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Justice undone

Why is Northern Ireland's human rights lobby so indifferent to the collapse of the Robert McCartney murder trial?

Mick Fealty
guardian.co.uk, Wednesday July 9, 2008

A few months after the Human Rights Act was finally made law, one of the key contributors to the text of the Act, Francesca Klug, sounding a warning to an assembled group of human rights activists that they could not expect to gain the wider trust of their people if they not recognise the responsibility of the state to protect its citizens.

In Northern Ireland, as you might reasonably expect, we have a strong and relatively diverse human rights lobby: almost all groups emanate from a nationalist or left-leaning base. Most were predicated on the need to watchdog the state and its security functionaries in times when state excess was a regular, if not every day, occurrence. Abduction and murder by anti-state organisations rarely surfaced as a legitimate area of debate or activism, presumably because none of the guilty parties ever believed themselves amenable to legal redress.

This may be one reason why selling human rights to unionists has been such a hard station for the lobby. Many unionists have interpreted its activities as anti-state in themselves, although there are also deeper and more genuinely political reasons why right-leaning, small-state unionism resent the positive obligations that the modern human rights agenda sometimes aggressively pursues. Interestingly, the Catholic hierarchy is similarly resentful, but for quite specific moral reasons of its own.

There was little surprise then that there was barely any notice taken of the murder of the Robert McCartney three years ago, when 70-odd potential witnesses in the bar in which he had been drinking apparently found themselves in the toilets. The one notable exception was when his sisters met the secretary general of Amnesty International in June of that year. There was also an article in the December edition of that organisation's newsletter of that year.

Since then: nothing.

Now, nearly a week after the trial collapsed, it has taken [a satirist](#) and [a former IRA man](#) to point out that there are significant questions arising from the way the state conducted the trial. Between the two of them, they ask the kinds of searching questions that surely ought to concern anyone who cares about fundamental human rights.

First [Anthony McIntyre](#):

What we end up with is a decision to charge Terry Davison with murder on the basis of an allegation that he had wielded the murder weapon. The Police Service of Northern Ireland (PSNI), like almost everyone else, knew Davison - whatever role he might have played - was most definitely not the knife man. Despite knowing the identity of the individual who plunged the knife into Robert McCartney, the PSNI, for reasons known only to itself, chose not to charge him with murder.

[Newton Emerson](#) goes on to note that of three witnesses for the prosecution, the Public Prosecution Service (PPS) only produced one on the day:

The burden of proof in a criminal trial is "beyond a reasonable doubt" and witness C only served to introduce reasonable doubt. It beggars belief that a murder case was brought on this basis. If the PPS needed more witnesses it should have taken the time to find them, even if that had taken many years. However, the PPS did not need more witnesses.

It already had two more - witnesses A and B. These two witnesses withdrew their statements before the trial because of fears of intimidation. But the law allows any "competent person" to be compelled to give evidence against their will. The only exceptions are when that person might incriminate themselves or their spouse, which did not apply to witnesses A or B.

He continues:

Not content with casually ditching friendly witnesses, the PPS also made no use of its powers to summon hostile witnesses or make deals with suspected accomplices, although it managed to do just that in a loyalist murder case also heard last week. Much has been made of the destruction of evidence and the wall of silence in the McCartney case but little was done to pursue those known to have witnessed or participated in the clean-up of the crime scene.

Concealing evidence, agreeing to give false testimony and assisting others to evade arrest are all offences of perverting the course of justice and carry an unlimited sentence. Was there nobody among the 70 people in that Tardis of a pub toilet, especially the middle-class ceasefire soldiers, who might have been more frightened of prison than of the IRA? The PPS barely tried to find out.

These observations remain just that: observations. These events happened before last year's "final" settlement, and therefore may be considered by the relevant parties to have been part of "[the legitimate price](#)" of the new dispensation. It's certainly a stinging reminder of [the poisonous foundations of this local peace pact](#). The game having moved on, the necessary deals done, no one in politics is listening any more.

Of course, this whole area is fraught with the dangers of "[passionate intensity](#)". Recently, at the World Conference of Advocates and

Barristers in Dublin, Professor Conor Gearty of the LSE told delegates he would like to see the equivalent of "[professional war crimes](#)" to be invoked against "[outlaw lawyers](#)", who were assisted by liberal scholars who said that the "war on terror" was "defending our civilisation".

And yet, still there is nothing from the human rights lobby, who for once seem happy to cede a substantial ground of legal argument to what is, in this instance at least, a particularly feral game of politics. Isn't it time for the lobby to move in to police the "peace state"?

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