



Ulster Unionist Party

Dealing with the Past

Introduction

The failure to address the past is often cited as the Achilles Heel of devolution; some argue we cannot achieve a better, cohesive, shared future without first dealing with our past. This paper sets out to raise key questions.

Terms of Reference

For any talks to have meaning, there must be (i) a shared understanding of what is meant by the phrase, “Dealing with the Past” and (ii) agreement on why we wish to take action, i.e. is it primarily for the victims and survivors, or to enable society to move on? These are not necessarily parallel tracks, as witnessed by the Consultative Group on the Past’s attitude to the question of informants (see below).

What do we mean by “Dealing with the Past”?

Traditionally, the phrase has tended to be interpreted in the narrow sense of truth and justice for those impacted by the Troubles. Important as this area is, not all victims and survivors consider truth and justice to be their biggest issues; rather, they may prefer additional help in achieving physical pain relief, better mental health and wellbeing, an end to social isolation, or a whole raft of other problems (see below for indicative list of services required by victims and survivors).

In so far as Dealing with the Past is about truth and justice, the Ulster Unionist Party has a bottom line: until those who call loudest for the truth of others’ actions are prepared to be honest about their own past, there can be no meaningful movement. We also adhere to the rule of law as the foundation for any new agreement, i.e. there can be no “amnesty”.

For whose benefit do we wish to Deal with the Past?

It could be for the benefit of those individuals, families and communities most impacted by specific Troubles-related incidents; alternatively, it could be for the benefit of allowing society to move forward. There is often a clear tension between the two. For example, there is the widow whose only crumb of comfort regarding her husband’s murder was that, because he was shot at point-blank range, he died before he hit the ground. Over 30 years later, the Historical Enquiries Team established he lay for twenty minutes, in agony, screaming her name. Understandably, someone suddenly confronted with that information is likely to be re-traumatised. So, what is the value of the HET case review,

particularly given the fact the widow did not wish HET to conduct a review at all? But families have no veto: the HET reviews the files of every Troubles-related killing. It is also to be noted the HET review deaths only; there is no parallel mechanism for the injured, and no review of atrocities that did not result in death. The Ulster Unionist Party notes that WAVE Trauma recently called on HET's remit to be re-examined in this context (research published May 2012).

Current Mechanisms for Truth & Justice

These include (i) Public Inquiries, (ii) the Historical Enquiries Team, (iii) the Office of the Police Ombudsman of Northern Ireland, and (iv) Inquests under a Coroner's Court.

It is important to bear in mind that none of the above is an end in itself, but merely a means to the end. If we take it the end is the establishment of "the truth", then to be effective, the truth has to be revealed in a manner that not only establishes the facts, but also articulates a narrative that gives society confidence that they are hearing the truth. (As an example, Martin McGuinness's unsuccessful bid to become President of the Republic of Ireland was dogged by disbelief at his claim to have left the PIRA in the early 1970s, a claim since at odds with evidence presented to the Smithwick Tribunal into the murders of RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan).

Regarding the mechanisms listed above:

- Public Inquiries and the OPONI deal exclusively in the actions of the State and its agents;
- The HET reviews files, but only State files, not those of terrorist organisations;
- Coroners Courts have a backlog of cases that hold the potential to become mini Public Inquiries into actions by state agents, and can compel evidence from state officials (RUC, Army) but not unidentified terrorists.

While individual inquiries, reviews and reports have merit in their own right, they no longer sit in isolation, but are developing into a body of evidence that is serving to re-write history, depicting the State and its agents as the villains.

Since the Coalition Government took power in May 2010, we have witnessed, among other events:

- An apology from the Prime Minister for Bloody Sunday;
- An apology from the Secretary of State for the handling of part of the aftermath of the Claudy bombing;
- Repeated controversy over the work of the OPONI, e.g. the report into McGurk's bar.

At the same time, Gerry Adams continues to claim he was never a member of the PIRA, despite being flown to secret talks between the PIRA and Government in Cheyne Walk, Chelsea in 1972, when Adams attended along with Sean Mac Stiofain, the then IRA chief of staff, Daithi O Conaill, Martin McGuinness, Seamus Twomey and Ivor Bell.

The outcome is that we have a set of mechanisms that are imperfect, incomplete and imbalanced. The manner in which they are operated, in isolation of a parallel focus on the activities of terrorist groups, and any reciprocal apologies / acknowledgements by others, serves to re-write history, exposing short-comings, bad decisions and perceived illegality by the state and its agents, without due emphasis on context.

A resolution to this situation can be achieved only by addressing three key issues:

- How do you persuade those who hold the truth to divulge what they know;
- What mechanism would facilitate this;
- How do you ensure society can have confidence that what is happening truly represents a “truth process”.

Regarding the first point, the attitude of republicans and loyalists alike gives little hope, e.g. the remains of many of the so-called “Disappeared” have yet to be located, while Martin McGuinness told the Saville Inquiry into Bloody Sunday he could not answer certain questions because “....there is a Republican code of honour For me to identify who these people are would be a betrayal, in my view ... I have a duty, in my view, stretching back 30 years, to those people and I am not prepared to break my word to them under any circumstances.” There is little hope that loyalists would be any more forthcoming.

No international model has been identified as a suitable import for the Northern Ireland context. Regarding the last point, advocates engaged with families privately admit to occasions when they have agreed with a HET review that concludes there was no wrongdoing by the state or its agents, but the family who lost a loved one will not accept such a finding, as it does not fit their world view.

A Broader Context

Dealing with the Past should look beyond the truth of the circumstances of why 3,500 people died, not least to acknowledge the thousands of physically injured and untold numbers suffering mental health and wellbeing issues, most of whom have no mechanism on offer to undertake a review of their circumstances.

Beyond that, there is a legacy, which might be described as toxicity within society.

There is little point in this paper re-inventing the wheel, so this analysis shall follow the Report of the Consultative Group on the Past (Eames Bradley, or CGP).

CGP was tasked with consulting on how we can best approach the legacy of the past 40 years, and make recommendations on steps that might help build a shared future that is not overshadowed by the events of the past. The Ulster Unionist Party supports a focus on what is possible and practicable in this area.

CGP

Eames Bradley's key Recommendations were for:

- An Independent Legacy Commission, with a budget of £100 million and the aim of promoting peace and stability through processes of reconciliation, justice and information recovery;
- A Reconciliation Forum, combining the Legacy Commission and Commission for Victims & Survivors, to tackle societal issues.

The Ulster Unionist Party does not see the need for these additional layers of governance. The job of building a better, shared future lies with the Northern Ireland Assembly.

Further, an agreed definition is required for the term "Reconciliation".

Legal Processes

The proposed Legacy Commission was to have four strands, one societal, three relating to the violence of the Troubles:

- Reviewing and investigating historical cases;
- Conducting a process of information recovery;
- Examining linked or thematic cases.

The Ulster Unionist Party supports the continuing focus on reviewing and investigating historical cases, with a view to identifying evidence that might lead to prosecution. We do not, however, accept the CGP recommendation that these reviews are restricted to cases that resulted in death. In those circumstances, there would be an effective amnesty for those who, for example, placed a bomb on a school bus in Lisnaskea in June 1988, an act which under other circumstances would be clearly defined as a war crime.

Regarding the next strand, the Party notes with interest CGP's choice of the expression "information recovery" and the avoidance of the word "truth". We perceive this to be an implicit acknowledgement that even the CGP could not foresee a mechanism that will facilitate the recovery of the truth. Also, the CGP envisaged this strand of work beginning only at the point where the review and investigation process was complete; this would involve the family in offering an effective amnesty in return for information.

As for thematic cases, even the CGP themselves admit the potential difficulties. In their Interim Report of May 2008, while addressing the theme of informants, at a News Conference in Titanic Quarter, they made clear that in their view the issue is too big for society to handle, i.e. were the size and scope of the informants' network to become public, it would tear the fabric of society. Again, a thematic review of the allegation of "collusion" would be based on evidence contained in state files: a thematic investigation into the perceived IRA campaign of ethnic cleansing in border regions would not.

Ulster Unionist Proposals: Individual Victims and Survivors

We support resources being made available to tackle the broad areas of need of victims and survivors, by providing services including:

- Befriending;
- Counselling;
- Therapies;
- Social Networks of Support;
- Personal Finances;
- Social Inclusion;
- Education and Training;
- Employment;
- Health;
- Gender Specific Issues;
- Security Service Personnel and their families;
- Trans and Inter-Generational Needs;
- Ex-prisoners' and their families.

Ulster Unionist Proposals: Definition of a Victim

The Ulster Unionist Party has taken the lead on this issue, articulating the anger of many innocent victims at the apparent equivalence afforded perpetrators in the definition of a victim contained in the 2006 Order.

The Party can put it no more eloquently than Alan McBride who lost his wife Sharon in the IRA Shankill Road bombing in October 1993. Mr McBride is clear that there is no equivalence between Sharon and Thomas Begley, one of the PIRA bombers who also died in the explosion. Mr McBride does, however, acknowledge that the mothers of the two individuals have needs that require attention.

Given the published attitudes, comments and positions of the other parties of the NI Executive, the Ulster Unionist Party recognises that there is no current prospect of political consensus for a change in definition. However, we need to take account of developments within the European Union, where consideration is being given to a new European Directive, including this definition of victim:

“victim” shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.

The Ulster Unionist Party calls on the Northern Ireland Assembly to consider the implications for the definition of a victim contained in the 2006 Order should the above definition be adopted by the European Parliament.

Ulster Unionist Proposals: Communities

The Ulster Unionist Party recognises what the CGP described as the “Victimisation of Communities” and consequently, another set of needs, to some extent overlapping with the needs of individuals noted above.

The Ulster Unionist Party believes these needs can and should be addressed via Cohesion Sharing and Integration, supported by Executive initiatives, including the Social Inclusion Fund, the remaining potential of PEACE III, and the prospective PEACE IV.

We oppose the Legacy Commission. To establish another set of arrangements for dealing with legacy issues would be to duplicate unnecessarily, and run the risk of an uncoordinated approach to building better, stronger, more open communities.

The CSI Working Group is also attempting, or should attempt, to cover many of the Legacy issues identified by Eames Bradley: sectarianism, socio-economic impact; flags and emblems; memorials.

A key question is that of when ex-prisoners should stop identifying themselves primarily as ex-prisoners, i.e. at what point it ceases to be supportive and actually hold individuals back from moving on, particularly given the fact these individuals argue they only became involved because of loyalty to a cause, not out of criminality. Now that their “cause” has been served, what is the continuing need to operate within single-identity support groups? (While there is no agreed figure, it is estimated that between 2000 and 2008, ex-prisoners and their families received well over £12m in funding from a variety of state and European sources). PEACE IV’s aims should include the objective of assisting ex-Prisoners and their families to move on, in line with the Prisoners paragraphs of the 1998 Belfast Agreement.

Ulster Unionist Proposals: Apologies / Acknowledgements

Offering an apology is relatively easy, and can be done without truly acknowledging, recognising or understanding the impact of the act for which the apology is offered. Indeed, the apology’s impact may be greater on the community the speaker serves rather than the community to whom he/she is reaching out. For example, as Eames Bradley put it in their Interim Statement, the unionist community have a problem recognising that:

“ the State not only sought to be an honest broker during the conflict but also played a combative role and, in this context, sometimes went beyond their own rules of engagement.”

It is important that this opinion is read in the context of the rules of engagement of others, e.g. the PIRA, who terrorised not only the security forces, but their own Republican / Nationalist communities. In the absence of an agreed mechanism which offers a complete and balanced approach to truth and justice, the Ulster Unionist Party recommends the Secretary of State explores the possibility of a series of “acknowledgement statements” from all sides. Such statements would be designed to switch the focus from a seemingly endless attention to the forensic detail of individual event after event, to an attempt to “draw a line” to enable society to move on. This would be very challenging to the unionist community, as it would be to all others. Acknowledgement would require a focus on an over-arching recognition of the role each group in society believed they played in the Troubles, an explanation of what they were

trying to achieve, the lengths they were prepared to go to achieve their aims, and critically, some recognition of the impact and hurt caused by their actions. In this regard, the Ulster Unionist Party notes the recent comments by Sinn Féin.

Ulster Unionist Proposals: Storytelling

In principle, we believe storytelling has merit (i) as a therapeutic exercise for those telling their stories and (ii) as a useful tool for ensuring the full human impact of the Troubles is understood.

Given there is no common narrative from the Troubles, not even agreement on what happened, why it happened, or the language used to describe events, the Ulster Unionist Party believes the next best alternative is to ensure all sides record their memories and experiences. As with truth and justice, the Party believes storytelling is currently being undertaken in a piecemeal manner, with former members of the security services least likely to participate, given it is counter-intuitive to their training and lifestyles for so many years.

Storytelling, conducted in a comprehensive manner, is a potentially fitting Legacy activity; it is also a powerful learning tool for future generations, who must be encouraged never to repeat the mistakes of the past.

That said, the Boston College storytelling experiment has highlighted the difficulties. As the Ulster Unionist Party does not support the introduction of any form of amnesty for individuals, we recognise the problems associated with facilitating storytelling for those who committed criminal acts; equally, we understand there are issues regarding those who wish to name individuals whom they believe to have committed criminal acts. The Ulster Unionist Party does not foresee this as an insurmountable problem.

Ulster Unionist Proposals: Coroners' Courts

A legacy silo with massive potential to re-write history is the backlog of Coroners' Courts. At the time of writing, it is believed the number of Inquests involving death at the hands of the RUC / Army may reach several dozen. Each has the potential to develop into a mini-Public Inquiry. Each is sanctioned under Article 2 of the European Convention on Human Rights (ECHR), which stipulates that when a death is at the hands of the state, there must be an independent and thorough investigation.

It is our understanding that these Inquests give rise to considerable concern among former senior RUC Officers, along the lines detailed above. They have briefed the Party privately regarding their concerns, and the Party has successfully requested a meeting with the Attorney General for this group to express and discuss their concerns directly.

The Party has also discussed Dealing with the Past, and the specific issue of legacy Inquiries, at an initial, exploratory meeting with the Secretary of State.

Ulster Unionist Proposals: Conclusion

The way we deal with the past at present is through a series of mechanisms which focus on those most impacted by individual events, rather than with a view to enabling and empowering society to move on. Further, the current mechanisms are imperfect, incomplete and imbalanced, and are serving to re-write history, painting the state and its security force personnel as the villains. Clearly, this is not a tenable position.

Yet, the immediate future is of an added layer of legacy Coroners' Court Inquests, which run the risk of establishing a narrative of actions by security force personnel, without a reciprocal narrative concerning terrorist motivation and activity, or any due attention to the security and political context of the time.

The Ulster Unionist Party will be tireless in countering the propaganda of others by highlighting the absurdity of claims of non-participation in terrorist organisations. If state files are to be opened to public scrutiny, the first should be those marked "McGuinness, M" and "Adams, G".

The Ulster Unionist Party will continue to offer real support to those who volunteered to don the uniform, put themselves in harm's way, and held the line against an existential threat to Northern Ireland that lasted nearly 40 years.

The Party will continue to press the Secretary of State and UK Government, the Government of the Republic of Ireland, and the EU to accept that a solution to Dealing with the Past requires honest brokerage, and that it is unacceptable to hide behind the assertion that these matters are now devolved, not least because many of the legal issues are European and best addressed by sovereign governments, not devolved administrations.

The past can be unpicked but not undone. It is the future that we can better influence. The Ulster Unionist Party wishes to agree a way to close the ugly chapter of Northern Ireland's first century marked "The Troubles" and focus on the opportunities we can create for all in our second hundred years.

Ulster Unionist Party, 11 June 2012

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