

# WHAT IS RECONCILIATION?

## HUMAN RIGHTS AND RECONCILIATION

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Tools for the place of lumpy crossings

THINKPEACE10

## ***The Purpose of this Title***

*To ground the readers in the challenges and implications of the theme.*

*To support members, staff, et al in thinking about and developing relevant reconciliation practice as a community.*

*To bring us more into the present time and face into future challenges.*

## **Tools for the ‘place of lumpy crossings’**

If we want an even more effective practice of reconciliation, the first step might be to extend our range and awareness of tools we bring to the task. Human rights--as legal structure, as a framework for reasoning, and as a language-- can help.

Human rights law in the UK and Ireland has had bad press in recent years <sup>2</sup> . In addition, in Northern Ireland there has been a long history—and it continues—of division between ‘human rights’ and ‘community relations’ groups <sup>3</sup> .

Perhaps it is appropriate to remember that old parish records say that Corrymeela’s site on the cliff was ‘a place where strangers meet’, and the many tides sweeping the shores below us swirl in an ancient ‘place of lumpy crossings’. These may be good descriptions too, for the place we start a discussion of human rights and reconciliation.

Consider the journey of one group of community relations workers, including Corrymeela staff, documented in 2004 <sup>4</sup> . According to the Northern Ireland Human Rights Commission (NIHRC), participants in the workshop started out with some negative perceptions. Human rights, they said:

- exclude relationships; are individualistic rather than communal;
- exclude responsibilities: Individuals claiming their rights could lead to an unhelpful focus on what they were due rather than the needs of others;
- are prone to manipulation;<sup>5</sup>
- are difficult to realise in practice.

After the day-long seminar, some members of the same group had changed their minds. Amidst many thoughtful comments, they said, human rights *can*:

- offer an objective non-political platform on which to base a discussion of difficult issues.
- allow all parties to a dispute to be heard, seeing from the ‘other’s’ perspective;
- help people draw back from the immediacy of a dispute and to rationalize their perspective;
- allow people to focus on their responsibilities in regard to upholding the law which protects the rights of others.

Some participants at least were persuaded that more human rights knowledge and awareness among community relations practitioners can help build peace.

I propose to set out the foundations of this case by making a series of assertions that

address reconciliation, conflict, human rights and how they work. Then I will suggest how human rights may help with the kinds of difficult conversations we have, to embrace difference, heal division and enable reconciliation.

## 1. Reconciliation

Corrymeela says reconciliation is:

...the restoring and transforming of relationships and structures harmed by division and conflict, so that they reflect a shared humanity and seek a shared future in which we live well with and for others <sup>6</sup> .

This definition talks about ‘structures’ as well as relationships. For the purposes of this discussion, think of human rights as a legal ‘structure:’ it is formally constituted in statutes and forms the basis for policy and behaviour of ‘state actors,’ from prison staff, to police officers, social workers and hospital staff.

## 2. Conflict and human rights

Systematic abuses of human rights fuel conflict. As conflict intensifies, the frequency and intensity of human rights abuses multiplies. So, peacebuilding has to be concerned, among other things, with how to reverse this process; how to build protections for human rights through institutions, laws and accountability of states to the people within their borders.

You find this reasoning, for example, in the preamble to the *Universal Declaration of Human Rights* (1948):

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,....

In this founding document of the United Nations, protection of human rights is the ‘foundation’ of peace both within countries and between countries. Human rights, in fact, frames necessary constituent parts of peace, like justice and the rule of law. This is aspirational, of course. But human rights should also be ‘practical and effective;’ that is why they are embedded in law <sup>7</sup> .

## 3. Human rights is a law-based project

When I worked for the Northern Ireland Human Rights Commission, we said that ‘human rights are human needs protected by law.’ These protections can work at international, regional, and domestic level, or all at once. So you have United Nations conventions, which work like peace treaties. Countries sign up to them and make promises to do what is in them. Then the Council of Europe has its founding treaty, the *European Convention of Human Rights and Fundamental Freedoms* (ECHR) 1950, to which both United Kingdom and Republic of Ireland governments have signed and ratified (i.e. they have opted to be accountable to it). And finally, in the UK the *Human Rights Act* (HRA) 1998 has incorporated the ECHR into domestic law. The ECHR and HRA 1998 both protect us from (among other things) torture, slavery, and arbitrary arrest and promise to respect private and family life, free speech, freedom of conscience, and freedom of peaceful

assembly.

If human rights is a law-based project, a number of implications follow.

It is only one branch of law; there are many branches of the law. Strictly legally speaking, the state is the body that needs to uphold rights, or can abuse them. This is because strictly legally speaking, human rights law is like a promise a state makes to those within its borders. When non-state actors commit murder or torture, for example, perpetrators are subject to criminal law. These distinctions are breaking down a bit as observers show that trans-national companies, for example, can sometimes have more power than the state and therefore potential to violate the law on massive scale (e.g. the BP oil spill in the Gulf of Mexico has been called, by some, a human rights abuse). Indeed, sometimes paramilitary groups control large territories and are in effect, acting as the state (in some conflicts in Africa for example).

All branches of law have potential and limits. For example, we don't always get what we think looks like justice from the law. Nonetheless, most of us would agree that upholding the 'rule of law,' accessible and consistent, equally for all citizens, is a desirable end for a peaceful and stable society.

Human rights law exists not only to protect individuals but to uphold the structures we all depend on for the common good: peace, democracy and the rule of law. Civil and political rights, for example, are the foundation of participatory democracy. To give just one example, democracy only functions if we can speak our conscience without fear that we will be arrested and tortured.

#### **4. How human rights work**

Christine Bell at the University of Edinburgh, and many other academics, have looked at the macro issues of human rights in 'transitional' justice, when a society is moving away from sustained large scale conflict<sup>8</sup>. Urgent questions come up about 'structures': should the same people who design the peace process design a truth commission? Should amnesties be offered, and if so what might be the long term price? Should historical crimes be investigated and prosecuted at any cost? And of course, for each of these questions, who should decide and how? These vital questions address the structural issues of justice and truth (two of the four quadrants in John Paul Lederach's model) of reconciliation<sup>9</sup>. However, I would like to focus on smaller scale applications of human rights law, in reasoning and language. I think these 'one on one' applications can help difficult the conversations to which we are committed in Corrymeela.

Quite frequently people talking about rights are not well informed. 'I have the right to .....! (insert activity)' is forcefully asserted, as if that finishes the discussion. To the contrary, among informed people it is only the beginning of the balancing act.

In fact, very few rights are absolute<sup>10</sup>. Most rights are limited. How do the limitations work? Well, they try to balance the positive rights of the individual against the public good. For example, we have (*HRA 1998 Art 9*) the right to think anything we please. What goes on inside our heads is free and cannot be regulated. However, we don't have an absolute right to 'manifest' our beliefs. How we actually behave can be limited by a number of considerations: including public safety, and the rights and freedoms of others. As one judge memorably put it, when rights are limited (as they almost always are): 'my right to swing my fist stops where your nose starts.'

Let's be clear. Human rights law is written in a way that acknowledges that rights will frequently come into conflict. As a result, in highly complex and emotionally charged situations, they can assist with an appropriate and measured language. They can also assist with a decision-making process.

One example of appropriate and measured language, is the attempt to set thresholds in court for what constitutes torture, and what constitutes inhuman and degrading treatment<sup>11</sup>. Other examples from cases on the right to life (also from Northern Ireland) is the need for law enforcement officials to plan carefully any operation that may involve the use of force<sup>12</sup>, and what constitutes an effective investigation when someone dies in custody of the state<sup>13</sup>. Appropriate and measured language in a rights framework, can also be applied to public processions, demonstrations and protest<sup>14</sup>.

'Agents' of the state (police, mental health care staff, housing officers, hospital workers, prison staff) have powers by law to do certain things. Quite frequently these powers will constitute a form of limitation on people's rights (for example the power of arrest limits my right to liberty in Art 5). How to make sure these rights are limited and not abused? Well, agents of the state are accountable to the law, and to the rest of us and through civil institutions (like the Police Ombudsman, the NIHRC and in a functioning democracy, institutions like a free press). Any officials using powers to limit rights should be able to show that the limitation has a basis in law, that it is necessary, that it is proportionate to the aim that is being pursued, that it is not discriminatory, and keep records of their decision-making.

Because the rights of the individual and the good of society come into conflict on a regular basis, there needs to be a way to reason through decisions. When conflicts are tested in court, the court has to examine 1) whether the restriction has a legitimate aim, 2) corresponds to a pressing social need, 3) is necessary and 4) proportionate (the means have to be appropriate and a balance between the individual and public good is struck)<sup>15</sup>.

## **5. Human rights and reconciliation**

Michele Parlevliet, a conflict transformation activist in South Africa, gave one example of bridging community relations and human rights approaches. In a conflict between South Africans and Namibians in a squatter camp she said they used conflict resolution techniques to assist to identify needs, fears and interests. But they also used legal and constitutional frameworks to draw attention to issues of xenophobia and the rights of the non-citizen Namibians. Both assisted to build awareness and a lasting solution. She explains:

Human rights actors generally need to develop their capacity to deal with conflict in a constructive manner while doing human rights work. Conflict management practitioners, by contrast, need to develop an understanding of the meaning and value of human rights for their work and gain the ability to identify human rights violations. They need to be familiar with various constitutional and legislative frameworks and must be able to conduct their interventions in line with the human rights instruments relevant to the context in which they operate.

In this case, more awareness of the law that applies to a context, and the ability to identify human rights violations, helped resolve the issues in the community. In addition, I believe that the measured language human rights can offer, the thoughtful analysis, and the reasoning process by which to assess decision making about limitations on rights, can

be very helpful.

A human rights discussion is not appropriate in every difficult conversation. But, without this tool, and perhaps others we can develop, we may not be as effective as we hope.

## 6. Tools for the lumpy crossing place

In preparing this article, I dug out a wonderful resource published by Corrymeela ten years ago, called *Pathways: A Resource Manual for Peacebuilding*. Under the heading, 'Peace is a process,' it provides a very helpful list of two sorts of peacebuilding activities. There are 'strategies and actions for dealing with the consequences of violence.' And there are 'strategies and actions for rebuilding (or building anew) the social, political and economic fabric, including institutions, structures, processes and mechanisms.'<sup>16</sup> I believe these tasks still describe what we set out to do in Corrymeela.

We are justly proud of our continuing work on dealing with consequences of violence. That is, on helping those who are experiencing trauma, telling stories and listening to each other's truths, as well as other forms of creative relationship building<sup>17</sup>. Sometimes, these tools have included other conflict mediation tools like a facilitated process of identifying fears, needs and interests<sup>18</sup>. Here I think an understanding of human rights and how they work can help even more effective work with the task of balancing justice, mercy and reconciliation in these conversations.

An awareness of human rights can also help in the other set of tasks, too, for renewing structures as well as relationships. I hope after this brief introduction you can see how human rights awareness can play a role in some of the strategies identified in our manual a decade ago:

... building community in a divided society, encouraging political empowerment and public participation in decision-making, improving leadership and governance at all levels, ... and addressing economic, political and social development in a more holistic way<sup>19</sup>.

Structures and relationships are linked in reconciliation and they need to be linked in our practice as well. We need personal qualities like faith, hope, empathy, a sense of humour, humility, enthusiasm, compassion, pragmatism, and the ability to make good scones. We need skills in group facilitation, to listen to stories and to tell them, to play games, ask questions, practice conflict mediation skills, do art therapy, to pray together. I believe we also need thoughtful contributions from practitioners from various disciplines: hard facts, implications, and new understandings for reconciliation from, for example, law, politics, psychology, theology, sociology, and history.

We have made a commitment to embrace difference, heal divisions and enable reconciliation. I have suggested a set of tools, from human rights law, that can help. I have also raised a general challenge. What tools do we use? Are the tools sharp? Are they fit for purpose? If not, or not always, what other tools do we need for reconciliation of relationships and structures, so that we live well with and for each other?

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End Notes:

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2 For example see Tim Shipman, 'End this Human Rights Insanity,' *Daily Mail* 17 February 20122, sec 1, Alison Little, 'Human Rights 'Police' Must Go,' *Daily Express* 8 August 20122, sec. 1, p. 1.

3 See contributions in Belfast conference on this subject: Neil Jarman (ed) *Human Rights and Community Relations: Competing or Complementary Approaches in Responding to Conflict?* Institute for Conflict Research, Belfast, 2002. Find an excellent set of discussions from Northern Ireland, South Africa, Sri Lanka, and Nigeria at

Carnegie Council on Ethics and International Affairs, 'Integrating Human Rights and Peace Work,' *Human Rights Dialogue/Winter* 2002, 27. ([www.cceia.org/themes/hrd.html](http://www.cceia.org/themes/hrd.html))

4 Northern Ireland Human Rights Commission, *Report on Human Rights and Conflict Management Project*, Belfast, 2004, p. 23.

5 'Human rights' practitioners level this charge at 'community relations' workers too.

6 Corrymeela Strategic Plan 2013 – 2016

7 *Goodwin v UK* (App No 28957/95) (2002) 35 EHRR 18 ECtHR

8 See for example '*Negotiating Justice? Human Rights and Peace Agreements*' authored by Christine Bell for the International Council on Human Rights Policy, Versoix, Switzerland, 2006.

9 *Building Peace: Sustainable Reconciliation in Divided Societies*, JP Lederach, United States Institute of Peace Press, Washington DC, 1997, p. 30.

10 Arts 3, 4, 7 of HRA 1998 are absolute; the right not to be tortured, the right not to be enslaved, and 'no punishment without law,' that is, if something was not against the law when you did it, you can't be found guilty when the law changes.

11 Key jurisprudence has arisen from the conflict in Northern Ireland. *Ireland v UK* (1978) arose from practices in detention in Northern Ireland; and set precedents in global terms for defining the nature of torture, inhuman and degrading treatment. (*Ireland v UK Series A, NO 23* (1978) 2 EHRR 25, ECtHR).

12 *McCann v UK* (App. No 18984/91) [1995] 21 EHRR 97 ECtHR

13 *Jordan (Hugh) v UK* (App. No 24746/94) (2001)37 EHRR 52 ECtHR

14 For a discussion, within a human rights framework on recent 'flag protests,' see Neil Jarman and Geraldine Scullion, 'Protecting Rights or Limiting Disorder? Freedom of Assembly and the Right to Protest,' *Shared Space, A research journal on peace, conflict and community relations in Northern Ireland*, Issue 15, April 2013, Community Relations Council, Belfast, pp. 5 – 16.

15 For an excellent introduction that spells out the practical implications for every article of the HRA 1998 and ECHR see *Rights in Progress: A Guide to the European Convention on Human Rights and the Human Rights Act*, Fourth Edition, Les Allamby and Jonathan Simpson, Law Centre (NI), 2013.

16 *Pathways: A Resource Manual for Peacebuilding*, Corrymeela Press, Belfast, 2000, p. A8.

17 Methods like 'deep dialogue, nature based learning, and reflective practice,' for example are identified in one peacebuilding exercise by, among others, a Corrymeela staff member: 'I will if you will: Interim Report of the Interdependence Project,' Ballynafeigh Community Development Association, Belfast, no date. p. 48.

18 There is a wide literature on this, emphasising empowerment and conflict transformation. One good source is *Peace Skills: Manual for Community Mediators*, Ronald S. Kraybill with Robert A. Evans and Alice Frazer Evans, Jossey-Bass, San Francisco, 2001.

19 *Pathways: A Resource Manual for Peacebuilding*, p. A8.

## Corrymeela Community

### VISION:

Embracing difference, healing division and enabling reconciliation.

### MISSION:

To provide open, safe and inclusive spaces for dialogue, which moves society towards social justice, positive relationships and respect for diversity.

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