Dead Lawyers, Complicit States

Collusion, accountability and the murder of Pat Finucane

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The decision by Northern Ireland Secretary Brandon Lewis to refuse an inquiry into the 1989 murder of Belfast solicitor Pat Finucane was just the latest episode in a long and sorry saga. The result is that a 2003 judgment from the European Court of Human Rights (ECtHR) finding that the UK had breached Article 2 ECHR (right to life) by failing to hold an appropriate inquiry into Finucane's murder has still not been acted upon and any possibility of justice or accountability fades just that little bit more.

Timeline

The timeline of events leading up to last week's decision is convoluted, but it is worthwhile to set it out here to give context to the Secretary's decision. Pat Finucane was a solicitor who had represented several republican and loyalist defendants in high-profile cases during the conflict in Northern Ireland colloquially known as 'the Troubles'. On 12 February 1989, Finucane was shot and killed in his kitchen in front of his wife and children. His wife, Geraldine, was also injured in the attack. His murder was later claimed by the Ulster Freedom Fighters (UFF), a cover name used by the Ulster Defence Association (UDA), a Loyalist paramilitary organisation. The UFF alleged Finucane was a member of the IRA, largely on the basis of his legal representation of republican prisoners.

Substantial allegations emerged, however, of overlap and collusion between the UFF and Ulster Defence Regiment (UDR) — a regiment of the British Army. Indeed, the weapon used in the murder of Pat Finucane was believed to have been stolen from a UDR barracks.

In 1989, the first Stevens Inquiry was established to investigate allegations of collusion between members of the security forces and loyalist paramilitaries. This inquiry denied Geraldine Finucane permission to make a statement concerning alleged threats the family received from the Royal Ulster Constabulary (RUC — the Northern Irish police force at the time) in the lead-up to Pat Finucane's death on the grounds that they were irrelevant to the proceedings. While the Stevens Inquiry found no 'widespread nor institutionalised' evidence of collusion, it did result in the arrest of Brian Nelson — a leading figure in the UDA.

While in prison, however, Nelson admitted that he had himself targeted Pat Finucane and, in his capacity as a double agent, had told his British Army handlers about the approach. These allegations were broadcast on a BBC show called Panorama. Following this revelation, a second Stevens Inquiry was then set up; however, again, Geraldine Finucane was never contacted about the threats she received from the RUC and the result of the inquiry was that no prosecution was recommended.

In 1999, charges were brought against William Stobie — a UDA quartermaster — for the murder of Pat Finucane. He pleaded not guilty and added that he was also a police informer. On the night of the death of Finucane, he claimed he informed the RUC Special Branch by telephone that he was to be targeted. Stobie's trial collapsed in November 2001 as a key witness could not testify due to serious mental illness. Shortly afterwards, in December 2001, Stobie was shot and killed by Loyalist paramilitaries.

In 2003, the third Stevens Inquiry found that the the murder of Pat Finucane could have been prevented and that an RUC investigation should have identified the killers earlier. It also found that there was collusion.

Finucane v UK and Aftermath

In 2003, the ECtHR found a breach of Article 2 — the right to life — on the grounds that there had not been an effective investigation. The Court found that

> *the proceedings following the death of Patrick Finucane failed to provide a prompt and effective investigation into the allegations of collusion by security personnel. There has consequently been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and there has been, in this respect, a violation of that provision.*

The court did not, however, address the further allegations of lack of accessibility or independence regarding the third Stevens Inquiry. It thus fell to the Committee of Ministers to decide what needed to be done to rectify the breach.

Following *Finucane v UK*, the Corey Inquiry into certain allegations of collusion between the British and Irish security forces and paramilitaries during the Troubles found that a public inquiry into the murder of Pat Finucane was necessary and that this inquiry required that certain evidence be subject to cross-examination. In lieu of this, the Secretary of State for Northern Ireland wrote to the Finucane family stating that a new inquiry would be held on the basis of new legislation— the Inquiries Act 2005. The family, however, objected to this due to the national security privileges built into this legislation. Nevertheless, in March 2009, the Committee of Ministers tasked with monitoring the enforcement of the judgment took the decision to close the judgment on the basis that the UK was actively working on proposals for establishing a statutory public inquiry and was continuing discussions with Geraldine Finucane on how best to proceed.

In 2011, however, the new Conservative-Liberal Democratic Coalition Government decided that a public inquiry would not now take place and, instead, an 'independent' review would take place into any state involvement. In 2019, the UK Supreme Court found that this decision had frustrated the Finucane Family's legitimate expectation that there would be a public inquiry into Pat Finucane's death.

Reaction to the NI Secretary's latest Decision

The NI Secretary's decision therefore was just the latest in a long saga that stretches back over 30 years.The NI secretary justified his decision on the basis that there were ongoing PSNI (Police Service of Northern Ireland) and Police Ombudsman processes that should be allowed run their course. However, the Police Ombudsman stated that it had no ongoing investigation directly dealing with the murder of Pat Finucane, and the PSNI stated that it was not pursuing any 'new lines of inquiry'. How such review mechanisms, if they do indeed exist, obviate the need for an Article 2-compliant investigation is thus at best unclear, and at worst, obfuscation. And while the Supreme Court found no evidence of bad faith in 2019 regarding the failure to hold an Article 2-compliant inquiry, this contention is becoming increasingly untenable.

A Hierarchy of Victimhood?

It would not be Northern Ireland if 'whataboutery' was not being deployed with shameless abandon and the reaction to the NI Secretary's decision did not disappoint in this regard. Why, it was lamented, should some victims get inquiries and not others? In the words of Democratic Unionist MP Sammy Wilson:

> *The expenditure contrasts starkly with the derisory efforts that have been made to deal with the cases of thousands of people who were killed by the IRA, which have not been investigated and for which no one has been brought to justice.*

It is not 'unbalanced' to say that killings allegedly involving state actors are investigated on a different basis to those carried out by non-state actors. Such acts are already criminalised or can be subject to civil prosecution. This is not to let non-state actors off the hook or to say that there should not be inquiries or investigations into the killings carried out by paramilitary organisations with no connection to the state. But if the state claims a monopoly of legitimate violence it

must be held to a rigorous standard when exercising this power. Contracting out the dirty work to non-state actors also does not absolve the state of liability.

Relatedly, the duty of the state to protect the right to life also entails a duty to investigate deaths that may have been carried out by the state. The rationale behind this duty to investigate is simple: without it, a state could violate the right to life with impunity. This is exactly the same principle that was applied in *Cyprus v Turkey*where Turkey was found to have breached Article 2 ECHR for failing to conduct an investigation into the fate of 1,500 civilians in northern Cyprus who disappeared following the Turkish invasion in 1974. It is also the same principle that animates current campaigns for public inquiries into deaths that have arisen because of states' handling of the COVID-19 pandemic.

Attacks on Lawyers

Less than a month before the murder of Pat Finucane, Conservative Party MP Douglas Hogg stood before the House of Commons and stated:

> *I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA.*

Such accusations were again reiterated by the aforementioned Democratic Unionist Party MP Sammy Wilson earlier this week when he condemned the Government's refusal to rule out a future public inquiry into the 'murder of the IRA's solicitor of choice'.

Quite aside from the fact that Pat Finucane represented those accused of Loyalist paramilitary attacks too, the idea that a solicitor doing their job somehow justifies or excuses their murder is reprehensible. This point is all the more salient in light of the current Home Secretary Priti Patel's attacks on'do-gooders' and 'lefty lawyers,' and Prime Minister Johnson's contention that the justice system was 'being hamstrung by lefty human rights lawyers'. In October 2020, a London law firm that was the subject of a knife attack by a man possessing a confederate flag and far-right literature claimed that the person was directly motivated by comments made by the home secretary.

Conclusion

The thing about the past is that often stubbornly refuses to stay in the past. The murder of Pat Finucane is not a case of letting sleeping dogs lie; instead, these are deliberate decisions being taken now to refuse to comply with a judgment of the ECtHR. Despite the NI Secretary's insistence that the UK government is 'determined and focused on delivering on our Article 2 obligations' , ultimately, it is impossible to see this decision as anything other than an attempt to once again kick the can down the road and prevent the truth from coming out.

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