

THE BILL OF RIGHTS FORUM FOR NORTHERN IRELAND

'Particular Circumstances'?

A Further Note

29 October 2007

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Introduction

At the close of the Residential on Saturday afternoon 13 October Chris, as chair, invited us to submit our views on what were the particular rights affected by the particular circumstances of Northern Ireland. So this Note is in response to that invitation.

But it is in the context of the point (set out in my previous Note) that the additional rights to reflect the particular circumstances of Northern Ireland must be such as reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem.

There was some discussion of those principles at the Residential so I wish to address in particular in this Note how any additional rights must reflect these specific principles.

Mutual Respect and Parity of Esteem

Also in closing the Residential, Chris referred to one on the contributions from the (excellent) academic experts in the discussion on this issue. This was the thought that one cannot achieve parity of esteem for the 'two communities' without achieving parity of esteem for all communities in Northern Ireland.

As I said in my previous Note no one should contemplate circumstances where there would be a hierarchy of rights with communities other than the 'two communities' enjoying a lesser standard of rights protection than that claimed by the 'two communities'.

But I suggest that there is a misunderstanding here: the phrase 'parity of esteem' between the two communities in the particular and specific context of the Agreement has a distinct and discrete meaning from the phrase 'parity of esteem between all communities' as it may be understood in the general context apart from the Agreement.

So I will set out a little of the history of 'parity of esteem', as I understand it in the context of the Agreement.

The origins

In an important speech to the British-Irish Inter-Parliamentary Body on 9 October 2000 the Taoiseach, Mr Bertie Ahern, explained his thinking (and that of his government) on the matter. He referred back to the Report of New Ireland Forum published in May 1984 which stated:

“The validity of both the Nationalist and Unionist identities in Ireland must be accepted; both of these identities must have equally satisfactory, secure and durable, political, administrative and symbolic expression and identity”

He went on to say:

“I and my Government stand by that principle, and it is reflected in the Good Friday Agreement. Each community's sense of their own identity is one of the building blocks of the Agreement, and was throughout all of the discussions.”

Mr Ahern went on to acknowledge that Sinn Fein were not a member of that Forum (nor, of course, were any of the Unionist parties).

But one can trace the process through succeeding years and events:

- the work of the Forum for Peace and Reconciliation in the years 1994 – 1996 to which Sinn Fein were party
- the talks and discussions which lead to the Agreement of 10 April 1998 in which at least some of the unionist parties directly participated
- the Agreement itself
- that the Agreement was endorsed by substantial majority votes in referendums in both parts of Ireland
- the further talks and discussions from 1998 onwards leading to the St Andrews Agreement of 13 October 2006 between the two governments but arising out of talks at which all the main unionist parties as well as the nationalist and republican parties participated
- the Northern Ireland (St Andrews Agreement) Act 1996 leading to the restoration of devolved government to Northern Ireland

One could also go backwards and trace the development of the concept of parity of esteem through previous Reports, talks, discussions and inter-governmental statements. Significant documents in this context include the Opsahl Report on Northern Ireland of 1993, the Downing Street Declaration of 15 December 1993 and the Frameworks Document of 22 February 1995.

But it seems to me that Mr Ahern in his speech that I have cited above set out the essential elements of the particular meaning of 'parity of esteem' in the context of the Agreement.

The need then for a Northern Ireland Bill of Rights?

Given that our task is bounded by the terms of the Agreement, are there then particular additional rights which reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem?

To quite an extent I do share the unease expressed by many that we should enshrine 'two community' rights in a Bill of Rights for Northern Ireland.

So in my view it would be quite legitimate for the Commission to take the view that there was no proper scope for a Bill of Rights for Northern Ireland to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem. Such view would not in any way be undermining the importance of parity of esteem (as Mr Ahern said) as one of the building blocks of the Agreement.

The argument would be that the Agreement and the other constitutional documents for the future of Northern Ireland now stand and (almost) everyone is now participating in the government of Northern Ireland on that basis. So one could go on to the conclusion that no useful purpose would be served by an attempt to enshrine some of the principles from the Agreement in a Bill of Rights.

We as the Forum, if we came to such agreed conclusion, could properly give the Commission our agreed recommendation to

such effect to inform the Commission's advice to the Government.

So, certainly, to my mind, that is a legitimate position which merits further debate in the Forum.

But my mind is not made up on the matter and I now set out an alternative view.

An ethical framework?

I borrow this phrase from Dr Francesca Klug (with thanks) who commented that one of the issues for the Human Rights Act throughout the United Kingdom was that the ethical framework had not been set or debated with the ordinary public prior to the enactment of the legislation. So the Act is victim to the (unfair) accusation, in the tabloid press and elsewhere, that it is 'a charter for the unethical'.

In contrast, I would have thought that people everywhere throughout Europe would fully endorse the ethical foundations of the European Convention on Human Rights.

Is there then an argument for a Bill of Rights for Northern Ireland which gives an ethical underpinning in rights terms to the concepts of mutual respect and parity of esteem as they appear in the Agreement?

I would suggest that this merits further debate and I would be glad to contribute to and participate in such debate.

A list of rights?

So I suggest that we should have further debate to see if there is any consensus that there are additional rights which reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem.

If there is an affirmative consensus on that, then secondly we would need to decide if there is an ethical framework for such rights: one which enhances them not just for the two communities but for everyone in Northern Ireland.

If the answer to both these questions is 'yes' then one comes (at last) to the question posed by Chris: what would be the list of such rights?

At this stage I would simply refer to the list proposed by Stephen Livingstone (as cited in my previous note) – issues of:

- language
- citizenship
- flags
- marches
- education

I would not regard that as a closed list but it is one which is I suggest correctly focused in terms of the Agreement – remembering always that the Agreement is not being prescriptive that there must be any such additional rights.

But I would suggest, and it seems to the views of some others in terms of recent emails, that the general and continuing debate may be more worthwhile for us at this stage.