

Annual Stephen Livingstone Memorial Lecture
Queen's University Belfast
21st October 2009

I'm extremely honoured to have been asked to deliver this Stephen Livingstone memorial lecture.

Stephen was a firm friend and close colleague for many years.

In preparing for tonight I was looking through my papers and came across some of the many tributes which were paid at the time of his death.

I was particularly struck by the message which came from Kader Asmal, who was then the Minister for Education in South Africa.

Kader said

"Great seriousness of mind combined with extraordinary courage and clear intellect made Stephen's contribution irresistible.

He recognised that the pursuit of human rights depends on ensuring that the ordinary person, whether Protestant or Catholic, is able to reach out for legal clarities.

His subsequent progress reflected an abiding belief in a non-sectarian approach.

He was a pilot, in other words, and helped us navigate in the very treacherous waters of Northern Ireland.

I hope that others will pick up the banner that he has handed to us of a lively, committed, passionate human rights approach to public life."

I think this very eloquently captures Stephen and his immense contribution to Northern Ireland.

Sadly pilots of Stephen's calibre, pathfinders, willing to push the boundaries of the law to protect human rights are few and far between.

Having got over my initial pleasure at being asked to deliver this lecture I was quickly faced with the challenge of working out a title and considering what I should say.

I remembered that four or five years ago, I was invited to give the annual lecture commemorating the life of another great human rights advocate, Paddy McGrory.

I took as my theme then *"progress and setbacks in civil liberties - how far have we come since the signing of the Agreement."*

Given the passage of time it seemed appropriate that I would return to this theme to take stock of progress again.

This is an approach that Stephen himself would have advocated - he was never one to settle for the rhetoric of change; he wanted to check in on progress, to be sure things were delivering.

It's never enough to say "well we won that" and sit back and wait, particularly in relation to human rights.

Human rights – requiring as they do, accountability from those in power, frequently meet resistance.

Rights must always be pursued, claimed and demanded.

They are rarely simply given.

In recent times we've heard much about the devolution of policing and justice being the final piece of the jigsaw in terms of implementation of the Agreement.

I want to start out by vigorously challenging that view.

I do so for two reasons.

Firstly it's clearly inaccurate because it ignores the fact that work on the Bill of Rights has yet to reach fruition.

Secondly, and more importantly it assumes that all those other pieces of the jigsaw that have been implemented are working according to plan and delivering the required change.

I don't think that's a safe assumption.

Before delving into Northern Ireland however, I want to say a bit about human rights in the global context.

Clearly the post 9/11 context has not been a good one for human rights.

The election of President Obama and some of his early pronouncements give some hope for better days in terms of a return to due process and the rule of law.

However question marks also remain in this regard.

The Northern Ireland experience points very firmly to the dependence of peace and security on justice, fairness and the rule of law.

How disappointing, then, that the UK government in particular has not applied these lessons in its response to the "war on terror."

Who would have thought, during our arguments around the legality of 7-day detention, that we would find ourselves in a

debate about 28 days, 42 days and even 90 days detention without charge?

Experience tells us that once these powers come on to the statute books it's very hard to remove them. There have been emergency powers of one form or another in place in Northern Ireland since the 1920s.

At the time of the McGrory lecture, I noted that the government had promised to repeal the Northern Ireland specific emergency legislation.

I expressed the fear that this might simply be replaced with equally bad UK-wide legislation.

Sadly that is largely what they've done.

I want to turn now to more exclusively Northern Irish concerns.

In particular I want to talk about the progress which has been made in terms of human rights and equality and examine what remains to be done.

In the time available I won't be able to give an exhaustive analysis but I hope to cover some main themes.

In reading the Agreement again, one cannot help but be struck by the spirit of transformation that it sought to embody.

As early as the preamble, it affirmed the importance of the "*protection and vindication of the human rights of all*" and it went on to outline a different array of mechanisms to give effect to this promise.

Mary Robinson has said

"...the Good Friday Agreement is conspicuous by the centrality it gives to equality and human rights concerns. Few documents emerging from divisive and difficult political negotiations have so well captured the importance of fairness in creating right relationships. "

Stephen of course played a big, but little known part in making that so.

Mary went on to say in the same speech that

"equality and human rights have now moved from the margins into the mainstream of Northern Ireland life. The rights enumerated in the Universal Declaration of Human Rights and its associated instruments, are now a duty at the heart of government. Those tools have an enormous

transformative possibility. It is now up to all of us to make sure that these tools are used to the full.”

I want to start by looking at policing and the criminal justice system.

Significant change has taken place in the arena of policing.

The police have a new name,
a new uniform,
another new Chief Constable,
more Catholic recruits,
more female recruits,
and a whole range of new policies and procedures that address human rights concerns.

Northern Ireland has a completely independent police complaints system that many other places can only dream of.

We have a potentially powerful civic oversight body in the Policing Board and there are a range of local partnerships which are intended to hold the police to account.

The police have a full time Human Rights Legal Adviser;
they have to comply with a disciplinary code which makes frequent reference to human rights;
and they are routinely assessed against a human rights monitoring framework.

When I gave my McGrory lecture Sinn Fein had yet to agree to participate in the policing structures.

That they now do is clearly a significant step towards building confidence in the republican community.

However we cannot expect miracles - in a society where policing was so contentious for so long and where community confidence in the police was so low, it's going to take some time for trust to be built.

Progress has been made but much remains to be done.

In particular it's worth looking more closely at the priority Patten attached to *policing with the community*.

The report was clear that community policing, means *“the police working in partnership with the community; the community thereby participating in its own policing; and the two working together”*

They also highlighted the importance of not seeing partnership solely in terms of the structures they had suggested. They said:

“Partnership is a matter of policing style, but it is also an attitude of mind, both for police officers and the public. It is at least as much a matter of philosophy as it is one of method, and it amounts to a profound shift in police thinking and community thinking”

I fear that we are lost in the structures, in method; that we have followed the letter rather than the spirit and that we have not yet succeeded in seeing partnership as a *philosophy* or an *attitude*.

While policing with the community has become the new mantra for the PSNI, it's clear that partnership is still seen as the police *“doing to”* rather than *“working in partnership with”* the community.

It will be interesting to see what fresh impetus is brought by a new Chief Constable with so many community policing credentials.

Will he, for example, be keen to change the current structures of District Policing Partnerships, many of which stifle rather than encourage meaningful public engagement with the police?

Will he reconsider powers and practices which work against building community confidence?

I'm thinking here for example of the 245% increase in the use of stop and search powers under the Terrorism Act last year, the power to detain without charge for 28 days, and proposals to introduce on the spot fines.

If the experience of the past tells us anything, it tells us that abuses of power by the police breed discontent and are entirely at odds with building community confidence.

It will also be interesting to see whether the new Chief Constable values the various institutions established to hold the police to account or whether he will complain about the level of accountability.

The previous Chief Constable often, mistakenly in my view, complained that it was too onerous.

Again, past experience tells us that external scrutiny is key to securing change.

The changes in policing and criminal justice emanating from the Agreement were hard-fought.

Those of us (Stephen included) who were fighting for the implementation of the Patten report and the Criminal Justice Review encountered significant resistance at the highest levels.

It's telling, for example, that those areas of the Criminal Justice Review which were most concerned with increasing transparency, and human rights compliance are the ones where least progress has been made.

For example we still do not have an equity monitoring system or a representative workforce strategy for the criminal justice system.

That's not to underestimate the significant changes that have taken place.

The old Director of Public Prosecutions Office has been replaced with the Public Prosecution Service and a Code for Prosecutors.

The setting up of a Judicial Appointments Commission has presented the opportunity to diversify the bench (although we are still notably lacking in terms of sufficient female representation in the senior levels of our judiciary).

I don't have time to look at everything in this area but I want to focus on two issues that were close to Stephen's heart - prisons and the administration of justice.

Stephen always said (although I suspect he may have been borrowing the words from someone else!) that you can tell a lot about a society by the way it treats its prisoners.

I know how disturbed he would be at the state of our prisons today.

Robin Masefield, the Director of the Prison Service is absolutely correct when he says it's "*unacceptable*" that a prisoner with a history of attempted suicide and showing signs of distress could hang himself while prison officers failed to pay attention.

But this is not just about one case - successive reports from the Prisoner Ombudsman, the Criminal Justice Inspectorate, the Human Rights Commission and the NI Affairs Committee to name but a few, point to deep rooted systemic problems that need to be addressed.

It's not enough to accept and respond to recommendations in a piecemeal fashion.

The office of the Prisoner Ombudsman has proved to be very important in upholding the rights of prisoners.

It's deeply regrettable that the first incumbent of this office felt compelled to resign due to statutory deficiencies in its independence.

I'm pleased to see that his successor has continued to call for this to be remedied.

On the administration of justice, Stephen always argued that we should pay attention to those responsible for running the system.

He often cited the South African experience and the need to look in the widest terms at those responsible for implementing policies.

These people can have a huge impact on the culture of institutions and cultures can be very slow to change.

Stephen was absolutely right - cultural change is the hardest and the slowest.

There is continued evidence today of resistance to change and attempts to claw back hard-fought advances from within the system itself.

It's clear that some senior civil servants and the security establishment in particular have slowed the pace of change which was mandated by the Agreement and that they continue to do so.

It will be interesting to see how any new devolved department of policing and justice is staffed for example.

Will it simply be the policing and justice sections of the Northern Ireland Office with new letterhead?

Is that what we really need?

If we don't look at the people charged with administering change then we risk it being a case of "the more things change, the more they stay the same."

Let's hope not.

I want now to consider the development of a Bill of Rights for Northern Ireland.

So, where are we in terms of this?

Well, still a long way from having an agreed Bill of Rights.

The handover of advice from the Human Rights Commission to the Secretary of State last December represented considerable progress.

The advice constituted a genuine and rigorous approach to the mandate given to the Commission.

They are to be commended for the work they have done.

It was particularly welcome that this Commission resisted any attempt to use the Bill of Rights debate as a vehicle to undermine existing human rights protections.

As one might expect, they saw their brief as building on what already exists and adapting that to the particular circumstances of Northern Ireland.

Of course it's precisely because the Commission and its Chief Commissioner did their job that they have been subject to attack.

Some of the attacks have been of a particularly low nature, personally directed and falling into the category, in my opinion, of sectarian and / or sexist.

It seems there are still some who do not want to extend rights and protections to the most vulnerable and some who also want to remove some of the protections people already have.

In my opinion, this is entirely incompatible with a commitment to human rights, and is profoundly irresponsible at this point in Northern Ireland's history.

Those who argue now that we don't need a Bill of Rights are, I believe, out of step with ordinary people who remain convinced that it will help to cement the peace.

They are out of step for example with young people in the Lower Shankill who have recently mounted a highly successful campaign on the right to play.

They are out of step with the many marginalised groups supported by the Community Foundation who are arguing that they are entitled to be treated with dignity respect.

The fact that growing numbers of disadvantaged people from across the community feel much more comfortable with the language of rights is itself arguably one of the great achievements of the peace process.

Of course it should come as no surprise that those who most need the rights are asking for a Bill of Rights.

I feel strongly that those of us who have least need of human rights protections, because of our relative privilege, must think twice before undercutting the efforts of others.

It's also striking that there are such high levels of support across the community for the inclusion of social and economic rights in any Bill of Rights.

In the context of a divided society, government and politicians should be building on this kind of agreement rather than trying to ignore or undermine it.

Is protecting the rights of the many people who have been disabled through the conflict really such a frightening and impossible task?

Do we really not care that so many of our older population die every year because they cannot afford to heat their homes?

Are we saying that the physical and mental health problems of our society - many of which can be linked directly to the conflict and thus embody "the particular circumstances of Northern Ireland" - *don't* warrant attention in a Bill of Rights?

I believe this project is about ensuring that those who are most vulnerable and most in need in our society are not ignored.

It's about transforming our society and making good on the commitment in the Agreement to the "*protection and vindication of the human rights of all.*"

I for one will be sticking with it.

Another major building block in the Agreement was the creation of specialist institutions to advance human rights and equality.

These institutions – the Human Rights Commission, and the Equality Commission – were not to replace the responsibility of government to uphold human rights, but rather to ensure that government complied with its duties.

Human rights activists vested great hope in the creation of a Human Rights Commission.

The very existence of a statutory body – established and funded by government – is, in principle, a positive advance.

The UN actively encourages the creation of such national institutions.

Its Paris Principles lay down a framework for their behaviour, and outline requirements for adequate resources and powers.

The creation of such a body implies that government intends to take human rights protection seriously, and is prepared to be guided by a Commission's expert advice.

The track record of the government in taking on board advice and recommendations from the Commission is patchy at best.

Despite these limitations, the Commission has carried out some excellent work, particularly in terms of research and also its investigations into the situation of women prisoners and homeless people.

A very easy way to cripple an equality or human rights institution, however, is to cut its budget.

We only have to look at the cuts to the budget of the Equality Authority in the Republic of Ireland which will render it largely ineffective.

The Irish Human Rights Commission has also been placed in similar difficulties.

Closer to home we have already heard arguments that the Equality Commission, Human Rights Commission and Community Relations Council should be merged, as part of a cost-cutting exercise.

Such money-saving arguments are often only a cover for undermining the institutions themselves and more importantly the work that they do.

The Equality and Human Rights Commissions were central building blocks of the Agreement.

Attempts to marginalise them should be seen for what they are.

Appointments can also be used to thwart these bodies.

It's essential that they represent the diversity of Northern Ireland.

Varying and diversifying the membership can be a very powerful tool to secure buy-in to the work of the institutions and the wider framework in which they operate.

Appointments to these bodies in Northern Ireland have not been without controversy.

The first round of appointments to the Human Rights Commission was the subject of a campaign of vilification.

The government had a clear duty to protect the Commission as an institution.

It failed miserably.

It alone chose the membership of the Commission, yet it made no serious move to defend its appointments.

Second time round, in an attempt to address some of these concerns, government sought to recruit more overtly from the political field, though not comprehensively.

However, it seemed that experience or knowledge of human rights were not even essential criteria in the recruitment process.

At the very least, commitment to the mandate of the institution should be an essential criterion.

The same applies in relation to the Equality Commission.

In my view, those appointed should be deeply committed to promoting equality.

As one of the first Commissioners on the Equality Commission,
Stephen embodied this commitment.

This brings me neatly on to the next issue I want to address, which is the ongoing inequality and socio-economic disadvantage in our society.

The starting point for any effort to tackle inequality is to acknowledge that there *is* a problem.

To be serious about tackling inequality then you need to start with the facts.

Inequalities are growing in our society and the gap is widening rather than disappearing.

As the recent research by Wilkinson and Pickett shows, inequality is bad for society.

The Agreement recognised this and made explicit references to tackling social inclusion, community development initiatives, a regional development strategy, Targeting Social Need, tackling the unemployment differential, and addressing the needs of young people, particularly at interface areas.

Sadly, statistics show that the historically poorest areas in Northern Ireland are in many cases now relatively worse off than they were during the conflict.

The prosperity experienced by the wealthiest areas of Northern Ireland from the late 1990s by passed the poorest sections of our society.

For the local communities of the Donegall Pass and the Short Strand, the peace dividend amounted to middle class people parking in their streets, and walking past their houses into jobs in the Gasworks Business Park.

It's no coincidence that many of these poorest areas also bore the brunt of the conflict.

It's morally and politically untenable that the areas which experienced the worst levels of violence are relatively worse off than they were during the conflict.

This is not a recipe for long term stability.

However opportunities exist to do something about this.

There are numerous regeneration initiatives proposed throughout Northern Ireland, many placed right in the heart of some of the most socially and economically disadvantaged areas.

Yet we have seen marked resistance to implementing these in a way that would have a real impact on unemployment, create more social housing and provide better facilities for the long-term disadvantaged.

It's scandalous that one proposal published by government suggested building *private apartments* in the city centre to ensure a mixed middle class community on the grounds that *social housing* would be segregated, sectarian and divisive.

It's encouraging to see how many disadvantaged communities are working hard to tackle the problems they face.

They have accepted their responsibility to make change.

The *least* they can expect is support from government.

Likewise, there has been much focus of late on economic investment but with little accompanying analysis on how that investment can best be used to target social need.

If the people in our most disadvantaged communities do not feel the economic benefit of the peace process, they will feel left behind.

And at what cost will that be?

In this context I want to say a bit about section 75 of the Northern Ireland Act which derives directly from the Agreement.

It's clear to me that this provision has considerable potential to tackle inequality and transform people's lives.

Indeed there are examples of it being used very effectively to this end.

But here, as in other areas, I fear that things have got lost in the structures, in method.

Very often what one sees are mechanistic "tick-box" exercises in relation to equality impact assessment.

This is exacerbated by a lack of effective enforcement at both a political and statutory level.

For example the Equality Commission has produced complaints procedures for section 75 which are more complicated than those envisaged by Parliament.

This problem was in fact identified by Professors Harvey and Dickson in their review of section 75.

However it has yet to be remedied.

It's absolutely essential for the Commission to be robust in the exercise of its powers as it's charged with holding government and public bodies to account on these issues.

The Neill judgement gave the Commission a significant degree of discretion in how it exerts its Section 75 enforcement powers. It should make full use of that discretion

Equally negotiation and compliance will be a lot easier to operate if people have a clear sense of the costs of non-compliance.

If the Commission is to carry out its remit it needs to be a champion for those who need equality.

In particular, the Commission, above all others, needs to be clear that section 75 of the Northern Ireland Act is about promoting equality.

It's not primarily about avoiding adverse impact.

The active promotion of equality is primary.

Anything less represents a failure to comply with the statute.

I want to touch also on the counter-posing of equality and good relations which also seems to be in vogue again.

The Northern Ireland Act very clearly states the primacy of the equality duty and the Hansard debate on the legislation explains that good relations must be built on equality.

You can't have sustainable good relationships on the basis of inequality.

As I referred to earlier Mary Robinson talks about the centrality of "fairness to right relationships".

In the last decade the gap between the prosperous and the poor has widened.

That will continue unless we accept that tackling structural inequalities must be at the heart of creating an inclusive future.

Put simply: we build good relations by making real the human rights of those who have least access to opportunity.

Through that prism we can begin to reshape our relationships.

A failure to do so lays the foundations for future instability.

The final issue I want to touch upon is dealing with the past.

In the McGrory lecture I commented that some mechanism will have to be developed to deal with the past if its horrors are not to undermine our future.

I reiterate what I said then: that there needs to be a wide ownership of the project, and one in which the needs of victims are placed centre-stage.

Since then we have seen the publication of the report from the Consultative Group on the Past.

I don't have time to comment in detail on its proposals, but unfortunately there does not appear to be widespread ownership or consensus around its recommendations.

The entire experience and the political posturing around it has no doubt re-traumatised many victims and probably left them dubious about engaging any further.

But, we simply cannot abandon the debate.

If we do not accept what the Group has proposed, then what will we accept?

Over the last few years we have seen the unfolding of a number of public inquiries into Bloody Sunday, and the murders of Billy Wright, Rosemary Nelson and Robert Hamill.

We still await the reports of all of them.

I hope they will provide some comfort for the families and that lessons can be learned from what went on.

Much of the discourse, however, has been focused almost exclusively around their considerable cost.

That has been cited by some as a reason not to hold any further inquiries.

There is something pretty perverse about this to my mind because there is a clear correlation between the *cost* and the state's continued efforts to *prevent* the truth coming out.

The cost argument is effectively being used to say that there should be no more public inquiries.

In short that means that ministers and governments will not be publicly held to account for their actions - a disturbing prospect indeed and one which must be resisted.

This year marks the 20th anniversary of the death of Pat Finucane.

Of course there has been no public inquiry into Pat's murder.

The truth must be too awful to even risk the chance of it coming out.

I attended the conference held in his memory in February, and was struck by the huge numbers of people who turned up to show their continuing interest and support.

Participants included Judge Cory, the retired Canadian Supreme Court Justice, the former UN Special Rapporteur Param Kumaraswamy from Malaysia and Mike Posner who has just been sworn in as the US Assistant Secretary of State for Human Rights.

I was particularly moved by Geraldine Finucane's contribution.

The family had just received a letter from the UK government saying that ministers were deciding whether it was in the public interest to proceed with a public inquiry.

My fear though is that they are not considering the public interest but rather their own interest in preventing the embarrassment of powerful people.

You can be sure however that people around the world will continue to watch.

Finally I want to finish by highlighting what I believe is a disturbing feature of the public discourse on these issues or rather the lack of one.

While much progress has been made and Northern Ireland is a different place, much remains to be done.

The peace process has not reached its goal.

It would be a shame, if in our desire to make the peace work, we airbrushed out the things that still have to be worked on to deliver change to the communities that need it most.

A failure to deliver to marginalised and disadvantaged communities will only store up problems for the future.

It's therefore essential that issues be named and problems be raised and tackled.

Dissent and questioning should be welcomed rather than silenced, demonised or dismissed.

Let's make sure that as Kader Asmal said we follow Stephen's example of *a lively, committed, passionate human rights approach to public life*.

It will take us far.

Thank you very much.