Still shackled by the Past: Truth and Recovery in Northern Ireland

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Abstract

The present paper aims to consider the government initiatives for dealing with the past and truth recovery in Northern Ireland and future prospects. Due to advances in the Northern Irish peace process, the issue of the past and reconciliation has been gaining increasing attention. This, combined with the increased lesson-learning from the field of transitional justice, has meant that issues arising from the legacy of the past are both controversial and extremely relevant for peace-building work. This paper considers past and current reconciliation and truth-recovery initiatives by government since the Good Friday Agreement, and analyses the success of these initiatives in resolving the issues of the past and recovering the truth about events during the troubles.

Introduction – The Good Friday Agreement

The signing of the Good Friday Agreement (GFA) on April 10, 1998 beckoned a new era in the tempestuous history of Northern Ireland. Aimed at ending the most recent phase of political violence whereby over 3700 individuals were killed and 40,000 injured in over 30 years of conflict, the GFA contained no formal mechanism for dealing with past abuses. Many believe this was a tactical choice, and that the issues involved were so controversial that they would have placed the Agreement’s success in jeopardy. This approach is not abnormal in negotiations in transitional societies.

A striking aspect of the transitional experience in many societies is that many legal and political issues remain “up for grabs” either because they have been specifically left out of the negotiations process, or because there has been a deliberate constructive ambiguity about their resolution.¹

Others would claim that the issue of the past was not important enough to be considered as part of the package, and that policymakers chose to concentrate on the present and future in order to increase the likelihood of success in negotiations. A “piecemeal confidence-building” approach has been taken towards the issue of the past,² which some say is appropriate given the terms of the Agreement - by avoiding addressing what caused the conflict and a long-term solution, in favour of a pragmatic compromise aimed at living peacefully while continuing to resolve the more difficult disputes. Bell argues that this approach is “constructively ambiguous”, in that it recognises what can be achieved in a deeply divided society and that it allows political movement on issues that can be progressed, therefore postponing movement on issues which cannot.³

This approach also perhaps recognises the distinct nature of the conflict in Northern Ireland where more deaths were committed by paramilitaries, who are unlikely to have information on the murders documented as well as other state-committed murders. This has meant that there has been a failure to engage systematically with the past in Northern Ireland, as the past has been one of those issues where movement appears to have been “postponed”. Bell argues that the establishment of a mechanism to deal with the past would have placed the GFA under jeopardy.⁴ Nevertheless, this lack of action in addressing the past has meant that the issue has become politicized, and now victims’ issues are often fraught with division.

Ireland increasingly looks like the exception that proves the rule, given the absence of such an official truth-telling process here. What has marked us out from the international norm has been the piecemeal approach to dealing with the past. This has largely been the result of the constructive ambiguity of the peace process placing a premium on not dealing with the past. Consequently victims’ issues have become a site of struggle and division⁵

Key parties, in particular the UK government and Sinn Féin, would have both been reluctant to enter into a comprehensive truth recovery mechanism to investigate their misdeeds in the past. As we shall see, this is probably still the case. In the context of uncertainty surrounding the Good Friday negotiations, key parties would have been very reluctant to commit such a mechanism as part of the Agreement. In such conditions, it is normally the voice of civil society that steps into the vacuum to articulate such demands. Nevertheless, civil society also placed priority on the need for political agreement and a range of human rights demands aimed at future reform, and so the argument for a need for such a mechanism was lost. Civil society was not in agreement on the issue or in the position, to place pressure for such a demand.⁶
Whilst the legacy of the past was not explicitly dealt with in the GFA, as David Ford explains, the wider issue of reconciliation in general was also not dealt with in the “Programme for Government” which was the follow-up programme to the Agreement.

I can remember when we debated what was called the Programme for Government… it failed to deal with the community divide in the society, the real need to promote that reconciliation and bring about a normal peaceful society, because at the end of the day, putting violence behind us is much better than having good schools, good hospitals, good roads, which were the kind of easy things for people to concentrate on.7

Arguably, the GFA does deal with the past and in other more discrete ways, by dealing with issues such as prisoners and victims: If you examine some of the institutional mechanisms put in place by the Good Friday Agreement, some of those do at some level constitute an interface with the past.8

In aiming to end the most recent phase of violence, which had begun around 1968, these methods were based on historical precedents and pre-Agreement initiatives. For example, the controversial release of politically motivated prisoners has been extensively used throughout Irish history, with non-prosecution used in 1969 and this amnesty continuing to have an effect to this day. Commonly the most controversial issue in transitional justice, this notion of amnesty has not evaded the debate in Northern Ireland. Typically, non-state actors would escape individual criminal responsibility when they were victorious, or when they were able to obtain amnesty in return for a peace agreement. The Good Friday Agreement is just one of many contemporary examples:

In addition, the Agreement envisaged a series of further measures with significant capacity for transformative effect, including a Bill of Rights, a Criminal Justice Review, a Policing Commission, and a scheme to release prisoners convicted in special, jury-less, “Diplock courts”, which effectively functioned as an amnesty provision.10

The GFA’s section on prisoners agreed to an accelerated program for prisoner release, and most qualifying prisoners were released within two years, with parallel releases conducted in the Republic of Ireland. Much of the public and private discussions concerning the early release of paramilitary prisoners drew considerably from similar international experiences, and it was indeed this “internationalization” that was a mechanism for framing what was, for many, an unpalatable aspect of the GFA as a difficult but necessary element of conflict transformation.11

Government Initiatives for Dealing with the Past

There are structures in place to support victims, we’ve a Victims Commissioner, there is funding for victims’ organisations, and they do a lot of work. Apart from that it’s been quite piecemeal. On the issue of justice, while officially people are still being pursued for what happened over the course of the Troubles, there’s a resignation that there’s going to be very few cases taken forward and even if they were taken forward, the sentence that would be passed down for politically motivated offences would be fairly minimal.12

(1) Victims Commission

- The pre-Agreement Victims Commission was commissioned by former Secretary of State Mo Mowlam on October 24, 1997 and tasked to “look at possible ways to recognize the pain and suffering felt by victims of violence arising from the Troubles of the last 30 years, including those who have died or been injured in the service of the community.” Headed by Sir Kenneth Bloomfield, it completed its work in April 1998,13 making a series of recommendations directed at criminal injuries compensation, employers, social security agencies, government and also practical initiatives, particularly related to memorials;
- Greater compensation for victims of violence, and their support groups;
- An official ombudsman or champion to deal with demands and grievances of victims;
- Creation of physical memorial such as a garden or park at appropriate time;
- Consideration of establishment of truth and reconciliation commission in the future;
- Higher priority to treatment of pain, and research into alleviating pain and trauma of victims;
- Fund to assist children who have suffered as a result of death or injury of a parent;
- Memorial Day for victims in the future; and,
- Improved employment opportunities for victims.

This report was subject to much criticism for largely ignoring those who had been victims at the hands of security forces and creating an alleged credibility and accountability gap.14 In the sixty-page report, two paragraphs were devoted to victims of State killings, and a later audit noted that the perception of bias by the Nationalist community had impacted in take-up of resulting funds due to distrust.15

Nevertheless, one of the core contributions to the debate was the recognition of the conflicting interpretations of victimhood, and the fact that any reconciliation initiatives will have to be suitable for two very different types of victim.

The main grievances are, on the one hand, on the part of those who feel that they were “innocent” victims and, on the other, of those who were the victims of
security force actions. Both sets of people tend to feel that the state and society in general are uninterested in properly acknowledging the depth of harm and alienation they have suffered. Some contrast their experience with that of ex-prisoners and others with that of state personnel. Outside of real political reconciliation, it is hard to see how these subjective interpretations can be brought into congruence.\textsuperscript{16}

(2) Republic of Ireland Victims Commissioner

In May 1998, the post of Victims Commissioner was created in the Republic of Ireland. Senator John Wilson published his report in June 1999, which ruled out the establishment of a truth commission until there were more settled political circumstances. Wilson recommended the appointment of a former Supreme Court judge to “enquire privately” into the issue of the Dublin and Monaghan bombings of May 17, 1974, as well as the case of Seamus Ludlow.\textsuperscript{17} The families rejected these proposals, and an independent commission was established headed by retired Supreme Court Judge Henry Barron to review the evidence relating to these events. Justice Barron published a report in November 2005 naming four men as Ludlow’s abductors, but under the governments’ proposed on-the-runs legislation, the four “…need only apply to an eligibility commission to be granted an automatic presidential pardon that may leave them with no criminal record. They will certainly never have to answer questions from the public or their victims.”\textsuperscript{18}

(3) Minster for Victims & Victims Liaison Unit

Also in May 1998, the British Government appointed Adam Ingram as Minister for Victims in the Northern Ireland Office (NIO). This was followed in June by the establishment of the Victims Liaison Unit (VLU) within the NIO to take forward the Bloomfield recommendations. Since 1998, over £20 million has been invested in victims’ initiatives. This money has been used for the establishment of the Bloomfield Commission, financial support for victims’ groups, the establishment of a Memorial fund, two trauma centres and a needs analysis of victims and survivors who live in Great Britain.\textsuperscript{19}

(4) Human Rights Commission

The Northern Ireland Human Rights Commission has also done significant work on the issue of the past. Created by section 68 of the Northern Ireland Act 1998, in compliance with a commitment made by the British Government in the GFA, it came into existence on 1 March 1999. It aims to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice and to advise the Secretary of State and the Executive Committee of the Northern Ireland Assembly on what steps need to be taken to fully protect human rights in Northern Ireland.\textsuperscript{20} It is specifically charged with drafting a Bill of Rights to supplement the European Convention on Human Rights.

In September 2001, the Commission published a draft Bill of Rights. The section on victims’ rights provides a right to some type of mechanism for the past for victims of the conflict.

\textit{With a view to promoting the principles of truth and reconciliation in the aftermath of a lengthy period of conflict, the Government shall take legislative and other measures to ensure that the loss and suffering of all victims of that conflict and the responsibility of State and non-State participants are appropriately and independently established and/or acknowledged.}\textsuperscript{21}

This text was maintained in the second draft published in April 2004,\textsuperscript{22} and aims to put a legally enforceable obligation on the government to design a mechanism to deal with the past.\textsuperscript{23} The Human Rights Commission has also published a report in June 2003, “Human Rights and Victims of Violence.”\textsuperscript{24} This focussed on victims’ rights, specifically in reference to the right to truth, justice and reparation.

(5) Victims Unit

In 2000, a Victims Unit\textsuperscript{25} was created within the Office of the First Minister and Deputy First Minister of the Northern Ireland Assembly. Its aim was “To raise awareness of, and co-ordinate activity on, issues affecting victims across the devolved administration and society in general,”\textsuperscript{26} and it first considered the idea of a Victims’ Commissioner for Northern Ireland in its 2001 consultation paper on a victim’s strategy.\textsuperscript{27} Two victims’ representatives were also appointed to the Civic Forum,\textsuperscript{28} and in April 2002, the Unit launched the “Reshape, Rebuild, Achieve” strategy,\textsuperscript{29} which focused on practical support to victims, explicitly leaving issues such as truth telling to the civil society “Healing Through Remembering” Project.

Following the Prime Minister’s Government reshuffle on June 13, 2003, the former Secretary of State Paul Murphy announced the portfolios of his Northern Ireland Ministerial team and the Under-Secretary of State Angela Smith MP assumed responsibility for Victims and Reconciliation. Following her appointment, the Minister for Victims ran a consultation with individual victims, victims’ groups, academics, experts and practitioners to understand more about the needs of victims and survivors, and on the future shape of services to meet their needs.\textsuperscript{30}

Responses were published in November 2004\textsuperscript{31} and recognized a wide range of opinions related to victim’s issues (e.g. funding, Victims Commissioner, recognition & acknowledgment, memorials and storytelling). The responses also contained opinions and concerns on the issues of truth and justice, which received substantial attention. Whilst there
were many suggestions on the issue, there was no measure of the extent of support for these suggestions in the paper. Truth and justice was seen as a necessary precursor to reconciliation, and the idea of a truth commission was also commented on.

(6) Victims’ Commissioner

On March 1st, 2005, former Secretary of State Paul Murphy announced proposals for a Victims’ and Survivors’ Commissioner, as part of a detailed consultation on the future of services for victims and survivors of the troubles. The proposals explained that the Commissioner would play a pivotal role in ensuring “effective service delivery and in promoting the interests of all those who have suffered as a result of Northern Ireland’s troubled past.”32 The consultation paper “Services for Victims and Survivors”33 focused on victim support issues, and also covered topics such as victims’ groups’ funding and the establishment of a Northern Ireland Memorial Fund. It identified the establishment of a Commissioner to enable a clearer focus on meeting victims’ and survivors’ needs, as well as to be a strong independent voice to ensure that their needs are taken into account by policymakers. The consultation ended in June 2005, and despite a lack of “demonstrable consensus” and skepticism 34 was followed on October 25, 2005 by the appointment of an interim Victim’s Commissioner, Mrs. Bertha McDougall. Her remit was to look at key areas relating to services for victims, funding arrangements in relation to services and grants paid to victims and survivors groups and individual victims and survivors, and also look at how a Victims and Survivors Forum might be established. Whilst this was in interim appointment, the Secretary of State also committed to legislation to establish a Commissioner on a longer term basis. 35 Nevertheless, her appointment was immediately interpreted as political, and there were concerns regarding the manner in which she was appointed. It was not publicly advertised, and was only “approved” by the DUP.36

In such a fragile moment, this left many parties feeling excluded from the process, and served to reiterate the “concession mentality”37 and piecemeal approach of the government. Sinn Féin’s response was that: “The handling of this appointment also gives further weight to the suspicion that the British government are not prepared to deal with this issue honestly.”38 The manner of appointment was even more surprising in light of the Government’s recommendations concerning the appointment, published 3 days later:

We understand that the normal public appointments process will apply to this appointment. Nevertheless, the appointment of the Commissioner must be made with the active involvement of victims and survivors, and relevant groups. Any sense of the government imposing an appointment must be avoided if the aim of making the post-holder a powerful and effective voice for victims is to be achieved. 39

In summary, it appears that whilst there have been a wealth of consultations and posts created, there has been little real movement on core issues concerning victims.

We are surprised that some of the initiatives (many of which appear administratively routine) proposed by the government in its consultation document of 1 March have not been undertaken already in response to the expressed needs of victims. We note that the range of issues identified by the Minister in her consultation in 2003-04 are reflected in those presented in a report on victims in 1998 which suggests to us that progress in addressing these concerns has been slow and patchy, at best. We expect to see the measures which have been proposed, and which receive support in the consultation, pressed forward with the utmost vigour. Overall, we wonder whether something of an opportunity has not been lost to make a ‘step change’ both in the support given to victims and to the wider question of an enhanced role for victims in building the future of Northern Ireland.40

The piecemeal approach is therefore flawed to a certain extent, as key gaps in the issues being addressed (e.g. accountability for State actors) have led to an undermining in confidence in the wider peace process. Transformation of key legal institutions has been exceptionally difficult, as the goals of transformation remain fundamentally contested. As will be considered, the absence of a truth recovery process has hindered confidence and reform in the peace process.

The absence of any official forum for addressing the past and moving towards a ‘social truth’, which could underwrite and justify institutional transformation, haunts attempts at reform. Even more dramatically, it destabilizes political institutions...The process has broken down arguably because the very issues a mechanism focussed on the past would address, were left to be debated through survival or collapse of the political institutions.41

(7) On-the-runs

A few weeks after the appointment of the Victims Commissioner, the government announced an “effective amnesty”42 for anyone accused of offenses in Northern Ireland before 1998. The Northern Ireland Offenses Bill43 permits “on-the-run” paramilitaries to return home without serving prison sentences, and loyalists, soldiers and police officers are also eligible for the scheme. Their cases would be heard by a special tribunal, but if found guilty they would be freed on license without having to go to jail.

The Government is aware that this is a very difficult issue, and one which will be hard for many people to accept. However, sometimes it is necessary to make difficult decisions in the interests of entrenching the benefits of peace. This is one such occasion...We want to close the door on Northern Ireland’s past of violence and paramilitarism, and this legislation is one step in that effort44
This effectively means that anyone who committed a Troubles-related crime before 1998 will not be put on trial by the government, and therefore that the police will not conduct investigations in a conviction-based manner. This also removes the anomaly that permitted prisoners to be released under the GFA, whilst those “on-the-run” were still liable for prosecution. The legislation was debated in the House of Commons and House of Lords in early 2006, and was heavily criticized by both Unionist parties and the SDLP. Some commentators viewed this move as an affront to victims’ interests, and indeed truth itself. Their view was that in granting an effective amnesty, the government was denying the victims the truth.

The absence of a time limit (in which the amnesty was applicable for a certain period) was highlighted as one of the most serious flaws. This is related to the idea of a truth commission, as the promise of amnesty was instrumental in facilitating buy-in in the case of the South African Truth & Reconciliation Commission. In this case, the revelation of truth in the Commission would be exchanged for amnesty. Those seeking an amnesty also had to make a full public confession in front of those they had wronged and answer questions put on behalf of the victims.

Nevertheless, as can be seen in the case of Northern Ireland, the implementation of the GFA legislation concerning early prisoner release, and now the proposed legislation concerning “on-the-runs,” would show that it is evident that a “de-facto” amnesty has been granted, and therefore the “trade” seen in South Africa would not be feasible. “People know that the opportunity for doing something like South Africa has long since passed, even if it was ever desirable in the first place. De facto amnesty has already been given.”

The Government and Truth Recovery in Northern Ireland

The role of truth in societal reconciliation is extremely important and indeed controversial. Northern Ireland is not an exception in this case, and the issue of truth is (and has been) one of the most contested areas of the conflict. This section will endeavour to look at this issue and the response by Government.

(1) The demand for truth

International guiding principles on victims’ legal rights concur that there is a duty on the state to:

- Investigate, prosecute, and punish the perpetrators;
- Disclose to the victims and their families, as well as to society, the truth about events;
- Provide adequate reparations for victims; and
- Remove perpetrators from positions of authority, including from law enforcement bodies.

For each specific duty of a state, there is a corresponding right, and therefore a victim has a right to ascertain the truth regarding the violation, to get access to justice and to receive reparation for the harm that he or she has suffered. Underpinning the legal rights of victims – both individually and collectively – is the right to the truth about violations.

…Is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember”, which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved. These, then, are the main objectives of the right.48

There are also further rights, such as the right to justice, to reparation, and to recognition. The issue of truth-seeking in Northern Ireland is not lacking in controversy. With the British Government being perceived by many to have maintained control over the official discourse (through its position as the State, control over judiciary etc.), this has resulted in the perceived prioritization of one truth – the “official” truth:

Official discourse in Northern Ireland has, too often, allowed one “truth” or one version of events to be prioritized, and accorded more respect. This dominant truth has, historically, admitted no space for victims who do not conform to the “model” laid down. This allows a hierarchy of victimhood to flourish and gets in the way of real healing and real transformation.49

This “hierarchy of victimhood” has contributed to the conflict and led to politicization of the truth. Some victims, in highlighting this discrepancy, are often seen as being politicized and therefore cast into respective “camps”. This has served to further divide the society, in that victims from both communities are often used to advance political agendas. The British Government has also been under pressure from the relatives of victims and human rights NGOs who have chosen to use international legal mechanisms such as the European Court of Human Rights (ECHR). Since May 2001, Article 2 (right to life) of the European Convention on Human Rights holds significant implications for how the
Hegarty has also commented on the lack of victim-centred approach of this inquiry, which has meant that victims’ whilst Nationalists wanted full disclosure from the British Government, they were unable to provide it themselves (citing an IRA “honour code”) even with immunity from prosecution, increased the perception of double standards – Nationalist demands of the government for truth, Martin McGuinness’s refusal to explain his role in Bloody Sunday Unionists were disenchanted with the Inquiry for other reasons. With the Inquiry deemed to be a response to will criticise whatever findings will come out. pleasing nobody. Both sides, I think inevitably, are going to come out of that inquiry no further forward, and no matter what the result, probably both sides

The one inquiry that we’ve had into past events just proves that you can throw cash at something, you can have a huge framework and inquiry, and it ends up received criticism from the Unionist community regarding cost and effectiveness: The inquiry’s operation has also raised questions regarding the pitfalls of such a commission, generating concerns about equality of treatment (for civilian and military witnesses), victim support systems, as well as cost effectiveness. It about equality of treatment (for civilian and military witnesses), victim support systems, as well as cost effectiveness. It also faced criticism from victims’ families for a variety of reasons relating to partiality, in particular due to the issue of whether or not the soldiers were responsible for the deaths of those who were killed or disappeared. The inquiry was perceived to be biased and to have failed to properly investigate the role of the British military in the killings.

Despite what Hamber calls, the “patchwork of truth” that has been created by the various government and civil society initiatives, he recognises that in the short term, the call for official acknowledgement will not cease. The demand (and internationally accepted right) for truth will not disappear.

(2) Inquiries

In seeking to resolve this demand for truth about the past, the Government has used private and public inquiries in an attempt to deal with the past: the Cameron Inquiry (1969) into the civil disturbances of 1968, the Compton Inquiry (1971) into allegations of State brutality associated with internment, the Parker Inquiry (1972) set up to examine the procedures for the interrogation of terrorist suspects, the Widgery Inquiry (1972) which was the first inquiry into Bloody Sunday, the Scarman Inquiry (1972) into the government of Northern Ireland and the civil disturbances in 1969 and the Bennett Inquiry (1979) into ill treatment and brutality during police interrogations. These inquiries were perceived by many to be independent, and to have prioritized the interests of the State and its agents causing many to be cynical about UK government inquiries. The Widgery Inquiry in particular served to increase the sense of injustice and resentment leading to further distrust and alienation on the part of the Nationalist community, arguably fomenting the conflict.

The events of Bloody Sunday and the investigation of those events by the Widgery Tribunal left an indelible mark on Northern Ireland…It resulted in the breakdown of trust by the Nationalist community in democratic procedures, policing, and the judiciary, with serious consequences for the people of Ireland and of Britain. 54

In 1998, a second judicial inquiry to investigate Bloody Sunday was established, and completed its work late 2004, with the final “Saville Report” expected in late 2005. This inquiry has probably come closest to raising matters which are pertinent to any future discussions about mechanisms to deal with the past, either with relation to the conflict as a whole, or with relation to other disputed deaths – taking on some of the remit of a possible truth commission. …The hearings have begun to demonstrate the capacity of examination of one event in the conflict to open up some of the deepest questions about the responsibility and justifications for the use of violence both with respect to the incident in question, and more broadly, with respect to the conflict itself…the Tribunal is fulfilling some of the functions of a truth commission, even though it was not intended to operate as such. 56

The inquiry’s operation has also raised questions regarding the pitfalls of such a commission, generating concerns about equality of treatment (for civilian and military witnesses), victim support systems, as well as cost effectiveness. It also faced criticism from victims’ families for a variety of reasons relating to partiality, in particular due to the issue of the disclosure of the names of the soldiers involved and any risk to their lives by said disclosure. The Inquiry also received criticism from the Unionist community regarding cost and effectiveness:

The one inquiry that we’ve had into past events just proves that you can throw cash at something, you can have a huge framework and inquiry, and it ends up pleasing nobody. Both sides, I think inevitably, are going to come out of that inquiry no further forward, and no matter what the result, probably both sides will criticise whatever findings will come out. 57

Unionists were disenchanted with the Inquiry for other reasons. With the Inquiry deemed to be a response to Nationalist demands of the government for truth, Martin McGuinness’s refusal to explain his role in Bloody Sunday (citing an IRA “honour code”) even with immunity from prosecution, increased the perception of double standards – whilst Nationalists wanted full disclosure from the British Government, they were unable to provide it themselves. Hegarty has also commented on the lack of victim-centred approach of this inquiry, which has meant that victims’
voices have been stymied and channelled into a “judicial” personal experience narrative form (formal statements, cross-examination) which fails to correspond to their actual experiences. She also comments on the power that the State continues to exercise over the articulation of events through the application of legal process.\(^8\) As can be seen, the current government policy of setting inquiries into particularly controversial and high profile cases has served to further antagonize the situation (when the government has been seen to be acting impartially), as well as contribute to the hierarchy of victims (giving some victims’ interests a higher profile than others).

While there are issues there regarding the behaviour of the state, there has been a feeling amongst a number of victims that there have been a number of particular high profile cases that have been singled out for attention, while their cases have been ignored. That does build up a certain degree of resentment, as it is not something broader across the board that has been applied rather than something that has been selective – that has the appearance of selective truth and selective justice.\(^9\)

These consequences have increased the sense of injustice felt in many quarters, and as the government attempts to “resolve” numerous cases, this has only served to increase the bitterness of those who interpret the government as acting partially, and resentment of whose cases have not been brought to inquiry or resolved. The demands for public inquiries and re-investigations have focused on State collusion and conspiracy, which has helped reinforce a “hierarchy of victims” and disenfranchisement. “This one-dimensional approach fails to acknowledge the sheer scale of the miserable history, and allows a hierarchy of death to be created where some victims are deemed to be more important than others.”\(^60\)

This sense of resentment is not reserved to the civilian community:

The public acknowledgment by the Chief Constable that investigations into the murders of over 200 police officers have been at a standstill opens major issues not just for police families but for Northern Ireland as a whole. Technically the files may not be closed but they are certainly gathering the dust of neglect. The Federation has been disturbed for some time that the deaths of colleagues were deemed to weigh less heavily in the scale of investigative priorities than those of other more high profile figures or who were murdered more numerous in spectacular fashion. The truth is, of course, that political pressure has been the real engine driving many of the current inquiries; The Saville, Rosemary Nelson, Pat Finucane inquiries, are proof of this point. All deserve to be thoroughly investigated but the pursuit of the terrorists guilty of other murders should never have ended. And now other horrific atrocities are inevitably being pointed up as equally meritorious of re-examination - La Mon House, Claudy, Enniskillen for example. \(^61\)

It is clear that inquiries have, so far, not generally assisted with the reconciliation process in terms of justice, truth, nor accountability.

The question therefore remains: are public inquiries the correct mechanism for finding truth and achieving justice? In the case of the course of the conflict in Northern Ireland, public inquiries have not, so far, provided a proper means of making the State accountable for its actions. That they have not done so is not because the public inquiry is a deficient model, but because in the main, these were public inquiries that were controlled in the important aspects by those elements of the State that had an interest in preventing accountability. Put simply, they were not fully independent inquiries.\(^62\)

(3) Policing

A new Police Ombudsman was created in November 2000 to deal with complaints against the police and having implications for accountability for past State abuses. This mechanism has been used to investigate the cases of Devenny (1969), Claudy (1972), Sergeant Joe Campbell (1977), Raymond McCourt Junior (1997), Alice McLaughlin (1991) and the Omagh bombing (1998). Most recently in 2004, former Secretary of State Paul Murphy announced separate investigations into the murders of Pat Finucane, Rosemary Nelson, Robert Hamill and Billy Wright, but these initiatives were also greeted with scepticism,\(^63\) and the former case has been held up due to the government’s Inquiries Act which was brought in for the Finucane investigation and allows Ministers to order the inquiry to keep material secret.\(^64\) “At the moment we have a process of accounting in a very limited and unsatisfactory way by the state for their involvement, for example in Wright, Finucane, Nelson and Hamill.”\(^65\)

Police Service of Northern Ireland Chief Constable Hugh Orde has been one of many who have criticised this “Selective Inquiry Culture”, recognizing that it is simply not practical, nor feasible to hold inquiries into every unresolved case:

I think we’re getting to a point in Northern Ireland where there is growing recognition that many of the deaths in the conflict will never lead to a judicial verdict. Obviously there is currently the team that Hugh Orde is assembling to reopen many of the cold cases and to look again at that, but I think the expectation is that in relatively few of them will it be possible to take a judicial way forward. Therefore it raises the question would a truth commission would be better? Another alternative would be a Saville-type inquiry. It is far from clear that that would be feasible on any widespread basis. Clearly, if the Cory inquiries are to move forward, I think it is very unlikely that there would be more inquiries after that – I think the British government wants to draw a line to the inquiries.\(^67\)

As Orde recognised, the practicality of continued inquiries is dubious. The prohibitive cost, effectiveness, resources, and political willingness make it unfeasible. There are a host of possible inquiries, and the line will need to be drawn somewhere. “Inquiries will not satisfy everyone, and the cost is prohibitive.”\(^68\) Furthermore, regardless of the current inquiries and any future prosecution charges, the amnesty that has been granted to prisoners (and the on-the-run
legislation to be considered later) creates a significant anomaly.

Judge Peter Cory’s report into the Finucane murder is waiting to be published and, together with the Stevens Report, it is speculated that as many as 20 police and army officers could face prosecution. Vines, but this creates both an anomaly and a difficulty. The anomaly is that most of the terrorists of that era are now out of prison and effectively amnestied. How can a man such as Michael Stone (or a Martin McGuinness, some might add) be walking free, and yet we are contemplating imprisoning the policemen who were trying - albeit illegally - to stop the terror?69

(4) Historical Enquiries Unit

In March 2005 the Secretary of State announced funding of £32 million for the establishment of a special unit whose task was to examine all unresolved deaths in Northern Ireland that were related to the security situation.70 As he put it:

Over the past three years I have met with people from all sides who struggle with simple questions about the deaths of their loved ones. I hope that the establishment of this unit will provide answers and achieve some closure for the families of victims while allowing the Police Service as an organization to close enquiries with confidence in the integrity of the investigative process and satisfied that no further investigative opportunities exist.71

The Historical Enquiries Unit (HET) is currently conducting a “cold case review” of 2,120 unresolved killings. Headed by former Metropolitan Police commander David Cox and expected to last between four and six years, the review is the largest of its kind in British criminal history:

The objective is to bring closure either by judicial means or by meeting with the families to explain what has been done and why the matter cannot be taken any further. It is also hoped that this initiative will contribute to a more positive climate of trust between the PSNI and people from both sides of the community.72

The Unit is staffed by 100 retired RUC and Garda detectives as well as serving officers from the British Forces. The review is examining all deaths in Northern Ireland that were related to the security situation during the period 1968 – 1998. This covers about 300 disputed killings by the security forces, not classified as murder, as well as 1,800 terrorist killings for which no conviction has been secured. The enquiry’s operating principle is claimed to be one of “maximum disclosure”, and this development may serve to bring some closure the victims. Nevertheless, as has been seen, previous government attempts at similar endeavours have not been successful, and considering the makeup of the investigators, the lack of international presence (and therefore likelihood that political interests will take priority) or independence, there are many doubts concerning partiality. Victims group “Relatives for Justice” comment on this issue:

…There are inherent dangers regarding the PSNI’s SCRT (Special Case Review Team) and cooperation with it…The SCRT is no different a strategy than that which exists in the form of the Inquiries Act preventing the truth surrounding the killing of Pat Finucane from coming to light. …At the end of the day the PSNI’s SCRT is accountable to the British Government – Sam Kincaid the head of Special Branch heads up the SCRT. Kincaid is of the old guard from within the RUC. There is also the fact that everything is reduced to a police investigation and will therefore not examine nature, causes, and extent of the conflict – policies or patterns of how the systemic nature of state violence in particular was. It will by definition not look at failings in the deliberately perfunctory nature of investigations and cover-ups, the role of the DPP and the courts. It will not examine the concealment of evidence by the RUC and forensic departments, avoiding prosecution when the State was responsible…Any process that examines the past must be independent, transparent, accountable, and have public confidence and support. The PSNI’s SCRT does not constitute that criterion and is unacceptable to hundreds of families affected by state sponsored violence. No matter how it is dressed and presented its sum total resides with the British Government…The SCRT is about the past and poses the single biggest threat to securing a proper truth recovery process…We have no confidence that it will deliver – instead we believe that it will act against our interests whilst promoting State interests.73

Orde has been one of the most outspoken advocates for the need to deal with the past in Northern Ireland. He has talked about the fact that some people are unable to move on and achieve closure, and also mentioned the policing practicalities of such a backlog of unsolved crime from the Troubles impinging on a post-Patten policing service. He has also openly objected to the “piecemeal” approach to history, as this would mean that the past would be given the chance to constantly resurface. “…Revisiting cases in an unstructured way over a prolonged time period would mean regularly surfacing old accusations and old suspicions and will detract from progress and reforms made in policing and investigation methods in recent years.”74 From this perspective, in the case of policing at least, the neglect of dealing with the past is currently impacting and restricting the present. The only way that victims and their relatives can find out about their loved ones is through the legal route, which is costly, controversial, polarising, traumatic, and does not reveal the information that is desired.

I have met fathers and mothers, brothers and sisters, sons and daughters - people from all sides who struggle with simple questions about the deaths of their relatives. Often they just ask how or why, believing that these details will bring acceptance. I believe them when they say they just want to know what happened. Many have accepted that prosecutions may never be possible. They are simply looking for someone to tell them the story of how their relative died.75

From the British government’s point of view, the information is available, but it is the handling and circumstances that are the areas of concern:
As has been seen, the legal route has served to increase the hurt of those involved, as well as forced actors to entrench their positions. Practically, the continuance of inquiries is not feasible, and so the work of the HET will be crucial in helping Northern Ireland deal with the past. If perceived as impartial and effective, the HET will be able to make a significant step towards resolving the needs of many victims, as well as contribute towards “normalisation”. Nevertheless, the work of HET will also be controversial, and any implication of partiality will lead to a loss in credibility and will be perceived as yet another British “cover-up” for many victims and their families, increasing the sense of grievance and demands for a truth recovery process.

**Conclusion**

As has been seen, these judicial, legislative and policing measures, whilst perhaps contributing to the consolidation of peace post-GFA, have been seen as lacking by many, particularly victim’s groups. The main problem with government-proposed initiatives for dealing with the past is their vulnerability to political pressure and accusations of impartiality. The core problem for these initiatives is their lack of credibility, particularly in the Nationalist community which cannot perceive the British government as an independent actor in the initiative, as it itself is an actor in the conflict.

It must similarly be recognised that governments are not neutral brokers in peace processes, but have their own agenda, which on one level is respectful of the status quo, but can also be intensely territorial and defensive. The tendency to compartmentalise issues of engage in technocratic discourse is an aspect of a defensive strategy that will ultimately undermine change and which must be acknowledged and resisted. Even when gains have apparently been made of agreements reached, it is important not to underestimate the potential of official resistance to reclaim or reshape the debate within narrower parameters.

It is for this reason that many acknowledge that no initiative for dealing with the past will have credibility or support from both communities unless it is perceived as being impartial and independent. This issue is recognized by former Secretary of State Paul Murphy: “…I recognize too that, for some, the Government’s role in past events is itself seen as an issue; and it is hard for some sections of the community to see us as a genuinely neutral party.”

Calls for truth commissions, further inquiries and “leaving the past in the past” – all manners of dealing with the legacy of conflict – have become politicized, and many voices, not least victims’, have been crowded out in the political melee that has grown developed in such a conflict-torn environment.

Roles have been cast and stereotypes entrenched through time. The impact of the heavy influence of other international examples (some of which are entirely dissimilar due to the respective dynamics of the conflicts) on expectations, roles, outcomes and format, has not been helpful on many counts. By attempting to address the past by investigating and supporting a variety of formal and informal mechanisms, the British Government has shown that it is not reluctant to address these issues. Nevertheless, in the power dynamic that exists and with the UK government driving the peace process, it is easy for any government initiatives to face significant scepticism.

Practically, in such a politicized environment, the long list of unresolved cases will not disappear and the piecemeal approach will not suffice. As long as the issue of the past remains ignored/unresolved, it will remain as a political demand and could potentially be a seed for future conflict. In a society so dominated by history, it is not unfathomable to envisage this, and some would argue that the issue of the past is already a contested and significant part of the conflict itself. As Professor Ní Aoláin has stated: “The State must lead the response with imagination and openness…if the State seeks to escape or minimize its past, it will inevitably meet it again.

A vehicle for exposing and examining the past is required. Without it, the long list of unresolved…cases will continue to linger at the margins of political debate and legal process, stymieing the capacity of all such systems to move forward.” Inquiries have indeed served to reveal many facets of Northern Ireland’s past, and for some they have brought closure and the ability to move on. Inquiries have also served to cause further antagonism in society. In a post-agreement society when the past is still very much in the present, it is only natural that such antagonism arises as interests and perceptions shift and readjust to the new political climate. Nevertheless, inquiries have been conducted in a haphazard and insensitive manner, paying little attention to other victims and causing a “hierarchy of victimhood” in an unstructured and uncertain process. Expectations have been set, and these have not been met, leaving the Government open to criticism and accusations of partiality – inquiries will not satisfy everyone.

As the international community has grown to recognize in recent years, there are a wide variety of mechanisms that can be used in order to assist societies to recover from the legacies of their past conflicts. The struggle that Northern Ireland is currently experiencing is not unlike that of many experiences throughout the world. Both the British and Irish governments have supported a variety of judicial and non-judicial mechanisms in order to assist in this arduous process. Being located in Western Europe, the substantial political attention, resources, and international expertise devoted to Northern Ireland’s past can be said to outstrip that of many other countries. Despite this, and despite the
efforts of governments and civil society, the process of dealing with Northern Ireland’s past can be seen to be as fraught, haphazard, political, and painful as countless other examples around the world. Northern Ireland also shows us that there is no easy-fix solution – reconciliation is a process and not an event, and assuming it is the latter will only serve to impede the former. “Northern Ireland is not yet free of the shackles of the past and it has no choice but to accept that the past has to be dealt with in one way or another.”

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