**Northern Ireland: No more answers**

Why has Northern Ireland closed down the organisation dedicated to investigating unsolved killings from the troubles

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The armed conflict in Northern Ireland has long been over. Yet 16 years on from the Good Friday Agreement, the politicians in Belfast are still arguing over how to deal with the legacy of a conflict that cost more than 3,500 lives. This impasse is dangerous, which is why the Northern Ireland Secretary Theresa Villiers is reconvening talks about the past and other contentious issues like flags and marches.

There is no room for complacency about the failure of unionists and republicans to agree the mechanisms for exorcising what that historic Good Friday Agreement described as the “deep and profoundly regrettable legacy of suffering.” Today, politics in Northern Ireland may seem relatively stable. But divisions along sectarian and religious lines in housing, health and education remain deeply rooted. In a real sense, the peace that flowed from Good Friday in 1998 has entrenched the sectarian divide, rather than broken it down.

“We need to deal with the past before it deals with us,” says Jarlath Burns, a member of the Consultative Group, which was established by the government in 2006 as an independent body to seek views across Northern Ireland on how to build a shared future that isn’t overshadowed by three decades of bloodshed. Co-chaired by the former Anglican Primate of All Ireland, Robin Eames, and former priest Denis Bradley, in 2009 the Consultative Group recommended setting up a Legacy Commission headed by an international figure with a £100m budget over five years to combine “processes of reconciliation, justice and information recovery.” However, by 2010, it was clear that the Eames-Bradley proposals did not command sufficient cross-community support. Since then they’ve been gathering dust.

Unionists feared that the Legacy Commission would become a “one-sided truth commission” focusing disproportionately on killings by the security forces, rather than by terrorists, while republicans protested it would be the other way around.

What about the nearest and dearest of those who died? The one thing that all politicians—including NGOs, the police, ministers and community groups—claim to agree on is that the “rights and feelings” of victims should be at the centre of whatever legacy mechanism is agreed.

For the relatives of those killed by the Irish Republican Army and loyalists the memories of murder, abductions, torture, executions and mass slaughter are still very much in the present. The same is true for those bereaved by the army and police. Both terrorists and innocents were killed by the security forces. Some terrorists were shot when unarmed, while some innocents were victims of security force collusion with loyalist terror gangs.

Most of the killings were never solved. Typically relatives still want to know: was the death of a loved one preventable; why were they murdered; were they alone when they died; did they suffer; who was the perpetrator; how far did the police investigation get; was there collusion? To this day, there remains a strong desire by the bereaved from both sides for answers.

Why, then, has the sole state-funded organisation that was providing them just been killed off?

That organisation is the Historical Enquiries Team (HET), staffed by about 100 ex-detectives mainly from England, Scotland and Wales. While HET was never intended to provide an all embracing solution to the vexed question of the past, it nonetheless offered the prospect of peace of mind for many thousands of relatives through Review Summary Reports. These reports addressed questions from each family using original case records, exhibits, fingerprint evidence, intelligence reports and open sources. Before writing a report, HET officers had to satisfy themselves that their review of the case offered no “realistic evidential opportunity” of a criminal investigation leading to prosecution. In the few cases where HET did find “fresh and compelling evidential opportunities” the file was referred to the Police Service of Northern Ireland (PSNI) for further investigation.

HET’s hybrid role of investigator, reviewer-analyst and welfare worker was unique in post-conflict policing and was the brainchild of Hugh Orde, former PSNI Chief Constable. Established in 2005, HET was “the only original idea I’ve had in policing,” reflects a rueful Orde, now President of the Association of Chief Police Officers. “I felt a moral obligation to do my very best. No one else stood up to be counted or implement the Eames-Bradley review.”

The Northern Ireland conflict—known as “the Troubles”—began in the late 1960s with civil rights marches by minority Catholic Irish nationalists protesting at discrimination over housing and jobs by the ruling majority of Protestants who were unionists. Rioting in Belfast and Derry ensued, with Catholics burned out of their homes. The arrival of the British army to keep order was soon met with a brutal armed campaign by the outlawed IRA, aimed at driving the British out of Northern Ireland and reuniting it with the Republic of Ireland in the south. The IRA spread their terror campaign to England and Europe, killing 146 people. In Northern Ireland, murderous Protestant groups responded with sometimes random assassinations of Catholics, hardly any of them members of the IRA. Penetrated by spies and worn down by security force attrition, the IRA eventually laid down its arms. The constitutional position of Northern Ireland remaining part of the United Kingdom was finally settled in 1998 under the Good Friday Agreement.

The proximate cause of the death of HET is money. After devolution, the Northern Ireland Office passed the funding parcel to the new Ministry of Justice, who passed it onto the PSNI. On 30th September, the PSNI announced it could no longer afford to police the past as well as the present. Deputy Chief Constable Alistair Finlay said this would “effectively mean the closure of HET.”

The root cause of HET’s demise, however, has been a loss of vision by Northern Ireland’s devolved institutions and an aversion to doing anything that departs from policy, a politically correct version of “Computer- Says-No” type government.

Last year HET was the subject of a blistering report by Her Majesty’s Inspectorate for Constabulary. HMIC deploys small teams of senior officers supervised by an Inspector of Constabulary to review the efficiency and effectiveness of police forces. Now under the leadership of the former rail regulator Tom Winsor, HMIC is meant to set the gold standard for policing through rigorous inspection. Winsor is the first Chief Inspector of Constabulary to have a non-policing background.

HMIC found that HET was not sufficiently accountable or transparent; its policies and procedures were unclear; its decisions weren’t properly recorded; it lacked comprehensive terms of reference, a quality assurance process, a complaints process, independence from the PSNI—on and on the list of transgressions went. But by far the greatest was HMIC’s verdict that HET’s approach to killings by “the state” was “illegal and untenable” because it was “inconsistent with the UK’s obligations under of Article 2 of the European Convention of Human Rights.” HET was accused of having dealt “less rigorously” with killings by soldiers than with killings where there was “no state involvement”—in other words, murders by terrorists.

In private, Orde has excoriated HMIC’s report. He is reported to have said that his successor as PSNI Chief Constable, Matt Baggott, should have “called a press conference and chucked it in the bin. Matt should have said: ‘This has no relevance to what HET’s objective is. I’m not taking any notice of it.’”

The latest satisfaction survey conducted by an independent company showed that 64 per cent of families who received HET reports were “very satisfied” and only 3 per cent were “dissatisfied.” HMIC has queried this figure and NGOs say they were sometimes less than impressed with HET. “Our job was to ensure that reports were as thorough as possible,” said Paul O’Connor of Derry-based human rights group the Pat Finucane Centre. “The fact remains that, particularly in cases where no NGO was involved, HET produced some dreadful reports that re-traumatised families.”

But it’s also clear that HET brought some peace of mind to many families. Here, for example, is the brother of 13-year-old Leanne Murray, one of nine Protestants killed when the IRA bombed a fish shop in the Shankill Road in October 1993: “HET were contacting me every couple of months and telling me they were finding out stuff. It took them about a year. When they did finish it they came out to my mother’s house and they sat down with me, and they went through page by page, which I thought was brilliant. Put it this way—I can sleep a lot better at night time.”

The Reavey family, who are Catholics, are also grateful to HET. Eugene Reavey’s three brothers were murdered when members of a notorious Ulster Volunteer Force (UVF) loyalist gang, which included policemen and soldiers, burst into their south Armagh home in January 1976. He said: “From the day after the shooting there was no policeman who ever entered our door until HET came 30 years later. I thought to myself: ‘This is the last chance I’ve got to find out what did happen to my brothers.’” HET’s report to the family was “the first time it had all been set down in chronological order… it was something you could read and you could ask your mother, or ask your brother, or your sister ‘did they remember this?’”

HMIC’s finding that HET had a bias in favour of the state also sits oddly with several other HET reports that exposed collusion between members of the security forces and loyalist death squads—for example, the 1975 murder of three members of the Miami Showband when UVF gunmen, dressed in British army uniforms, stopped them at a bogus check point late at night as they drove back to Dublin after a concert in Banbridge.

Nor was a bias in favour of state killings my own experience. Last year, for BBC Panorama, I investigated the killings of innocent civilians by soldiers in the Military Reaction Force, an experimental army undercover unit whose soldiers dressed up as locals and sometimes went on patrol armed with the IRA’s favourite weapon, the “Chicago grinder,” a Thompson sub-machine gun. The HET officers I encountered struck me as having no illusions about the murderous conduct of some of the MRF’s more trigger happy soldiers, and were hungry for new leads. One detective spent weeks looking for leads in the Public Records Office.

As in any community that divides broadly along sectarian lines, there are two versions of “truth.” For unionists it requires that the settled history of the Troubles records a clear distinction between perpetrator and victim; that whatever the state got up to, there can be no moral equivalence to the IRA and its acts of mass murder.

For republicans, who were responsible for twice as many deaths as loyalists, “truth” qualifies as a full and frank admission by the state of its darker deeds, specifically that there was a “shoot to kill” policy by undercover forces and that collusion between the intelligence services and loyalist murder gangs was widespread.

From a nationalist perspective, the onus on HET to prove they were dispassionate truth seekers was always going to be huge. “I don’t think HET was about covering things up,” explained Paul O’Connor of the Pat Finucane Centre. “Many decent, professional people worked in the HET, but our difficulty was in convincing them that their peer group, former soldiers from the 1950s and 60s who were retired, had grandchildren and were great neighbours—nice folk, in other words—might have been involved in horrific incidents decades earlier that involved unarmed civilians being murdered.”

There is no realistic prospect of both sides settling on “one truth” when they can’t even agree on what constitutes a victim. Should, for example, the mother of a terrorist blown up as her child planted a bomb be called a victim in the same way as the mother of a murdered civilian, soldier or policeman?

The answer may seem obvious, but in Northern Ireland it isn’t. Attempts by unionists to make a clear distinction between a “perpetrator” and what most people would regard as a “victim” have failed. “There can be no hierarchy of victims” intones Sinn Féin President Gerry Adams. Accordingly, as currently defined under the Victims and Survivors (Northern Ireland) Order 2006, a terrorist shot dead by the security forces while attempting to commit murder in cold blood is as much of a victim as anyone murdered in cold blood by a terrorist.

While HMIC is, of course, politically neutral, the inference from its report is that it believes HET inclined to what amounts to a unionist definition of victim and a unionist version of the truth.

Its inspection of HET was inspired by a sociology professor, Patricia Lundy of the University of Ulster, who has written several papers about Northern Ireland’s transition from conflict to peace. So confident were HET that they were performing a valuable ground-breaking public service that they gave Lundy near unfettered access to review their work.

To HET’s astonishment, her response was to produce a highly critical report citing “anomalies and inconsistencies” in the way HET investigated army killings compared to “paramilitary suspects.” She called for an inquiry into HET’s impartiality. NGOs, community groups, lawyers and Sinn Féin leapt on her call. As the reformed offspring of the disbanded Royal Ulster Constabulary, the PSNI sees itself as one of the most transparent and accountable police services in western Europe. So, upon the recommendation of Chief Constable Baggott and the Northern Ireland Policing Board, the newly-devolved Ministry of Justice called in Her Majesty’s Inspectorate of Constabularies to subject HET to the full panoply of policing rules and regulations.

The terms of reference for HMIC drawn up by Baggott and the policing board included this question: “Does HET’s approach conform to current policing standards and practices?” Of course HET did not, as the PSNI, the policing board and Department of Justice must very well have known before HMIC even set foot in Belfast. HET was a unique, never-been-tried-before quasi-policing and welfare outfit, attempting to soothe the pain from 30 years of conflict that had left some 2,000 unsolved killings, many of them barely investigated.

A unique organisation should surely have had a unique inspection process by someone who understood that HET was not an organisation that could be bought off a tick-box shelf. As Orde put it: “In asking ‘Have you got one of these? Have you got one of those?’ Everyone knew the answer was going to be ‘No.’ Why? Because there was nothing to compare us with.”

Another of HMIC’s terms of reference asked: “Is HET’s approach to cases with state involvement compliant with the European Convention on Human Rights and Fundamental Freedoms (ECHR)?” Here the answer was even more obvious. Orde himself had gone before the Committee of Ministers of the Council of Europe to explain that HET never set out to be compliant with the European Convention. “The fundamental objective was to provide information for families,” explains Tony Blockley, a former head of Derbyshire Criminal Investigation Department and senior investigator for the HET team dealing with killings by the army. Orde has become convinced that the terms of reference set for the HMIC inspection deliberately “set HET up to fail. That was why they asked them.”

By now, PSNI had become HET’s paymaster, with Chief Constable Baggott struggling to find the funds to police the future, never mind the past. HET’s fate was sealed.  
The HMIC inspection team of four detectives was led by Stephen Otter, a former Chief Constable of Devon and Cornwall. For the uninitiated, Northern Ireland is strewn with political elephant traps. Orde believes that Otter and his team walked right into one. “Otter should have realised ‘This is a set up. I am walking into a divided society to inspect one element that’s been doomed to fail’,” he said. In the end, the trip wire that HET walked into was the fine line it sought to tread between criminal investigator and non-criminal reviewer of past cases. “They were trying to do two things at once, but there was no good policy,” says Otter. That, responds HET, was because every case was different.

Otter’s report effectively accuses HET of sanitising killings by soldiers because it had referred “not one” soldier for criminal investigation by the PSNI, whereas it had referred 39 terrorist suspects—both loyalists and republicans. HET categorically denies applying a higher evidential standard for soldiers than for terrorists. HMIC “ignored facts that didn’t fit their argument,” says Blockley. “They allowed themselves easily to be misled.” Orde has also complained that Otter ignored his own submissions about the uniqueness of HET. Otter disputes this. “I do think HET was a great design by Hugh Orde; it was just poorly executed.”

HET says the explanation for HMIC’s “39-Nil” statistic is straightforward: comparing deaths caused by terrorists to deaths caused by soldiers was like comparing apples with oranges. In the case of terrorists, the fact that a crime had been committed was indisputable. Terrorists were not lawfully armed, therefore all terrorist shootings were automatically a crime. Typically, the only evidence the Royal Ulster Constabulary (RUC) were able to gather was a dead body, usually a bullet, shell casings and occasionally witnesses.

Most terrorist crimes during the Troubles remain unsolved. In only a handful of cases did the RUC have a positive identity of the perpetrator. Therefore any new evidence found years later by HET self-evidently qualified as grounds for referral to the PSNI. In all 39 cases the new evidence related to HET having identified the perpetrator for the first time through new DNA and fingerprint techniques. These DNA and print lifts were taken from forensic samples (such as clothes or hair) gathered from the scene of the crime and kept in storage by the RUC.

In the case of deaths caused by soldiers, HET insists that while it applied the same evidential standard for referral to the PSNI, the threshold for referral was inevitably higher for soldiers than for terrorists. There was rarely any dispute as to the identity of the soldier who fired a fatal shot because he was automatically interviewed either by the Royal Military Police or by the RUC. His weapon was also available for inspection and witnesses were usually available, especially if the shooting occurred in a nationalist or republican area. Unlike a murder by a terrorist, a fatal shooting by a soldier was by no means automatically a crime. Soldiers were lawfully on the streets, lawfully armed and lawfully entitled to open fire if their target was carrying a weapon (or petrol bomb), or if the soldier felt his life, or the lives of comrades or members of the public were in danger. Only rarely was this defence demonstrably a crime to the criminal standard of proof. Self-defence was always difficult to disprove because it required an objective test of the soldier’s subjective state of mind. Therefore, even if the victim was unarmed, the Northern Ireland Director of Public Prosecutions normally gave the soldier the benefit of the doubt if he claimed (as he almost always did) that his life, or the lives of others, was in danger.

HET say it follows that in army cases, referral to the PSNI for further investigation required other new and compelling evidence which was not considered or which was unavailable to the Director of Public Prosecutions at the time. No such new evidence was uncovered, despite HET’s best efforts to find new leads precisely because they fully appreciated that early investigations into fatal shootings by the army had been so superficial.

“The idea that we were less rigorous in army cases than terrorist cases is just total and utter nonsense,” says Blockley. “The truth is we put more effort into army cases than other cases because the army cases were the hardest of all. We had huge difficulty tracing soldiers. We didn’t have the records and [the Ministry of Defence] didn’t really want to know.”

Another senior HET investigator said: “Orde said to me ‘I want you to see these families and make it right for them.’ So I’d get into my car driving between Belfast and Derry and I’d go and see these families trying to persuade them I wanted to do something for them. When I got there I’d be confronted with relatives, shouting and baying, sometimes for hours. There was just 40 years of pent up fury there. And I understood this. Then I’d drive back at midnight and we’d be getting NGOs, lawyers and politicians ragging us to death. And I’d think to myself: ‘I’m 50-odd years old. What the fuck am I doing here?’ I’ve come over to try and help!”

Nonetheless, HMIC argue that HET must have regarded some soldiers as “suspect” because they interviewed some under caution. HET sources say this relates to 17 soldiers involved in nine deaths. They interviewed these soldiers under caution not because they were suspects, but because they wanted to capture evidentially what the soldiers said so that the interview could be used should new and compelling evidence ever come to light. “We were trying to give the process belt and braces,” explains Blockley. He points out that 17 soldiers is a fraction of the 700 who were traced and spoken to by HET, in contrast to refusals by every ex-terrorist suspect approached, and that most of the cases involving the 17 soldiers were eventually resolved to the satisfaction of the families anyway.

HMIC says it doesn’t recognise the figure of 17 soldiers and that interviewing soldiers under caution was in contravention of a memorandum of understanding HET had signed with the PSNI. HET insists that’s untrue. “Not only were the tape recorders and paperwork for that purpose provided by the PSNI,” said one senior ex-HET investigator, “the PSNI also held refresher courses specifically for HET staff that were going to conduct interviews with former soldiers under caution.”

HMIC also complains that, whereas in advance of interviews under caution soldiers were given full disclosure of material in possession of the state, terrorist suspects got little or nothing. HET responds that such a comparison is ”a complete distortion.” Some terrorist suspects were interviewed by HET under caution having been arrested by the PSNI for terrorist-related offences. The soldiers interviewed under caution by HET were interviewed not as suspects but as witnesses, and were represented by lawyers hired by the Ministry of Defence as part of their duty of care to the soldiers. Statements given by soldiers were typically 40 years old. The lawyers argued that without pre-disclosure, they couldn’t advise their clients whether to engage voluntarily with HET. Therefore, says HET, pre-disclosure was the only way to secure an interview. They would otherwise have got no information for the families.

“Running through Lundy and HMIC is an unspoken assumption that because the investigation process at the time was flawed—which it clearly was—the actions of the soldiers were unlawful,” says Blockley. “The fault was with the investigation process, not necessarily with the actions of the soldiers themselves.” HMIC also criticised what HET called its “pragmatic approach,” claiming HET had adopted this “in a number of cases” by interviewing soldiers informally after they had declined to be interviewed under caution. HET say this happened just once in relation to a single soldier who had shot an unarmed man at night. HET say it was the soldier’s right to decline a formal interview since there was no new evidence to show that he did not genuinely believe the man had been armed. HMIC says HET should have referred the case to the PSNI for investigation. HET responds that the informal approach at least got the family a personal apology from the soldier and a formal apology from the Ministry of Defence. HMIC did not mention the fact that the family wrote to HET thanking them “from the bottom of our hearts,” and praising them for “all the painstaking work and all the effort you expelled [sic] to uncover the truth.”

HET was by no means perfect—inevitably, since its family-centric role was an initiative unique to policing. Its somewhat haphazard processes made it a sitting duck for the rule-book brigade and it should have paid more attention to its interpretation of the law.

At the heart of the impasse over the past is a conflict over what should be the balance between truth recovery on the one hand, and justice on the other. It really isn’t possible to have both. There is little prospect of meaningful truth recovery if ex-terrorists and state killers still run the risk of ending up in court. Without some form of amnesty, the one circumscribes the other. For as long as unionists and republicans failed to resolve that dilemma, HET was the least worst compromise. Absent the Eames-Bradley Consultative Group’s comprehensive legacy proposals which were rejected in 2010, HET was the only show in town.

The former London IRA car bomber turned policing board member, Sinn Féin’s Gerry Kelly says HET’s brand is “toxic now, so within nationalism there’ll be no great disappointment in the fact that they are no longer working.” Yet what’s left of those 17 army cases that had yet to be resolved to the satisfaction of families, and which are alleged to have made HET “toxic,” represent just 0.2 per cent of the more than 1,800 cases completed by HET. The fact that it has been shut down speaks volumes about how those who shout loudest in Northern Ireland still get listened to.

Picked over by HMIC, then starved to an untimely death, the desolate truth is that HET may not, in fact, be much missed, except, of course by one group—the families. There remain in Northern Ireland so many vested interests in the past. Politicians, former terrorists, the security forces and government—all, in their different ways, continue in an unholy alliance to suppress the truth of what they got up to for mutually convenient reasons.

In its nine-year existence, HET delivered reports to the relatives of over 2,300 lost lives from the Northern Ireland conflict. The relatives of a further 900 dead were looking to this ambitious and altruistic experiment in post-conflict policing for answers to the many anguished questions that have pained their memories. “What happens to these families now?” asks Orde. “The tragedy is that there is no longer anything for them, and that is so sad.”

So much for the high minded mantra from all those politicians and organisations with a vested interest in the past, that the “rights and feelings” of victims should be at the epicentre of dealing with its legacy. Northern Ireland may yet rue the day it didn’t take Orde’s advice by “chucking” the HMIC report “in the bin” and continuing with HET until someone came up with a better idea. So far no one has.

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