

Common Track 9 - CELEBRATING THE SAVILLE REPORT

The terms of reference of what has become known as the Saville Report were set out in a resolution of the House of Commons on 30 January 1998 (and the House of Lords three days later): 'It is expedient that a tribunal be established for Inquiry into a definite matter of urgent public importance, namely the events on Sunday 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day.' The initiative had both a general and a particular context. It was part of the blizzard of constitutional engagement for which the first two years of the Blair-led Labour government has rightly become renowned: by the end of that year, 1998, there were already to have been enacted the devolution legislation for Scotland and Wales, the Human Rights Act, and the Lawrence inquiry (into the death of Stephen Lawrence) had already been set up: this was to transform police approaches to racist crime.

Then there was, of course, Ireland. The depth of commitment shown by the outgoing Conservative Prime Minister John Major to the problems related to the Province had been immense, and back in 1997 it had not been at all obvious that this energy would be replicated by the new man in Number 10. But exactly one month in office saw Tony Blair writing to a commemorative event in Cork acknowledging that the famine of 150 years before had left 'deep scars' and that '[t]hose who governed in London at the time [had] failed their people.' Here was a new kind of approach to British-Irish relations for sure. And while in 1992 John Major had acknowledged that those shot by British forces in Derry should be regarded as innocent of carrying firearms or explosives, in announcing the Saville Inquiry seven months after his remarks about the famine, Blair went much further, explaining that 'Bloody Sunday was different [from other killings in Northern Ireland] because, where the state's own authorities are concerned we must be as sure as we can of the truth, precisely because we pride ourselves on our democracy and respect for the law, and on the professionalism and dedication of our security forces.'

The Lawrence Inquiry started in July 1997 and reported to the then Home Secretary Jack Straw in February 1999. The contrast with the Bloody Sunday Inquiry is indeed stark. The opening statement (by Lord Saville himself) was made on 3 April 1998. Oral hearings commenced on 27 March 2000. Witnesses were heard between November of that year and (on and off) until January 2005. It was only on 22 March 2010 that the Tribunal finalised its report. Some 2,500 statements were elicited or submitted and 922 of those supplying these were called to give evidence. The thirty-three bundles of evidence amounted to some 160 volumes – well over 20 million words. Surviving victims on the day, together with the families of those killed, and soldiers involved in the proceedings were permitted legal representation, as were some other individuals. There were a number of significant legal actions on the margins of the Inquiry, and as a result of one of these proceedings were relocated to London for a time, from September 2002 to October 2003. Some witnesses were permitted to remain anonymous (due to concerns about their safety) while others were 'screened', being visible only to the Tribunal team and legal advisers present. By the time the

Inquiry team were ready to report, costs had already reached over £190 million. Northern Ireland had also of course changed enormously: power sharing arrangements had been agreed and made to work; sworn political enemies at the time of its announcement had been chuckling together for years by the time of its arrival. One main player was now a senior political representative and deputy first minister in the Northern Ireland executive.

So is this like a report into the first Bloody Sunday landing on the desk of Stanley Baldwin in the mid 1930s, interesting but quite beside the point? Does the prodigious work of Lord Saville and his colleagues William Hoyt and John Toohey have an impact which is even remotely proportionate to the effort expended and the money spent? Has the whole thing been worth doing?

As the title to these remarks makes clear, I believe it has. The then Irish Prime Minister John Bruton greeted Tony Blair's remarks about the Famine by saying that 'While the statement confronts the past honestly, it does so in a way that heals for the future' and I think the same can be said for the Saville report. We need first to recall the degree of damage the running sore of Bloody Sunday had caused over three decades – the very fact of the Inquiry and the manifestly open and inclusive way in which it had been established made it possible (even before a single finding had been released) to draw the poison from this dangerous legacy of times gone by, to siphon its venom into a separate jar and to say to those so affected by it that they felt it not possible to engage seriously with the British in a joint search for a just peace, 'Wait, have patience, Saville will do the right thing, and meanwhile get on with making the future'. I believe that without the fact of the Saville Inquiry there would have been either no Good Friday Agreement at all or it (or something like it) would have been constituted by that Agreement. In other words, the fact of the Saville Inquiry was an essential building block in the transformation of Northern Ireland that has been so evident over the past twelve years.

And then secondly, there has been the reaction to the Report itself. There are so many dogs that are not barking: no Sinn Fein protest against an establishment whitewash and this despite the emphatic finding of Saville that there had been no premeditated action on the army's part nor a political conspiracy involving Stormont or Whitehall or both; anxiety about the next steps for sure but no crowds baying for the prosecution of old men as the next stage in their bleak spiral of retribution; anger certainly in some other places as well, especially among those army named personnel still around to be affronted, but no miring of the report in court proceedings that now threaten to destroy it –so often nearly suffocated by the lawyers during its weary gestation, with this act of birth the report seems gloriously to have escaped the clutches of my learned friends for good, and now stands before us unimpeachable and seemingly impregnable. No fury from the Irish government as has so often been the case with reports of this sort in the past – far from it: for Irish Taoiseach Brian Cowen publishing Saville marks 'the day when the truth has been set free in the city of Derry. This is not about the re-opening of old wounds, but rather it is about the healing of the gaping wounds of injustice left behind by the terrible events of Bloody Sunday.'

For the leader of the SDLP Mark Durkan, the effect of the report is that 'Relatives will stand at the graves of victims and their parents to tell of a travesty finally arrested, of innocence vindicated and of promises kept, and as they do so, they can invoke the civil rights anthem when they say, "We have overcome. We have overcome this day."' And in the same parliamentary reports that set out

these remarks, Hansard dispassionately quotes a certain Ian Paisley (North Antrim) expressing the hope 'that this is the end of a matter that has bedevilled and poisoned Northern Ireland's politics for so long.' Not 'junior' in parliament but watched as he spoke by his father in the galleries above, but from that great titan of denunciation and destructiveness nothing – no megaphone through which to shout abuse; no flags burned; no mobs invading the report team's office or assailing its personnel. These are new times indeed.

We know that Lord Paisley of Bannside (as we must learn to call him) was there because the Prime Minister told us so: welcoming him in a way that he imagined might be 'unparliamentary', Mr Cameron observed that 'Everyone has had to take big risks for peace in Northern Ireland, and no more so than the Big Man, as they like to call him.' I will come to the central heroes of the Saville report later but for the extraordinarily positive reception that the report has received, for the breadth and range of the acceptance of its findings, and for the warm feeling of justice done that has descended on sceptics and cynics alike, the British prime minister must take – and deserves to take – a large responsibility. Betrayal is too big a word ever to use again in an Irish context so perhaps its best to say that nationalist Ireland is used to being 'let down', to seeing well-entrenched forces in Whitehall hitting back at the last moment to undo gains hard fought for and thought safely in the bag.

Not this time. Towards the end of his remarks in the Commons on the 15 June 2010 publication of the report, responding to a question, David Cameron says (as you'd expect) that people should read the report, but then goes on to 'recommend the summary document, which is some 60 pages long and incredibly clear. That is why I reached my conclusion about there being no equivocation. When one reads the summary, whatever preconceived ideas one brings to the whole area and to what happened, one is given an incredibly clear sense of what happened and how wrong it was.' Just because you are an ad-man does not mean that you are not being honest: there is an image here to make the British proud of themselves as a people and of their new leader – perhaps some evening a careful read of the summary document when it turns up in one of the boxes, maybe some talk with friends and certainly plenty of anxious reflection, and then (I'd say without knowing any of the background) the highly personal decision to go as far as he chose to when launching the Report.

There is something immensely compelling about a politician who forsakes equivocation. This is how the Prime Minister opens: 'I am deeply patriotic; I never want to believe anything bad about our country; I never want to call into question the behaviour of our soldiers and our Army, which I believe to be the finest in the world. And I have seen for myself the very difficult and dangerous circumstances in which we ask our soldiers to serve. But the conclusions of this report are absolutely clear: there is no doubt; there is nothing equivocal; there are no ambiguities. What happened on Bloody Sunday was both unjustified and unjustifiable. It was wrong.'

Quoting extensively from the report the Prime Minister gives a compelling account of official wrongdoing. The soldiers of support company who went into the Bogside 'did so as a result of an order... which should have not been given' by their commander and 'on balance the first shot in the vicinity of the march was fired by the British Army'. '[N]one of the casualties shot by soldiers of support company was armed with a firearm'. Soldiers 'reacted [to coming under some fire] by losing their self-control... forgetting or ignoring their instructions and training' and as a result they acted with 'a serious and widespread loss of fire discipline'. In 'no case was any warning given before soldiers opened fire.' '[D]espite the contrary evidence given by the soldiers... none of them fired in response to attacks or threatened attacks by nail or petrol bombers' with many of the soldiers 'knowingly put forward false accounts in order to seek to justify their firing'. Some of those killed or injured were clearly fleeing or going to the assistance of others who were dying. One person was shot while 'crawling... away from the soldiers' and another, in all probability, 'when he was lying mortally wounded on the ground'.

For the Prime Minister '[t]hese are shocking conclusions to read and shocking words to have to say, but we do not defend the British Army by defending the indefensible..... The families of those who died should not have had to live with the pain and hurt of that day, and with a lifetime of loss. Some members of our armed forces acted wrongly. The Government are ultimately responsible for the conduct of the armed forces, and for that, on behalf of the Government-indeed, on behalf of our country-I am deeply sorry.' In the course of his remarks Mr Cameron claims that 'Openness and frankness about the past, however painful, do not make us weaker; they make us stronger. That is one of the things that differentiates us from the terrorists.' This is surely correct.

The openness here goes further than the events of the day itself. The Prime Minister makes only one passing reference to the previous inquiry into the events on 30 January 1972, and that was simply to say that 'the Widgery report is now fully superseded', but there is an important sense in which Saville is also a kind of judicial penance for Widgery, indeed for all the harm done by the British judges whose past dabbling in Northern Ireland has caused such damage, not only to the province but to the integrity of justice and the rule of law in the United Kingdom as a whole.

Lord Widgery was, in contrast to Lord Saville, a model of expeditiousness – but hardly of fairness. He sat alone and took just eleven weeks to produce his report. He talked to no victims and took no evidence from any civilian eye witnesses. Given this truncated process and his own background in the armed forces (he had been in the Royal Artillery during the war), it is perhaps not surprising that he found 'no reason to suppose that the soldiers would have opened fire if they had not been fired upon first' and that he held to the 'strong suspicion that some [of the victims] had been firing weapons or handling bombs in the course of the afternoon and that yet others had been closely supporting them'. It is important to recall that at the time of his Report John Widgery was England's some senior judge, no less than the Lord Chief Justice. His appointment came on the Tuesday after Bloody Sunday; on the day before, an absurdly misleading account of events on the day had been given in the Commons by the Home Secretary Reginald Maudling but with Widgery in place under the Tribunal of Enquiry Act 1921 no further discussion was permitted, either in Parliament or among the public at large. When his report was published, its acceptance by the official opposition as well as the Heath government marked the end of Bloody Sunday as a party political issue: the shadow Home Secretary James Callaghan asserting that '[t]hese tragic events

belong in the past.’ When nationalist MP for Fermanagh and South Tyrone Frank McManus described the Report as a ‘spurious and desperate attempt’ at ‘whitewash’ he was shouted down on all sides with members screaming ‘Have you read the Report?’

Widgery was not an isolated event. Just before its publication a former lord chief justice (Lord Parker of Waddington) had led a committee which had found ‘no reason to rule out ... techniques [of sensory deprivation] on moral grounds’ – a conclusion from which Lord Gardiner the former Labour lord chancellor dissented and which to its credit the government effectively disowned, marking publication of Parker’s report with a promise not to engage in such practices in future (on which more shortly). After Widgery, Lord Kenneth Diplock felt able to end jury trial for terrorist offences and make many other fundamental changes in the legal system of Northern Ireland on the basis of a two month investigation and only two visits to the place under scrutiny, during which time he saw only security forces personnel. This report of course made possible the phasing out of internment which by now was being overseen by yet another British judge, Sir Gordon Willmer, comfortably ensconced as chair of the fortunately long-forgotten Detention Appeal Tribunal, a body designed to allow the authorities to claim that internment was not really internment after all.

And this is just the extra-curricular damage: time after time, from the early days of the troubles in Northern Ireland, the senior British judges intervened ruthlessly to support the established order, often overturning their Northern Ireland junior colleagues in the process. William Craig could ban republican clubs or ‘any like organisation howsoever described’ – a majority of the lords in *McEldowney v Forde* [1971] AC 632 did not think this at all vague. Soldiers could shoot innocent people running away from them if they thought they were not innocent and were about to rally their fellow-terrorists so as to launch an ambush – or so their lordships thought in *Attorney-General for Northern Ireland Reference (No 1 of 1975)* in 1977 [1977] AC 105. Members of the security forces should not be required even to turn up, much less give evidence, at inquests into the deaths of civilians in which it was known they had been involved: *McKerr v Armagh Coroner* [1990] 1 WLR 649. The media ban was if anything too soft: *R (Brind) v Secretary of State for the Home Department* [1991] 1 AC 696.

We all remember Lord Denning and Lord Lane and the miscarriages of justice over which they presided – but what we need also to recall is the extent to which these shocking distortions of justice were merely part of an embedded practice insofar as Northern Ireland was concerned. Widgery is a starting as well as a high point in such scandalous renegeing on legal and moral responsibility – but it is only a peak of culpability in what became a whole range of mountainous judicial failures. Saville has done expiatory work for more than just the disgraced Widgery: he has begun to atone for the ethical bankruptcy of a generation of his predecessors.

As Tony Blair said when setting up the Saville Inquiry, as a nation ‘we pride ourselves on our democracy and respect for the law’. It was the mismatch between such fine words and action that, down the years, did so much to perpetuate the violence in Northern Ireland. After the phasing out of internment marked the end to the overtly military phase of the UK’s action against the IRA, an approach supposedly embedded in the rule of law took its place, and this allowed ministers and officials to kid themselves that the IRA were just ordinary criminals. But of course they were not:

hence not only the rulings (judicial and extra judicial) to which I have just referred but also the new terrorism laws, the sweeping police powers, the controls on ports and much else besides. It was perhaps cynical of Sinn Fein to have aligned themselves with the civil rights and other liberal movements protesting at such damaging assaults on civil liberties in the 1970s and 1980s, but if we say it was cynical then should we not also acknowledge the grander cynicism of the British authorities, fighting a war under cover of a rule of law distorted to achieve war aims while pretending to be fighting a fair fight?

All this is now in the distant past so far as Northern Ireland is concerned, and this will surely remain the case even if dissident elements from either side manage the return to violence which some of them at any rate seem so desperately to need. Even justice and policing is now back with government in Northern Ireland, in the hands of David Ford, backed by Sinn Fein and the DUP – an alliance unthinkable just a few years ago. The public prosecution service is considering where to launch any prosecutions arising out of the report but it is perhaps fair to say that there is no clamour for such a renewal of retributive activity. While no immunities from prosecution were given, the Attorney General has stipulated that any written material or oral evidence provided by a witness cannot be used to incriminate that witness in any later criminal proceedings. This does not rule out the possibility, however, of future criminal proceedings against an individual; it only means that their own evidence to the Bloody Sunday Inquiry cannot be used against them.

There is likely to be a parliamentary debate in the Autumn, so what should it discuss? Reflections on the past certainly and a forgivable degree of careful congratulation about the present for sure. But is it too much to hope that the horizons of such a discussion should be pushed beyond Ireland? The past repeats itself, but it is careful to take a different shape whenever it does – to put us off our guard. In a contribution to a new book, David Fisher and Brian Wicker (eds) *Just war on Terror? A Christian and Muslim Response* (Ashgate 2010), the former permanent secretary at the home office and former security and intelligence coordinator at the Cabinet Office Sir David Omand writes that 'The memory is still strong of the dire consequences of the brief use in 1971 by the British Army in Northern Ireland of coercive interrogation methods, found by the European Court of Human Rights to have amounted to inhuman and degrading treatment and subsequently banned by Prime Minister Heath from use by any British personnel for all time'. He would probably say the same even more confidently about Bloody Sunday. But we know because the modern day judiciary – the judiciary of Lord Saville and his senior colleagues – has insisted on our knowing through the extension of the jurisdictional reach of the Human Rights Act that this memory has been anything but strong in Iraq, that there has been abuse and indeed killings by our forces which have been entirely illegitimate. Must we wait until a generation has passed before justice is secured for the families whose members have been the victims of this modern day abuse of their human dignity and right to life? The inquiry by Sir William Gage into the death of Baha Mousa in Basra – ongoing at the moment – is a reminder that some memories are short and even long memories can be selective. Human rights are for everyone, even – perhaps especially – the colonised and oppressed.

I end with those whom it is right particularly to celebrate. Of course the prime minister has been brave, the families of the dead and injured have been determined and the civil rights movements who have supported them throughout have never lost their faith. We would not be here tonight without William Hoyt from New Brunswick and John Toohey from Western Australia.

As the chair of the tribunal has said, paying tribute to them, they 'gave up more than a decade of what would otherwise have been their retirement to sit as members of the Tribunal and to participate in the writing of the report. They spent much of this time working in Northern Ireland or in London, long distances away from their homes and families.'

It is that Chair though, Mark Saville Lord Saville of Newdigate, whom I would like especially to honour as I bring these remarks to a close. In 1995 I joined a barristers' chambers in London of which he had long been a central figure. By then he was off on his predictable course to judicial fame, the path you'd expect a Vinerian Scholar, leading commercial barrister and brilliant legal man to take. In 1997 he achieved the highest promotion open to him, being elevated to what was then the UK supreme court, the appellate committee of the house of lords. One year later along came the Bloody Sunday inquiry and now with it finally over he is himself close to retirement. Since 1998 he has doggedly stuck to his task, withstood the brickbats, the hostile judicial reviews, the animosity of many in the security forces, sometimes even latterly the laughter and contempt about having lost control of the process, the talk even of his being a Casaubon who would never complete.

He has confounded his critics, produced a brilliant report, and reminded us all of the true greatness of those English virtues of fairness and diligence, especially when they are added to brainpower and determination. We do not have a drink in our hands yet but when we do can I suggest that the first toast be to Lord Saville of Newdigate – he makes this Irish lawyer long resident in this country and often sceptical of its judges proud of his profession, and of its leaders. We should all be proud of him.