there is nothing much left. Let us consider social and economic rights. Someone living in north Belfast may have been on the housing waiting list for years, and they will be on that housing waiting list a lot longer than people who live anywhere else. That is the Equality Commission's finding. Then there is the ability to block social housing simply because there is a perception that people moving into houses are from a Catholic background. That is a denial of rights.

The other aspect is that, in your submission, you mentioned that Owen Paterson said something like the British Government could not make any further progress on the issue without consensus. So, it is almost consensus versus rights. I wanted your views on that, because you included that latter piece in your submission, Jeff. Thank you.

Mr Dudgeon: Thanks, Carál, for that. Judicial activism is a reality; it happens day and daily in the courts. One witness talked of there being 300 judicial reviews every year in Belfast alone, many of them probably on rights issues or certainly on discrimination issues. There is activity in that field and it is ongoing. A considerable number of things have been brought about through judicial action locally, let alone in Strasbourg. I do not rule that out as a fact of life, and it will continue whether we have a bill of rights or not. It is true that it may become more busy if we have a bill of rights.

You talked a lot about discrimination, particularly in housing in north Belfast. That is a political issue in many respects, but there are equality laws on discrimination that are much used by people. There is section 75 and all the proofing of legislation and administrative actions to ensure that they are within the rules and within the laws on equality and discrimination. Those things can be addressed and challenged where there is a failure to do what you think is right. However, at the end of the day, it is a question of resources, and housing is a huge example of that. You cannot invent resources. They either have to be taken from somebody else or there has to be re-prioritisation of existing expenditure.

For all those reasons, I do not think that a bill of rights would solve the issue of north Belfast housing. I am not from north Belfast, although I have lived there. I recognise that there are boundary and territorial issues that have been frozen over the decades and perhaps those should be addressed, either by administrative or judicial action. However, that will not, in a sense, build more houses. Of all the things that we need, we are in need of better housing, and more of it. We only have to realise that the number of people in rented housing, which is often of lower grade than ordinary domestic housing, is growing. We brought in a thousand Syrian refugees, without building the 300 or 400 extra houses required to house them. I certainly approve of reprioritising expenditure towards housing if nothing else, so I am with you on that much. Again, however, it is a political decision for the Executive, and it maybe requires more focus.

Ms Ní Chuilín: Jeff, thank you for that, but the fact is that, under article 8, there is a right to respect of private family life. When that has been breached regarding housing, there is an issue. You will appreciate that because you were once a judicial activist because your rights were denied. In fact, you and many others like you were criminalised. That was completely wrong, and, thanks to your action, you have changed the law and blazed a trail for many people. I want to put my appreciation on the record. However, the issue for me, Jeff, is that people go to court because there is political failure, and

there is political failure because people ignore equality and human rights legislation. The purpose is to introduce a bill of rights for everybody. This is not the point that Mike made, but, if there is a bill of rights, it is a bill of rights for everyone; it is a set of laws and protections for everyone, regardless of how you vote or who you love. That is the reason for it. The issue is this: what do you do if you cannot get consensus and there is still a denial of rights?

My last point is that I am just a wee a bit concerned about the equity versus equality argument. I explained my experience of being in the Assembly since 2007. For example, we could have a Programme for Government that looks at addressing objective need and inequality and that is met. However, if someone kicks up about it, a false balance is created, and that is "equity": if you get two, I get two, regardless of whether I need two. I want to put that on the record. I am not saying that you said that, but when I hear "equity" and "equality" in the same breath, I get nervous. Again, Jeff, I appreciate all your activism and your submission today.

Mr Dudgeon: Thanks again, Carál. It is very kind of you to say that. On the equity aspect, having been in City Hall until recently, two unexpected things stood out for me as a councillor more than anything else. One was the sheer territoriality of the council. Literally, every pound and every inch were fought over, which is politics in one way, but, at the same time, it is revealing in other ways. The City Hall moneys are relatively minor compared with what the Assembly has to spend. In that respect, it is a problem. "One for you, one for me" were the watchwords in City Hall, and pretty much every party played that most of the time. That is just a reality of politics in a divided society. However, all societies are divided, if not on religion, then on nationality, on ethnicity or on class in particular.

I was a judicial activist and maybe still am to some degree. Nine tenths of decisions should be made in the Assembly, in Westminster or somewhere like that through democratically elected representatives. Rights and judicial decision-making are a minority pursuit that should take up 5%, perhaps 10%, of decision-making, but it will always be at a considerably lower level, given the sheer reality of Stormont or Westminster. Of course, changing laws, let alone changing attitudes, takes a long time and a lot of work, and I know that you are involved in that.

Ms Bradshaw: Thank you, Jeff. It is good to see you at the Committee. A lot of the conversation has focused on "one for you, one for me", nationalist versus unionist. Could a bill of rights could go some way towards pushing those divisions down the agenda and make us look more towards centrist, right/left politics in how we approach government policy here?

Mr Dudgeon: Thanks, Paula. It will always be there. Government policy will be decided on for many reasons and in many different ways. When it comes to judicial involvement in rights, you are talking about failures in politics, because something has gone wrong somewhere. A lot of things are going right in politics in Northern Ireland. A lot of decisions are made that do not involve a great deal of squawking or rage, but, obviously, a proportion are big issues. As I said to Carál, a small proportion of decision-making is involved in and around rights. Since the Troubles and the civil rights movement, for example, there has been a huge structure developed, maybe stronger in Northern Ireland than elsewhere, of commissions — I can think of half a dozen — where decisions are made to ensure that things do not get out of hand and that the majority does not misbehave or overdo things.

The world has changed in that respect. We are not out of the woods by any means in that sense, and maybe never will be, but the fact of the matter is that if you are dealt a hard deal by government or, even to some degree, others, you can achieve change.

Ms Bradshaw: When Dermot Nesbitt appeared before the Committee, he talked about the Council of Europe's framework convention for the protection of national minorities. I think that you touched on that a bit, Jeff, mentioning the changing demography in Northern Ireland in that I think everybody is a minority. What are your views on the framework convention?

Mr Dudgeon: Dermot is incredibly knowledgeable about that. Sadly, perhaps, not many other people take note of it or take advantage of the rights guaranteed in it.

I had not read it for some time, but I was surprised to read again just how significantly it is based on respect for existing frontiers, for example, and the territorial integrity of states. It was written at a time when the Franco-German dispute was still strongly in people's minds. Alsace-Lorraine was one of the biggest territorial disputes that brought us to the Second World War if not the First World War.

That was resolved, and the intention of the drafters of the framework was to ensure that future disputes could be tempered by international protocols and treaties. In many respects, they have been. There are still lingering disputes in the Alps between Austria and Italy, and in Finland between the indigenous populations and the Nordic peoples.

The framework is a working document. The importance of such documents is often not in their enforcement but in the fact of their coming into existence and being a guide and watchword for all people, in particular for the administrators who make decisions.

Mr Durkan: Thank you for that, Jeff. It was very interesting.

I want to flag up just one wee thing. You spoke about "One for me, one for you" politics, and Paula said that we see a lot of that between nationalism and unionism. Was your reference not more in terms of when you have certain blocs of power or two large parties with conflicting views on many policy areas, and that that transactional approach is not based on the fact that one of those blocs is nationalist and one unionist?

Mr Dudgeon: I was talking from my experience in council, and that was what I noticed. In an odd way, and I am not being critical of various parties, I was in a second-level party. Although I fought quite often with the Alliance Party, I have to say that when it came to "One for me, one for you", they were unusually particular in trying to ensure that the moneys or resources that were being allocated in that way were not squandered, so there is a centrist position.

You are right: "One for me, one for you" could happen in any surroundings. It is called dealing, I suppose, and it is compromising as well. If you think of the involvement in, for example, the Brexit withdrawal agreement, the acres of compromises and deals that must have been made between Michel Barnier and David Frost. You yourself, probably, in the Assembly and in Ministries and politics, know how much dealing, compromising and offerings are made by both sides. In some respects, that is reality. However, in the City Council, it was so plainly territorial that it stood out.

Mr Durkan: OK. I wanted to establish that it was not just over constitutional outlook or issues. Paula presented it as if nationalism and unionism, as ideologies or approaches, were at fault for that approach, when, really, it is just politics.

Jeffrey, you spoke about the danger of judge-made law. I presume that you are not referring to the common law system altogether. When it comes to the application of human rights law, despite accusations of the UK Government of overreach by the judiciary — we have discussed those in previous sessions — there are also plenty of examples of the judiciary knowing where that fine line between public policy and legal application is drawn. I speak of recent cases on assisted suicide, abortion, which has been mentioned, and the rights of transgender people.

Mr Dudgeon: I am old enough to recall when lawyers and judges were essentially conservative — in the words of Brice Dickson, they were "rich old men" — but no longer. The world has changed in that respect. Far from there being a mindless reluctance to be significant in judgements, it is almost the opposite, and you mentioned the Supreme Court and Brexit. I think of an issue like the incinerator in Mallusk, where the judges have completely overturned policies that were well argued in many respects but had not dotted all the i's and crossed all the t's. Yes, there is a danger of overreach, but there was a danger of underreach in the past. Maybe it will balance out for a while, although everything changes in this world.

Mr Durkan: I would argue that the courts definitely got it right in the example that you cited there.

Jeff, you have said before — you glossed over it a bit today — that all-party consensus cannot be reached on a bill of rights here. Has today's evidence session thus far done anything to change your view?

Mr Dudgeon: I know that there are several views in the Committee. Whatever you end up doing, if you put together an agreed position, it will have to be narrower than some people want and broader than other people want. Your next witness, Daphne Trimble, was in a minority on the Human Rights Commission when it came to an all-singing, all-dancing bill that was put forward, and she was right in the sense that it did not advance at all. I am a bit of a minimalist these days and more so a gradualist. I cannot remember who, but somebody said that, if a bill of rights with one right in it had got through

15 years ago, you would be in the stronger position of being able to add to it. However, by asking for the world, you end up with nothing. That is the problem.

Mr Durkan: Finally, Jeff, you helpfully shared the opinion of Neil Faris, who stated, in my view reasonably and correctly, that we must abide by the terms of the agreement as they are and not as we might wish them to be. In that respect, where is the precondition in the agreement for all-party consensus for a bill of rights?

Mr Dudgeon: As the agreement is written, it is, in fact, relatively limited. You can imagine that, in the decision-making process in the days before the text was agreed, bits were added and bits were taken out. It was, at its simplest, a mixture of admonition that rights be respected in the new circumstances and that the possibility of a bill of rights be looked at by the Human Rights Commission. It had to be within that relatively limited range of particular circumstances and linked to the two communities — not all the communities but the two communities — unionist and nationalist, Catholic and Protestant, insofar as they are synonymous. It had to be within that range of neutral respect and parity of esteem.

At the end of the day, those are limited areas that you could put into text for a bill of rights. In that sense, Neil Faris was absolutely right. I do not want to be too nasty about it, but certain people who were involved in this had the ability all along to temper things, tone things down, and try to find a way through a centre position. They failed; that is a pity.

Mr Durkan: Such consensus has not always been a prerequisite. The Police Act touches on those issues as well.

Mr Dudgeon: Obviously, there are big moments like the Belfast Agreement, when consensus was not necessarily agreed. Half of unionism had nothing to do with the Good Friday Agreement. Sinn Féin did not sign or endorse it at the time but eventually came round to accepting it. There are moments when consensus goes out the window. However, in day-to-day terms, you cannot really advance matters without consensus or else the whole thing goes upside down.

Mr Durkan: I think that is important and something that we should strive for. Thanks for that, Jeff.

Mr Stalford: Jeff, during my time on Belfast City Council, I managed to encapsulate in one person the disputes that you describe. For my first eight years, I represented Laganbank, which is an inner-city area. I would go to meetings, bang the table and say, "We are one of the most deprived parts of the city. We demand more funding". Then, after the 2014 council elections, when I represented Balmoral, I would go in, bang the table and say, "The outer suburbs of the city get nothing. We demand more funding". The disputes in City Hall are always ultimately geographical rather than necessarily unionist versus nationalist.

You, Paula and I can all attest to the fact that the 10 councillors elected from the south of the city were, 99 times out of 100, on the same page in saying, "The south of the city demands more resources. Where are they?". I think that you are right: it was territorial in the sense of being constituency-led.

This is one of the issues that I have raised consistently. You mentioned the American constitution. If some see this as going down the pathway of a written constitution, you will require judges to interpret said constitution. Could that lead to the danger that exists in America whereby, basically, judges, before appointment, are screened to see whether they are suitably conservative or suitably liberal to be on the court that interprets the constitution?

Mr Dudgeon: Good to see you, Christopher.

Mr Stalford: And you.

Mr Dudgeon: You are looking well. You bring up the City Council and its constituency and geographical issues. In truth, the south of the city was always underfunded compared with the rest of it for good or bad reasoning —

Mr Stalford: Quite right.

Mr Dudgeon: — and I imagine that it will continue to be. I was talking more about classic issues, however. For example, you may recall bonfire diversion funding and museum funding, which were clearly and coherently, "One for you and one for us". My only significant achievement in council was to get an agreement on a Blitz memorial, which was not a "One for you and one for us" thing but about commemorating a significant event in the city's history that affected everyone.

On the question of judges, if you look at the US Supreme Court and the really vicious appointments process and the hearings that are held, particularly for the guy whose name escapes me and the very brief one for the last person who was selected by Trump, that is the danger. What is the current position here? Judges used to choose their barrister compatriots — whoever, they felt, was best — and that worked in many cases, but it ensured that everything was repeated and that there was little ability to change things, because the same people were reselected. We have now got a Judicial Appointments Commission, and you ask yourself, "Who appoints the Judicial Appointments Commission?". It tends to be, probably, the same people who were going to appoint the judges in the previous iteration. You will never get a system that is perfect.

Even if the appointments in America are very partisan, the new judges, who tend to be sensible lawyers to start with, with some track record, do not do what they are expected to do. The last two Trump appointments have, in certain cases, gone with the liberal or non-conservative group on the Supreme Court and have not formed a new majority in a sense. You can always rely on the common sense of judges in that respect.

Mr Stalford: I have noticed during the meeting that twice the point has been made and duly noted about consensus not being as important on this issue as it perhaps is on others. You have spoken to that. Do you agree that it would be absolutely disastrous for the public and for public support for any bill of rights to start from a position of being imposed by, for argument's sake, two nationalist parties and a centrist one?

Mr Dudgeon: If it were imposed, it would start in a difficult place. A bill of rights would be legislated for at Westminster, and I cannot see the Government there tolerating an imposed bill of rights that did not have at least significant cross-community support. That is not a problem that we will have to face.

Mr Stalford: Thank you.

The Chairperson (Ms Sheerin): I have not seen a hand go up from Michelle, so I do not know whether she wants to ask anything.

Miss McIlveen: No, I am happy enough, thank you. Thank you very much for the presentation. It was very interesting.

The Chairperson (Ms Sheerin): Brilliant. Jeffrey, that is you excused.

Mr Dudgeon: Oh, good.

The Chairperson (Ms Sheerin): We put you through your paces. That was an extensive interchange. Thank you very much again for your time and your presentation. We will let you go now and move on to our next briefing.

Mr Dudgeon: OK. Thanks. That was very comprehensive indeed.