

HUMAN RIGHTS INNOVATION IN SCOTLAND



January 2019

Summary of conference hosted by the
Centre for the Study of Human Rights
Law

Technology and Innovation Centre, 14 November 2018

the place of useful learning

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RATIONALE

The First Minister established an Advisory Group on Human Rights Leadership in January 2018, which brought together ten experts. This Group was mandated “to lead a participatory process to make recommendations on how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights”. The Advisory Group explored how such obligations might be given further effect in law, policy and practice within Scotland.

The initiative was fundamentally about:

- relying on the law and human rights to improve peoples’ everyday life in Scotland;
- managing the risks of Brexit in Scotland;
- raising the global profile of Scotland as a supporter and innovator of international law.

Several Strathclyde colleagues contributed to the work of the First Minister’s Advisory Group on Human Rights Leadership. Longstanding Visiting **Professor Alan Miller** is former Chair of the Scottish Human Rights Commission, a member of the First Minister’s Standing Council on Europe, and was appointed Chair of the Advisory Group. **Professor Nicole Busby** is an expert in equality and employment law, a founding member of the Scottish Universities Legal Network on Europe (SULNE) and in 2017 she was appointed as a member of the Scotland Committee of the Equality and Human Rights Commission. **Professor Elisa Morgera**, Co-Director of the Strathclyde Centre for Environmental Law and Governance, was appointed to the Advisory Group on the basis of her research on human rights and the environment, including contributing to the mandate of the United Nations Special Rapporteur on Human Rights and the Environment. Strathclyde colleagues **Professor Aileen McHarg** (on constitutional issues) and **Dr Elaine Webster** (on the place of the idea of human dignity in human rights law) also contributed to the development of the Advisory Group’s recommendations.

In light of this development, the Centre hosted a major conference to mark twenty years of the UK’s current legal framework (the Human Rights Act 1998) within the devolution settlement (which established the Scottish Parliament and Government in 1998). The conference aimed to reflect on the potential of the next twenty years to further the implementation of human rights standards that are internationally-recognised but not directly enforceable in the UK legal system, including those human rights relating to social security, the highest attainable standard of health, cultural heritage, and environmental governance, amongst others.

PARTICIPATION

More than 100 members of the Scottish legal community attended the conference, including undergraduate, postgraduate and PhD students in law, from Strathclyde and other universities, local solicitors (from private practice, law centres and local authorities), advocates, academics, and children's rights and environmental organisations.



WELCOME

Following a welcome from the University Principal, **Professor Sir Jim McDonald**, **Dr Elaine Webster** welcomed and thanked speakers and attendees on behalf of the Centre for the Study of Human Rights Law. The aim of the Centre is to act as hub for engaging the academic, student and wider community, to support understanding of the scope and impact of human rights law in society.

The conference then watched a specially recorded video message of support from **Christian Courtis**, **recognised expert within the UN Office of the High Commissioner for Human Rights** on economic, social and cultural rights and on the Sustainable Development Goals.

KEYNOTES

Professor Alan Miller introduced the opening keynote speaker, **Nicola Sturgeon MSP**, First Minister of Scotland. The First Minister delivered a positive message, discussing how the Scotland Act and the Human Rights Act 1998 transformed the context for human rights protection in Scotland. She described the value of the human rights framework in exerting discipline in policy making. Human rights have now been incorporated into Scotland's National Performance Framework, making them central to the evaluation of whether Scotland is a successful country. The First Minister noted that the Holyrood Parliament has recognised the Human Rights Act 1998 as a valuable tool for creating a better and fairer society and that the European Convention of Human Rights is a minimum floor, which should not be the limit of Scotland's ambitions.



The First Minister ended by reflecting on two more distant anniversaries: the 100th

anniversary of World War I and the 70th anniversary of the Universal Declaration of Human Rights, and the international effort to create a better world having witnessed the horrors of the first half of the 20th century. The resurgence of intolerance and discrimination are a reminder, she said, that social and political progress cannot be taken for granted and respect for human rights is not guaranteed. The First Minister's key message was that she wanted Scotland to be a leader in protecting and enhancing international human rights.

The afternoon session was opened by the Lord Advocate, **James Wolffe QC**, the Scottish Government's chief legal officer. The Lord Advocate focused on what it meant for the Government and Parliament to take human rights seriously. The role of these institutions, alongside the courts (in defining the law), lawyers (in supporting access to legal remedies), academics (in progressing understanding), and civil society (in creating a culture of commitment to human rights), was to assume a shared responsibility. Echoing the First Minister, the Lord Advocate stated that human rights law exerted a discipline over policymaking; a discipline that Government and Parliament accept because of the enduring commitment to the values underpinning human rights. He highlighted the Social Security (Scotland) Act 2018 as an example of commitment to the broad view taken in the Universal Declaration of Human Rights to civil and political and also economic, social and cultural rights, and as an example of the required working-out of human rights through concrete legislative schemes and administrative practice.

HIGHLIGHTS

Alongside the keynote speeches, the conference heard a wide range of thoughtful contributions based on personal experience. An early highlight was hearing the reflections of **Lord Wallace QC**, former Deputy First Minister of Scotland, Deputy Leader of the House of Lords in the UK Parliament, and former Advocate General for Scotland (Head of the UK Government's Scottish legal team and chief advisor to the UK Government on matters of Scots Law). His was a unique perspective, especially since, having supported the incorporation of the European Convention of Human Rights as a Parliamentary candidate in the 1980s and 1990s, he became the very first minister to face an adverse judgment under the Human Rights Act in his role as Minister for Justice in the then-newly established Scottish Government. It was refreshing to hear from Lord Wallace that on that day the judgment was not particularly welcome news, but that it was unquestionably an example of the effectiveness and success of the HRA. During a presentation and then in conversation with Dr Elaine Webster, the conference also heard Lord Wallace's thoughts on the achievements of the Human Rights Act and why he actively promoted the creation of a Scottish Human Rights Commission.



Professor Alan Miller, first Chair of the Scottish Human Rights Commission, addressed the question, What is Human Rights Leadership Today? In his role as Chair of the First Minister's Advisory Group on Human Rights Leadership, Professor Miller observed that having listened to many people, from cabinet secretaries to communities that have been denied rights, leadership at this juncture is about bringing out the best in people.

'In summary then, the recommended framework would help to anchor Scotland's values in these times of uncertainty. From there it could navigate its way forward post-Brexit in keeping with international standards. In so doing it would send a welcome signal of its support for the international rules-based order.'

International Public Policy Blog, [What is Human Rights Leadership today?](#), 7 December 2018

A key insight from the speech was Professor Miller's view that the steps that Scotland needs to take are clear, should be possible under any devolutionary arrangements, and are backed by a real desire to see them achieved: a human rights framework based on dignity and civil, political, economic, social, cultural and environmental rights on the basis of a participatory process, with a focus on everyday accountability. On the role of lawyers in human rights leadership, he said that the public have trained lawyers to know about law and rights, therefore lawyers need to know about human rights principles, even if they are not human rights lawyers. He highlighted that where systematic gaps in the law are perceived, it is the role of lawyers to bring these to public attention, and he urged lawyers to enter the public space and depoliticise rights.



Three panellists, **Cath Denholm**, **Dr Calum MacLeod**, and **Mhairi Snowden**, responded to this presentation, and reflected on human rights leadership from diverse policy and advocacy perspectives. A theme in the responses was an openness to trying out new, connected-up ways of prioritising rights-based approaches with a core respect for participation. The panellists considered how to make stronger linkages: between the right to health and the right to a healthy environment, between land rights and the right to take part in cultural life, and between civil society and the legal sector to strengthen a new rights framework.

Shelagh McCall QC facilitated a discussion on shared human rights leadership following the Lord Advocate's speech. She highlighted the importance of recognising a shared goal in the next stages and that progressive human rights protection is not an 'us v. them' approach. **Michael P Clancy OBE** reflected on the potential loss of the EU Charter of Fundamental Rights and the need to recognise the intertwining of domestic and EU law. **Sarah Crawford** returned to the theme of collaboration, giving an example of recent successes taking a collaborative social justice approach.

In the penultimate session, solicitors **Rachel Moon** and **Seonaid Stevenson** and advocate **Ximena Vengoechea** shared their stories about using human rights (or not) in their work and the role of practitioners. Rachel Moon illustrated the need to reduce the burden on clients in Scotland by shoring up human rights recognition within the police and judicial system. She talked about the role of practitioners in carrying the human rights ethos into the empathy shown to clients, a theme also picked up by Ximena Vengoechea: giving a voice to clients, and helping to make the arguments that have led, and will continue to lead, to developments in the law. It was '#LoveYourAdvocate', as Ximena said! Advocates will play a significant role in developing new strands of judicial human rights implementation. Seonaid Stevenson talked about her experience with the Strathclyde Law Clinic initial advice service, the inspiring potential she has seen within the Scottish legal community to use the law to support social change, and ideas for increased, creative opportunities for solicitors in all fields to get involved.

Advisory Group members and Strathclyde **Professors Nicole Busby** and **Elisa Morgera**, and **Professor Paul Hunt** from the University of Essex, then closed the conference, looking to regional and international treaties and practice, across the spectrum of human rights, for inspiration and innovation drawing on their respective areas of expertise. The common theme was the complementarity of international human rights law with other international and national administrative frameworks and approaches (using examples of social rights, equality guarantees, and environmental regulation) and the necessary dynamism that comes from this interaction. If stakeholders

recognise where separate efforts have fallen short, lessons can be learned and shared through open-minded and collaborative exchange. Their contributions emphasised creative possibilities of integrating the detail of legal frameworks with international innovations.

NEXT STEPS

The Centre for the Study of Human Rights Law has committed to supporting activities that may arise from the First Minister's Advisory Group process, through research and sharing knowledge as well as teaching (a recent step is the extension of the [Community Bursary](#) scheme to the LLM in Human Rights Law).

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