**Ian Acheson**

**17 August 2021**

**Cap X**

**<https://capx.co/as-things-stand-the-northern-ireland-legacy-plans-are-indefensible-but-they-can-be-changed-for-the-better/>**

**AS THINGS STAND, THE NORTHERN IRELAND LEGACY PLANS ARE INDEFENSIBLE – BUT THEY CAN BE CHANGED FOR THE BETTER**

**While we are distracted by the capitulation to Afghan terror, we’ve thrown the towel in closer to home**

**If the original proposals stand, the work of revisionists and apologists for terrorism is complete**

**It's time for the British government to show that the moral imperative trumps exhaustion and expediency**

This is a good month to bury bad policy. On Sunday, as Kabul folded in the face of violent extremism, people in Omagh recalled the work of other zealots who on that day in 1998 murdered 29 men, women and children in a terrorist outrage that could have come straight from the Taliban playbook.

While we are distracted by the West’s capitulation in the face of Afghan terror, closer to home we’ve thrown the towel in too. Victims and survivors of IRA atrocities such as the Omagh and Hyde Park bombs, savaged by republican violence, have had to resort to the civil courts to achieve some measure of justice when failed by prosecutors. For the first time anywhere in the world, members of terrorist organisations were being sued after the criminal process proved inadequate.

Now, new government proposals on dealing with the Northern Ireland conflict, out for consultation, will mean that prior to 1998, those robbed of their loved ones during the anarchy of the Troubles will have nether civil nor criminal recourse to get justice. In an attempt to stop vexatious claims against the tiny number of security force personnel who committed crimes, this moratorium must also mean the huge majority killed or maimed by republican and loyalist paramilitary terrorists will never be held accountable for their crimes. All terrorists who have evaded prosecution will now get amnesty, not jail time. Many of their atrocities rival the worst excesses of sectarian killers in the fields of Bosnia or the streets of Raqqa, if not in scale, then certainly in intent. Terrorist killers will be elevated to the same plane as the security forces who did so much and gave so much to stop them. If the original proposals stand, the work of revisionists and apologists for terrorism is complete. It’s infuriating and wrong.

I had lunch recently with the solicitors who led the landmark legal actions against the Omagh bombers. Jason McCue and Matthew Jury have forged a legal career representing victims of terrorism. We agreed that the Government’s proposals, although rooted in a sincere desire to draw a line under the endless (often fruitless) legal process for Troubles victims, was morally and procedurally indefensible. The moral case is straightforward, replacing the possibility of legal justice with nebulous concepts such as ‘truth recovery’ and ‘information retrieval’ is a denial of due process which has a vanishingly small prospect of voluntarily engaging paramilitary combatants who caused 90% of the harm. Why would anyone responsible for some of the most depraved acts of terrorism imaginable voluntarily submit themselves to encountering their victims, except perhaps to retraumatise them?

The proposed statute of limitations on civil, criminal and coronial process is not just antithetical to basic notions of justice, it is itself likely to be mired in litigation for years. It would almost certainly be subject to challenge under the 1998 Human Rights Act as it engages article 2 – the state’s obligation to investigate suspicious deaths. Moreover, by proposing an end to civil litigation like that which held republican bombers liable for the likes of the Omagh and Hyde Park bombs, the Government is in effect expropriating a private right to seek remedy through the civil courts. Finally, the unconditional nature of a ban on all redress for terrorist victims pre-1998, paying no attention to the scale of the harm caused, places a disproportionate disadvantage on victims of violence inflicted by terrorists – particularly republican paramilitaries.

This disproportionality will follow through into and fatally contaminate the other proposed innovations that prop up this invidious process. The security forces were good at keeping records, those they were opposed to much less so. Republican and loyalist terrorists were primarily concerned with pushing up the body count. This has meant that existing legal actions have been wildly skewed in favour of those who opposed the state, relying on legally aided and sometimes politicised campaigns that leave out the majority of the bereaved and survivors. Figures from Northern Ireland’s Public Prosecution service bear this out – former members of the security forces are up to 54 times more likely to be prosecuted than a republican paramilitary. Expecting paramilitaries, freed from any remaining fear of the knock on the door, to voluntarily reveal themselves to public gaze and participate in a ‘happy clappy’ reconciliation process with their victims is an act of supreme naivete. The alternative is unthinkable cynicism.

We prefer naivete. And we want to respond with pragmatism. Rather than be opposed for all the good reasons set out above, if the Government is determined to press ahead with its legacy proposals they must be fundamentally changed to restore the moral balance of power to victims.

We have set out McCue and Jury’s proposals in a detailed submission to the Northern Ireland Office, but in essence they are that, firstly, the Government establish and fund a physical ‘Peace Centre’ staffed by victim advocates, mediators and litigators who have access to all archival material from the state, including from military intelligence and the security service. Then any victim or survivor can apply to the centre to confirm whether a suspect they believe was responsible for the harm caused to them can be corroborated with held evidence. If this is established, that individual is invited to consent to a private reconciliation with the victim that is based on meaningful participation. If the respondent participates to this extent they are immune from further legal action. If they fail to – a test established by and adjudicated on by a panel of judges – then the Peace Centre would fully fund and support a fast-track civil action against the alleged perpetrator.

Crucially, the work of the Peace Centre would be prioritised in terms of ‘harm caused’. No longer would victims of mass paramilitary murders be put to the back of the queue for justice. The silent majority of those killed and maimed in the Province’s awful roll call of unsolved mass murder – Enniskillen, Teebane, Loughinisland, Claudy, Kingsmills – would finally feel like more than the collateral damage from a peace process that has delivered them anything but closure and continues to wound long after the physical scars have healed.

It would be much preferable for the perpetrators of these heinous crimes to never feel safe from the criminal justice process as long as there is breath in their bodies. But we live in an imperfect world.  If the Government is determined to press ahead, despite uniting all political parties in either part of Ireland against them, then they must think again and show by adopting these significant amendments to their legacy plans that the moral imperative trumps exhaustion and expediency. We’ve had more than enough of that this past few days.

**Ian Acheson is a prison safety expert. He led the independent review of Islamist extremism in prisons and probation ordered by then Justice Secretary, Michael Gove, in 2016.**

**MHG response**

Ian Acheson's legacy proposal, in his 17 August 2021 CAP**X** article, consists of the following elements as an alternative to the NIO’s no further criminal investigations, inquests or civil suits policy:

(a) A publicly funded physical 'Peace Centre' (PC) established by government, “staffed by victim advocates, mediators and litigators”.

(b) It would have access to all archival material from the state, including from military intelligence & the security service;

(c) Any victim or survivor could apply to the PC to confirm whether a suspect they believe was responsible for the harm caused to them can be corroborated by held evidence;

(d) If this can be established, then the individual is invited to consent to “a private reconciliation” with the victim;

(e) This is to be based on meaningful participation. If the respondent participates to this extent, they are to be immune from further legal action;

(f) If they fail, the PC would fully fund and support a fast-track civil action against the alleged perpetrator;

(g) The test of whether a respondent had duly participated would be established by a panel of judges;

(h) The work of the PC would be prioritised in terms of 'harm done', so the victims of mass paramilitary murders would no longer be put to the back of the queue for justice;

MHG Commentary

1. How could the PC achieve rigorous impartiality in its staffing?
2. The PC would have access to state archives, but presumably little or nothing by way of paramilitary archives - so the disproportionality which Ian Acheson identifies elsewhere in his article would persist.
3. Then there is the problem that much in the state archives may be 'intelligence' identifying 'suspects' but would not be of the standard to be evidence capable of being admitted in the courts.
4. Furthermore, it would not be legitimate for the PC to identify suspects to victims and survivors or show any such material to families.
5. The rights of suspects to due process under Article 6 ECHR and to protection of their reputation under Article 8 ECHR are vital to any investigatory and adjudication process. Compliance with them are neglected in most alternative legacy proposals.
6. There is the further problem that the PC acting in its role of investigator should not also perform the role of adjudicator on the 'guilt' of any suspects.
7. Would any victim or survivor be compelled to participate in “a private reconciliation” with the victim? If they did not participate, would the suspect go free? That could put moral pressure on a victim or survivor to participate in something which they believed to be immoral - the antithesis of 'reconciliation'.
8. Then there would be the problem of the alleged perpetrator being put under pressure in the process to 'confess' - if only to achieve the desired 'amnesty' from any further legal process. So there could be a serious problem of false or forced 'confessions'.
9. How would a 'fast track' civil action possibly work? The courts would be rigorous in recognising defence rights as well as plaintiff rights and inevitably delays, for instance in the discovery process of the mass of documentation on which the PC was relying, would result.
10. It is undesirable for a panel of judges to be tasked with the process of deciding due participation by a respondent suspect. The proper role of judges is to decide cases in court based on the admissible evidence presented to the court and after hearing submissions from the lawyers for the parties on the law and such evidence. To mire the judiciary in the work of the PC could lead to a loss of confidence in the courts by one or other section of the community - or indeed both sections.
11. The sequencing of cases presents a further problem. The article concentrates on the mass murder atrocities. But surely equal harm is done to the victim's family in each of the thousands of individual murders?
12. Furthermore the families of those killed in disputed circumstances by members of the army or police would have to be entitled to apply to the PC which would lead to further tension over its sequencing decisions.Top of FormBottom of Form