

Talking in a safe space: The experience of the Northern Ireland Bill of Rights Forum

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Northern Ireland's Troubles

The island of Ireland has known conflict for centuries. For the northern part of that island, the conflict is not merely historic but contemporary. It includes many factors:

- ethnicity: Irish on the one side and English and Scottish on the other
- religion: Catholic on the one side and Anglican and Protestant on the other
- economic and social class: working class on the one side and middle and upper classes on the other
- politics and ideology: Irish nationalism on the one side and unionism with the United Kingdom on the other.

These differences are distinct but they overlap for the great majority of people. There are some of English and Scottish descent who are Irish nationalists. Indeed some of those regarded as heroes of the Irish nationalist struggle have been English or Scottish Anglicans and Protestants. Overwhelmingly, however, the fault lines coincide: Irish, Catholic, working class nationalists and English and Scottish, Anglican and Protestant, middle class unionists. The division of the island between the Republic and the provinces of the North that remained in the United Kingdom brought peace to the South but prolonged the conflict in the North. In the North the political, economic and social conflicts remained.

The time of violence in the northern counties from 1969 to 1998 is locally called the Troubles. The experience, however, was much more extreme than the word 'troubles' implies. Thirty years of violence and destruction that literally left no family unaffected. The violence continued too beyond 1998, though on a greatly reduced scale. From 1969 to 2006, the Troubles resulted in 3717 deaths.¹

¹ David McKittrick, Seamus Kelters, Brian Feeney, Chris Thornton and David McVea *Lost Lives* .

- 2084 were civilians (726 Protestant and 1257 Catholic and others)
- 1039 were members of the security forces
- 395 were republican paramilitaries and
- 167 were loyalist paramilitaries.

The deaths occurred throughout the northern counties and beyond but the death rate was very high in Belfast, especially in quite small areas of North and West Belfast:

- 1687 deaths in Belfast (691 West and 566 North)
- 520 deaths in County Armagh, the highest per capita rate
- 128 deaths in Great Britain and
- 121 deaths in the Republic of Ireland.

So far as it is possible to allocate responsibility for the deaths

- 58% were due to republican violence
- 30% were due to loyalist violence
- 10% were due to the security forces (including 138 Catholic civilians and 20 Protestant civilians) and
- 2% were of unknown responsibility.

To understand the extent of the violence and its impact, the number of deaths has to be seen in the context of the small population and small geographical area in which they occurred. If there had been violence on a similar scale in England, the deaths toll would have exceeded 100,000. If the violence had occurred in Australia, the death toll would have been about 40,000. The deaths occurred in an area less than a quarter the size of the Australian state of Tasmania (22%), a little less than the area of Connecticut, the third smallest US state. No family, no community was unaffected.

The peace process

The peace agreement negotiated and signed in Belfast on Good Friday, 10 April, 1998 was years in the making. Informal contacts began in the 1980s, through intermediaries. Formal negotiations took place for many years before their successful conclusion. The violence continued while the negotiations dragged on. There were 69 deaths in 1994, only 9 in 1995 but still 58 in 1998. It continued after the peace agreement was signed, with some incidents that were particularly tragic even by the standards of the Troubles.

- On 12 July 1998 three Catholic brothers, aged 10, 9 and 8 years were murdered in a loyalists firebombing.
- On 15 August 1998 29 children, women and men were killed in the bombing of the Omagh market by a dissident republican group.

And the violence persists. In March this year, in separate incidents, two British soldiers and a local police officer were murdered by different dissident republican groups.

Nonetheless the peace process has ended almost all of the violence and has brought a great measure of peace to people who have known far too much death and suffering. It has done this through a comprehensive response not only to the Troubles, the violence, itself but to the underlying political, social and economic problems of Northern Ireland. It has had to effect

- an effective permanent ceasefire and renunciation of violence
- the release of prisoners, including prisoners convicted of the most serious crimes
- the decommissioning of paramilitaries, bringing the fighters into mainstream employment
- power sharing among the various communities, instead of simple majority rule
- the return of law enforcement and security to the local police, requiring the abolition of the Royal Ulster Constabulary, that was widely distrusted by one community, and the establishment of a new, credible police service whose members are drawn from all the communities of Northern Ireland
- the removal of military forces
- the devolution of law and justice to local political structures
- the ending of discrimination and economic disadvantage and
- the enactment of a new legal regime for the more effective protection and promotion of human rights.

Human rights

Violations of human rights occurred before and during the Troubles. Indeed many see violations of human rights as being at the heart of the divisions in Northern Ireland that led directly to the Troubles. So human rights had to be included in the peace agreement of 1998. The agreement provided, first, that responsibility for human rights would remain with the UK Parliament and Government, rather than a devolved Northern Ireland Assembly and Executive, to ensure their promotion and protection and, second, that there should be consideration of the need for a Bill of Rights for Northern Ireland to address ‘the particular circumstances of Northern Ireland’ and to complement the European Convention for Human Rights. The agreement provided that the Northern Ireland Human Rights Commission, established under the agreement itself, should provide its advice to the UK Secretary of State for Northern Ireland on this issue.

From 1998 to 2003 the Northern Ireland Human Rights Commission set about this difficult task. It conducted an extensive program of human rights education and a very wide consultation with people in Northern Ireland. A great deal of excellent work was done but in the end the Commission was unable to complete and agree on its advice. Essentially, in 2002-03, as the peace process itself became deadlocked, the Human Rights Commission itself became deadlocked, for similar reasons, and the work on preparing advice on a Bill of Rights came to a halt.

The St Andrews Agreement of October 2006 revived peace process as a whole, including the consideration of a Bill of Rights. It provided for the establishment of a forum of

representatives of political parties and civil society organisations to make recommendations on a Bill of Rights.

The Northern Ireland Bill of Rights Forum

Composition

The Northern Ireland Bill of Rights Forum was established in December 2006 and held its first substantive meeting in April 2007. The UK Secretary of State for Northern Ireland appointed 29 members, drawn from most (though not all) of the major political, social, community and religious organisations in Northern Ireland:

- 14 members representing all five major political parties – three each from the Democratic Unionist Party, Sinn Fein, the Social Democratic and Labour Party and the Ulster Unionist Party and two from the Alliance Party
- 14 members representing civil society organisations from the churches (one Catholic and one Irish Council of Churches), business (two) and trade unions (two) and one each (usually with one alternative member) from sectors representing children, women, ethnic minorities, people with disability, lesbians and gay men, older people, the voluntary sector and human rights organisations, and
- an international chair who was independent and had expertise in human rights law.

Three sectors not represented on the Forum complained about their omission: organisations of victims of the Troubles, the Orange Orders and Ulster Scots organisations. The Secretary of State, however, thought the Forum's membership already large and was unwilling to make it even larger. He considered that the interests and views of these three sectors were adequately represented among the members he had already appointed. The Forum itself established mechanisms to enable the participation of these and other groups through consultation processes and working groups.

Terms of reference

The Forum's mandate was set out quite clearly in the St Andrews Agreement of October 2006. It was required, within one year, 'to produce agreed recommendations to inform the Northern Ireland Human Rights Commission's advice to Government on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international human rights instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill Rights for Northern Ireland'.

Almost every phrase in these terms of reference became contentious during the year. Some of the contentions went to the process of the Forum:

- Did ‘agreed recommendations’ require unanimity or a special majority or a simple majority? In particular, did any Forum member or group of members have a veto over recommendations?
- Would the Human Rights Commission simply pass on the Forum’s recommendations to the UK Government as its advice or would it make its own judgements and decisions about the Forum’s recommendations and provide its advice quite independently of the Forum?

Some went to the interpretation of the terms of reference:

- What were ‘rights supplementary to those in the European Convention on Human Rights’?
- Was the Forum authorised to make recommendations only in relation to matters that concerned the ‘identity and ethos of both communities and parity of esteem’? If so, how could this reflect the contemporary reality of Northern Ireland in which there were no longer merely two communities but a number of different groups with different ethnic and other identities distinct from the two historic communities?
- How was ‘taken together with the ECHR’ affected by the enactment of the UK Human Rights Act in 1998, some months after the 1998 agreement?

Some were matters of substance that went to the heart of the conflict itself in Northern Ireland:

- What were ‘the particular circumstances of Northern Ireland’?
- What are ‘the identity and ethos of both communities’?

The Forum agreed at the outset that ‘nothing would be lost’, that all proposals for the Bill of Rights discussed by the Forum would be included in its report, whether or not they attracted sufficient support to be considered ‘agreed recommendations’.

The process

The Forum worked through both plenary and working group meetings. The plenary meet at least monthly – in the final months, a couple of times a month. In the beginning it debated the interpretation and scope of the terms of reference. These debates were not essentially resolved and differences of view persisted to the very end. Early debates also concerned the process of the Forum itself. After some months, agreement was reached on a process including working groups and limited outreach.

The Forum established seven working groups:

- children and young people
- women
- criminal justice and victims
- economic and social rights, including relevant equality issues

- culture and identity and language
- civil and political rights, including relevant equality issues and
- preamble, enforcement and implementation.

Each working group had equal representation of political and civil society members and nationalist and unionist parties and each was open to observers from groups not represented on the Forum itself. Each working group was assisted by a human rights expert specialising in the area of the group's work. Much of the substantial work of discussion and recommendation development was done in these working groups over the second half of the Forum's year.

The second part of the process was the appointment of outreach workers to take the Forum's existence and its request for submissions to sectors and groups in Northern Ireland that, for differing reasons, had not been engaged fully in previous discussions about a Bill of Rights.. These outreach workers were people with existing contacts and experience working with people from these sectors. The sectors were

- carers
- children and young people
- lesbian, gay, bisexual and transgender people
- linguistic minorities (users of languages other than English)
- low socio-economic groups and areas (new TSN)
- new immigrant communities
- older people
- people with disability
- Travellers
- rural and remote communities
- unionist communities (e.g. Loyal Orders and evangelical churches)
- victims of the Troubles and
- women.

The outreach workers were appointed quite late in the Forum's year and so the results of their work were not as good as had been hoped, in spite of the excellent work and enormous efforts of the individual workers.

The Forum plenary received reports with recommendations from each working group and from the outreach workers. It then had the difficult task of considering the recommendations and making decisions on what it in turn would recommend to the Human Rights Commission. These debates continued for many long days and nights during the last weeks of the Forum's mandate. In spite of the workload, it completed its terms of reference on time and delivered its report to the chairperson of the Human Rights Commission on the final day of the year, 31 March 2008, in a public ceremony that attracted substantial media and public interest.

The human rights issues and the issue of relationships

The Forum's debates focused on the usual issues that arise whenever a Bill of Rights is discussed:

- What violations of human rights have been experienced in Northern Ireland that need to be addressed through a Bill of Rights?
- Aren't existing protections sufficient?
- If not, what rights require better protection?
- How can economic, social and cultural rights be subjected to judicial determination?
- Would a Bill of Rights transfer power from elected politicians to unelected judges?
- Would a Bill of Rights be of benefit to anyone apart from lawyers?

Underlying these issues, however, were always issues that arose from Northern Ireland's Troubled history. Fundamentally these were issues of relationships. More on this later.

The results

After a year, the Forum reported to the Northern Ireland Human Rights Commission with recommendations on a Bill of Rights for Northern Ireland. It accomplished, it was said, something never before achieved by an official process in the region: it completed its terms of reference on time and within budget. There was very little consensus on the recommendations, however. Indeed the few that attracted a consensus within the Forum were largely procedural. Nonetheless, most recommendations were endorsed by a very large majority of Forum members. Some individual members dissented on a specific issue. Some others dissented on the basis that, if an issue was strongly opposed by either the unionist or the nationalist political representatives, then it should not go forward. The dissents principally arose from the representatives of the two unionist parties.

The value of this result to the Human Rights Commission is questionable. The Commission did not receive what it wanted most, a set of recommendations that enjoyed consensus within the Forum and so, by implication, across Northern Ireland's divided communities. Nonetheless, the report may have helped the Commission in its work in two significant ways: good, well formulated recommendations were developed and presented to it; and the positions of the different political parties and interest groups in Northern Ireland were made explicit on an issue by issue basis on a very wide range of human rights questions.

After the Forum

The Forum presented its report and recommendations to the Northern Ireland Human Rights Commission on 31 March 2008. On receiving the report, the Chairperson of the Commission, Monica McWilliams, committed the Commission to provide its advice to the UK Government on 10 December 2008, the 60th anniversary of the adoption of the

Universal Declaration of Human Rights. On that day, more than 10 years after the 1998 peace agreement, the Commission fulfilled its obligation under the 1998 agreement and provided its advice.

Perhaps the Troubles could have been avoided, or at least alleviated, had Northern Ireland had an effective Bill of Rights fifty years ago. That can only be a matter for speculation – another historical “what if”. Certainly an effective Bill of Rights now can play a significant part in addressing the legacy of the injustice of the past and preventing the return of violence by building a more just and peaceful future. Whether Northern Ireland ever obtains the Bill of Rights that it needs is now dependent on the UK Government and Parliament.

Assessing the Forum

The basis for assessment

If the value or otherwise of the Forum were assessed on the basis of its report and recommendations alone, it would be rightly judged a valiant but unsuccessful effort. It did manage to produce a good report with generally well developed recommendations that were approved by a substantial majority of its members but it did not bridge the community divide to achieve consensus on human rights. It would be judged another Northern Ireland failure. It cannot and should not be assessed on that basis, however. Rather, it should be assessed, and judged positively, on the basis that for a year it provided an opportunity for something that had never before happened in Northern Ireland:

- human rights were discussed, debated and contested
- representatives of the major political parties and civil society groups learned together, from each other and from internationally recognised experts, what human rights are and what international and European human rights law requires and
- they learned the perspectives – both rational and prejudiced – of others in the community with whom they might never previously had had such conversations.

The issue of relationships

The issue of relationships was the basic challenge confronting the Forum throughout its year. First and foremost, there was the question of trust. The members of the Forum came from all parts of the Northern Ireland community. Although virtually all members at least knew of the other members, very few had previously engaged in deep and serious discussion and debate with those of opposing backgrounds or views. Every member (apart from the external chairperson) had been affected by the Troubles. Some had been deeply and personally affected. Some Forum members had had relatives and friends killed or seriously injured or their homes bombed and burnt. Some had seen people killed

and seriously wounded in the violence. Some were perpetrators of violence who had spent years in prison.

At the very beginning, as its first substantive meeting, the Forum discussed and agreed on operating principles. The issue of relationships featured prominently in them. Forum members decided that they would work on the basis of mutual respect.

The commitment to this principle was tested many times during the year. There were at least two occasions on which the whole process teetered on the edge of collapse. At one Forum plenary meeting, the representatives of one of the major political parties packed their bags and headed for the door – only to reconsider and return to the table. On another occasion, a few days after an especially successful and productive weekend away with internationally renowned human rights experts, the representatives of one political party made highly personal attacks on Forum members from civil society organisations under parliamentary privilege in the Northern Ireland Assembly. These incidents damaged relationships, undermined trust and tested the resolve of Forum members to continue and complete the work. But they did continue and the Forum did report, as required.

To say that Forum members grew to trust each other over the year would be a gross exaggeration. Until the very end there were profound tensions in the discussions and therefore in the relationships. Indeed four members declined to attend the ceremony to hand over the Forum's report to the Human Rights Commission. Their failure to attend the afternoon tea, however, cannot disguise the fact that all were there until the end, that non one withdrew from the process and none was lost.

Hearing conflicting perspectives

Being there through all the debates and difficulties meant listening to different, usually conflicting, perspectives on Northern Ireland's past and present. It seemed that almost everything in the region had two names and every event two interpretations. The region is called Northern Ireland and the North. Its second city is Londonderry and Derry. The peace agreement of 1998 is the Belfast Agreement and the Good Friday Agreement. The history was differently understood and the causes of the violence differently identified. The Troubles were a time of terrorism and a legitimate war of resistance. For a year, in the Forum, representatives of the principal political parties and civil society organisations sat together, often unhappily, and heard and discussed the views and perspectives of others in the context of human rights.

There was no reconciliation of these divergent views and perspectives, no common agreement on them. Perhaps that kind of reconciliation is not possible. If not, then society is challenged to find ways forward without a common understanding of history and a common language. That requires, at the very least, listening and learning. Within the Forum there was certainly listening and, from listening, learning. That is one achievement of the year, an important achievement for a body that included senior representatives of all the major political and social organisations in the region.

Strengthening a fragile peace process

The Forum played a second major role in contributing to strengthening a fragile peace process. The peace agreement was signed over 10 years ago but the process remains fragile. Violence still occurs, although on nowhere near the same scale as previously. In March this year, for example, two soldiers and a police officer were murdered by dissident republican groups and a number of civilians were injured. This incident could have held to a new cycle of violence but it didn't. Instead leaders of both major communities were quick to condemn what had occurred, call for the identification and punishment of the perpetrators and plead for calm in response. The republican leaders were especially forceful in denouncing the perpetrators as betraying all Ireland and in calling for full cooperation with the police investigation. The popular response was equally forthright. There were large peace rallies, across the community divides, in Belfast and many other cities and towns in the region.

Very few people in Northern Ireland want to go back to the days of the Troubles but peace cannot be assumed. It has to be actively sought and built. The Forum played its part in this. It provided a place for a contest of ideas rather than of guns.

Debates and disagreements on the human rights issues discussed in the Forum are not surprising in themselves. They are the standard questions regularly debated whenever a Bill of Rights is proposed. But they were surprising in the Northern Ireland context. In many respects they represented the normalisation of political debate in that region. They reflected differences of political ideology and legal philosophy that are normal in democratic societies, rather than being characterised by ethnic, class and religious lines. The Forum made a significant contribution to this normalisation of Northern Ireland politics and, in doing so, contributed to strengthening the peace process itself.

The Forum as a safe space

Professor Jude Butcher and Anthony Steel for the Australian Catholic University's Institute for Advancing Community Engagement have written and spoken about the concept of a 'safe space'. They consider that conflict within a society arises from 'ignorance of differing religions and cultural beliefs and understandings, and a lack of personal engagement with members of these [different] cultures and religious communities', from the identification and treatment a stranger as 'the other'. They argue that, as opposed to the characterisation of those outside one's own groups as 'the other', 'shared humanity [is] the ground upon which greater understanding, security and trust can be sought together, [through] recognising and honouring the dignity of all'. They asked how a society can 'move forward in the face of misunderstanding, fear and mistrust' and propose a model of

- dialogue
- structured teaching and learning initiatives
- learning and engagement for transformation and
- common actions in pursuit of shared goals.

For a year the Northern Ireland Human Rights Forum was this kind of safe space. There was plenty of dialogue. Through the provision of highly regarded experts in Forum plenaries and working groups, there were structured opportunities for teaching and learning. The learning and engagement was directed towards the transformation of the old divisions and debates into a new common action, a proposal for a Bill of Rights, for shared goals, the more effective protection and promotion of human rights.

How successful the Forum was in achieving its ‘shared goals’ is still to be determined. What is clear already, however, is that, in providing a safe space for a year for discussion and learning about human rights, it exceeded expectations.

Further information: useful websites

Northern Ireland Bill of Rights Forum	www.billofrightsforum.org
Northern Ireland Human Rights Commission	www.nihrc.org
Northern Ireland Bill of Rights website	www.billofrightsni.org
Committee on the Administration of Justice	www.caj.org.uk

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