

Lessons Unlearned: Bloody Sunday and the Conduct of British Armed Forces in Conflict

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Abstract

As one of our most important cultural, political, and legal resources, history can enrich our collective understanding of present events. Conversely, historical narratives can be manipulated to fit a political agenda. This paper explores these issues with reference to Bloody Sunday, 30 January 1972. On this day, 13 civil rights demonstrators were killed in Derry, Northern Ireland, by a unit of the British Parachute Regiment. The report that followed the subsequent tribunal of inquiry justified the actions of the unit to produce propaganda against the Irish Republican Army. However, a second inquiry into the events of Bloody Sunday was established to consider new, as well as historical, evidence, in order to develop an accurate account of the day. Based on this evidence, Lance Corporal F of the 1st Battalion of the British Parachute Regiment was charged in 2019 with murder and attempted murder on Bloody Sunday. Media outlets consequently perpetuated a narrative that there is a ‘witch hunt’ against British veterans for ‘doing their job’. This denial of military accountability has facilitated the British government's disregard of known abuses of civilians by the British Army during the Iraq War. This paper will use the case of Lance Corporal F to demonstrate the complexity of crimes committed in conflict and the extent to which new legislation, the Overseas Operations (Service Personnel and Veterans) Act 2021, is insufficient in providing the necessary temporal scope to investigate them. It will further argue that the British government remains committed to cultivating a ‘culture of protection’ for British armed forces personnel, in turn denying justice for unlawfully killed civilians.

1 Introduction

In 2010, the second tribunal of inquiry into the events of Bloody Sunday, 30th January 1972 concluded that there was a ‘serious and widespread loss of fire discipline’ among the 1st Battalion of the Parachute Regiment of the British Army (1 Para).¹ On this day, a civil rights march through the Bogside area of Derry, Northern Ireland, was violently suppressed by 1 Para, whose actions resulted in the loss of thirteen lives. The evidence presented as part of the second tribunal, which became known as the Saville Inquiry, led to charges being brought against Lance Corporal F (L/C F) for murder and attempted murder in 2019, more than 47 years after Bloody Sunday.¹ These charges fuelled a narrative, led by sections of the mainstream media and by senior members of the Conservative government, of a ‘witch hunt’ being perpetrated against British veterans of operations in Northern Ireland.² The European Center for Constitutional and Human Rights (ECCHR) notes that this attitude has led to a political climate where allegations of war crimes perpetrated by British soldiers during the Iraq War are disregarded by the British government.³ The trauma experienced by victims of violence by state actors, as well as the effects on their families, which is well-documented in the case of the Bloody Sunday families, continues to be dismissed politically in favour of

¹ Northern Ireland Public Prosecution Service, ‘Bloody Sunday Decisions Press Release — Principal Conclusions’ (*Northern Ireland Public Prosecution Service*, 2019) <<https://www.ppsni.gov.uk/news-centre/bloody-sunday-decisions-press-release>> accessed 3 January 2020.

² HC Deb 11 March 2020, vol 673, col 126W.

³ ‘ECCHR is an independent, non-profit legal and educational organization dedicated to enforcing civil and human rights worldwide’ — European Center for Constitutional and Human Rights, ‘Who We Are’ (European Center for Constitutional and Human Rights) <<https://www.ecchr.eu/en/about-us/>> accessed 3 April 2020; ECCHR, *War Crimes by UK Forces in Iraq: Follow-Up Communication by the European Center for Constitutional and Human Rights to the Office of the Prosecutor of the International Criminal Court* (ECCHR 2019) 21.

preventing reputational damage to the British armed forces.⁴ The validity of such an interpretation is illustrated by the recent protests against the notice of L/C F's prosecution by thousands of retired soldiers, who collectively asserted that armed forces personnel should not be prosecuted for 'doing their job'.⁵

2 The History of Bloody Sunday

The history of Bloody Sunday requires exploration to understand the brutal and complex nature of the Northern Irish conflict, of which there are conventionally two sides — Catholic Nationalists, who endorsed a united Ireland, and Protestant Loyalists, who favoured unification with Britain.⁶ Of the paramilitary organisations that sought to represent each group, the Provisional Irish Republican Army (PIRA) arguably remains the most well-known.⁷ Together with Loyalist paramilitaries and the Royal Ulster Constabulary (RUC), the British Army was

⁴ After hearing the PPS decision to prosecute only one member of 1 Para on Bloody Sunday, the families released a joint statement noting that the event in 1972 created 'a deep legacy of hurt and injustice and deepened and prolonged a bloody conflict'; Owen Bowcott, "'People Were Devastated": Relatives of Bloody Sunday Victims on the Charge' *The Guardian* (London, 14 March 2019) <<https://www.theguardian.com/uk-news/2019/mar/14/people-were-devastated-relatives-of-bloody-sunday-victims-on-the-charge>> accessed 4 April 2020.

⁵ Dominic Nicholls, 'Thousands of Retired Soldiers Protest through London over Charging of Soldier F for Bloody Sunday Murders' *The Telegraph* (London, 12 April 2019) <<https://www.telegraph.co.uk/news/2019/04/12/thousands-retired-soldiers-protest-central-london-motorbikes/>> accessed 15 March 2020.

⁶ Whilst this paper solely discusses the two sides of the conflict, it should be noted that there were Protestants who favoured a United Ireland and Catholics who favoured the union with Britain; Samantha Anne Caesar, 'Captive or Criminal? Reappraising the Legal Status of IRA Prisoners at the Height of the Troubles under International Law' (2017) 27 *Duke J Comp & Int'l L* 332; Dave McKittrick & Dave McVea, *Making Sense of the Troubles* (2nd edn, Penguin Viking 2012) 2.

⁷ *ibid* Caesar 332. The paramilitary group believed in a united Ireland, independent of British rule, and the military branch of the Irish Republican Army.

controversially sympathetic to Protestant loyalism.⁸ For some, militancy was not the answer. The Northern Ireland Civil Rights Association (NICRA) emerged in 1967: an organisation that sought to reform the Catholic community's 'second class citizenship status', which had been the norm since the Government of Ireland Act 1920 created the six counties that comprised Northern Ireland, governed by a disproportionately Protestant Loyalist government.⁹ One mechanism of the NICRA's activism was organised marches, one of which took place in Derry on the morning of Sunday, 30 January 1972. This march, which was initially peaceful, escalated into a brutal incident that would become infamous in the wider history of the 30-year-long Troubles.¹⁰ The march was suppressed by 1 Para, a unit of the British Army, whose actions would later be described as a 'massacre'.¹¹ The events of Bloody Sunday are considered by academics to have highlighted the extent to which the British and Irish governments were unable to provide 'political, economic and cultural' equality between Protestant and Catholic communities, including the right to life.¹²

Throughout the latter half of the twentieth century, Northern Irish leaders attempted to address the discrepancies between the societal positioning of Protestants and Catholics in Northern Ireland; the then prime minister (PM), Terence O'Neill, attempted to reform its governance to facilitate intercommunity equality.¹³ International

⁸ The police force in Northern Ireland from 1922 to 2001.

⁹ Gregory Maney, 'The Paradox of Reform: The Civil Rights Movement in Northern Ireland', in Sharon Erickson Nepstad and others (eds), *Nonviolent Conflict and Civil Resistance* (Emerald Group Publishing 2012) 6–15.

¹⁰ Angela Hegarty, 'Truth, Law and Official Denial: the Case of Bloody Sunday' (2004) 15 *Crim L Forum* 202.

¹¹ Although it was not an isolated incident of excessive force used by the British Army against Catholic Nationalists; Dermot Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (Macmillan 2000) 12.

¹² *ibid.*

¹³ PM of Northern Ireland from 1963 to 1969. Audra Mitchell, *Lost in Transformation: Violent Peace and Peaceful Conflict in Northern Ireland* (Palgrave Macmillan 2011) 48.

relations academic Audra Mitchell notes that O'Neill's legislative efforts were poorly received, however, ultimately increasing levels of intercommunity violence and inadvertently exposing the extent to which the RUC were lacking in resources to suppress it.¹⁴ With support from Westminster, in 1969 O'Neill sanctioned the deployment of British troops on Northern Irish soil, which became known as Operation Banner.¹⁵ Responding to the intrusiveness of the troops, the PIRA escalated their campaign against British rule weaponised with resources provided by global supporters, including sympathisers in the United States of America.¹⁶ Motivated by the organisation's vast resources, in 1971 the Northern Irish PM Brian Faulkner extended the powers granted to British troops through the Civil Authorities Special Powers Act 1922.¹⁷ Troops were thus able to exercise controversial capacities such as internment without trial through the concomitant invocation of the Act, which breached several articles of the Universal Declaration of Human Rights.¹⁸ Maney, for example, notes how 340 people participating in a civil rights march in 1971 were arrested and held in jail without charge. All but two of the protesters were Catholic.¹⁹ As this example conveys, internment without trial purposefully criminalised the Catholic Nationalist community. Walsh, author of a report detailing the evidential flaws in the Widgery Tribunal that ultimately contributed to the fruition of the second inquiry, noted that '[it] formally subordinated the liberty of the individual to the absolute discretion of executive authority'.²⁰ This sentiment was shared by White, who noted

¹⁴ *ibid* 56.

¹⁵ Mark Saville, William L Hoyt and John L Toohey, *Report of the Bloody Sunday Inquiry* (vol 1, Stationery Office 2010) 219–20.

¹⁶ Sean Boyne, 'Uncovering the Irish Republican Army' in *Jane's Intelligence Review: The IRA & Sinn Fein* (PBS Frontline 1996).

¹⁷ PM of Northern Ireland from 1971 to 1972.

¹⁸ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 33; The Universal Declaration of Human Rights 1948, arts 10, 12–13.

¹⁹ Maney (n 9) 18.

²⁰ Dermot Walsh, *The Bloody Sunday Tribunal of Inquiry: A Resounding Defeat for Truth, Justice and the Rule of Law* (CAIN Web Service 1997) 51.

that internment without trial was an act of ‘organised’ repression by the state, which invigorated more IRA recruitment than Bloody Sunday, which he categorised as ‘unorganised’ repression.²¹

Sunday, 30 January 1972

The nature of Bloody Sunday provides the context for the discussion of the subsequent tribunals of inquiry. Of these, the second inquiry's findings will be examined to explore the events of the day, which saw the ‘largest single loss of life’ incurred throughout the course of the Troubles.²² On the morning of Sunday, 30 January 1972, the NICRA marched through the Bogside area of the city of Derry, protesting against the British Army's use of internment without trial.²³ As the march proceeded through William Street, ‘rioting broke out ... in the form of members of the crowd throwing stones’ at the British Army.²⁴ Under the provisions of the 1922 Act, the NICRA's march was illegal.²⁵ This provided a basis for military intervention, with the troops initially responding with baton rounds.²⁶ The director of operations, Brigadier MacLellan, intervened, authorising Colonel Wilford, commander of 1 Para, to send ‘one subunit’ of paratroopers to the outskirts of the Bogside. The unit were tasked with conducting the arrests of rioters, but MacLellan explicitly stipulated that 1 Para ‘must not conduct running battle down Rossville Street’. This order was, however, rejected by Wilford, who, according to the Saville Report, believed that the soldiers were trained to ‘seek out the “enemy” aggressively, and not behave like

²¹ Robert White, ‘From Peaceful Protest to Guerrilla War: Micromobilization of the Provisional Irish Republican Army’ (1989) 94(6) *Am J Sociology* 1277, 1289.

²² Hegarty (n 10) 202.

²³ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 7.

²⁴ *Principal Conclusions* (n 1) 14.

²⁵ Caesar (n 6) 333.

²⁶ *Principal Conclusions* (n 1) 14.

“Aunt Sallies”²⁷. Instead, Wilford deployed one company of 1 Para through Barrier 14 onto William Street, followed by a second company in vehicles through Little James Street, resulting in a chase down Rossville Street and subsequently into the Bogside, where rioters and demonstrators were indistinguishable.²⁸ This movement resulted in a panicked chase. The predetermined arrest operation became impossible — rioters and demonstrators intermingled in the chaos, resulting, as the Saville Report highlights, in every civilian in the Bogside becoming ‘the enemy’.²⁹

The Saville Report provides a detailed account of what happened in the minutes following the chase. In the car park of the Rossville Flats, Jack Duddy was mortally shot as he ‘[ran] away from the soldiers’ and six other civilians were wounded.³⁰ Soon after, Hugh Gilmour, William Nash, John Young, Michael McDaid, and Kevin McElhinney were shot dead, and Nash’s father, Alexander, was injured.³¹ Like Duddy, Gilmour was shot as he was running away from the soldiers and McElhinney was shot as he crawled to safety.³² Four members of 1 Para arrived in Glenfada Park North, where they shot two more men: Jim Wray, who was shot a second time ‘when he was lying mortally wounded on the ground’, and William McKinney.³³ A further four men were injured in this area, one of whom was aged 16.³⁴ One soldier left

²⁷ Mark Saville, William L Hoyt, and John L Toohey, *Report of the Bloody Sunday Inquiry* (vol 8, Stationery Office 2010) 571.

²⁸ *ibid* 576. Barriers separated nationalist and loyalist communities to limit inter-communal violence.

²⁹ *Principal Conclusions* (n 1) 52–53.

³⁰ *Principal Conclusions* (n 1) 22–23, 40. There were six casualties in this area of the Rossville Flats. Margaret Deery, Michael Bridge, Michael Bradley, and Patrick Brolly were wounded by 1 Para rifle fire. Additionally, Pius McCarron and Patrick McDaid suffered injuries from flying debris caused by 1 Para rifle fire.

³¹ *Principal Conclusions* (n 1) 24.

³² *Principal Conclusions* (n 1) 35.

³³ *Principal Conclusions* (n 1) 35.

³⁴ *Principal Conclusions* (n 1) 26–27. The four casualties in this area of Glenfada Park North were Michael Quinn, Joe Mahon, Joe Friel, and Patrick O’Donnell.

Glenfada Park North and advanced to Abbey Park, where Gerard McKinney was mortally shot, and the bullet passed through his body and killed Gerald Donaghey.³⁵ The other three soldiers who had been in Glenfada Park North entered Rossville Street, where Bernard McGuigan and Patrick Doherty were shot dead and two other men were injured.³⁶ The Saville Report highlights the rapidity with which 1 Para acted, stating that ‘only some ten minutes elapsed between the time soldiers moved in vehicles into the Bogside and the time the last of the civilians was shot’.³⁷

Bloody Sunday can be categorised as ‘unorganised’ state repression.³⁸ However, academics have speculated that the British political and security establishment intended to use this march through Derry’s Bogside to ‘inflict severe punishment on rioters’ involved with increased civil rights mobilisation in the area.³⁹ The notion of inflicting punishment directly rejects the policy of ‘minimum force’ that governed the activities of the British Army in Northern Ireland.⁴⁰ Through the deployment of 1 Para, a unit with a reputation for meticulous combat training and breeding the toughest men in the British Army, the making of a volatile environment was inevitable.⁴¹ In the direct aftermath of Bloody Sunday, Westminster Irish Republican Member of Parliament (MP) Bernadette Devlin suggested at a House of Commons debate that 1 Para’s lethal response to rioters was not an

³⁵ *Principal Conclusions* (n 1) 35.

³⁶ *Principal Conclusions* (n 1) 30. The two casualties in this area between Joseph Place and Rossville Flats were Patrick Campbell and Daniel McGowan.

³⁷ *Principal Conclusions* (n 1) 31.

³⁸ White (n 21) 1289.

³⁹ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 5; Maney (n 10) 15–16.

⁴⁰ Huw Bennett, ‘Smoke without Fire? Allegations against the British Army in Northern Ireland, 1972–75’ (2013) 24(2) *Twentieth Century British History* 275, 277.

⁴¹ Christopher Dobson, ‘Inside the Minds of the Hard Men’ *The Independent* (London, 22 October 2011) <<https://www.independent.co.uk/voices/inside-the-minds-of-the-hard-men-1572200.html>> accessed 21 March 2020.

accident, arguing that rigorously trained paratroopers do not simply go ‘berserk’.⁴² Devlin, who had been present in Derry on Bloody Sunday, concluded that the events in the Bogside were akin to ‘a normal, ordinary exercise to those men’.⁴³ Instead of accepting the criticisms of 1 Para, it can be argued that the British government used official discourse in the form of a tribunal of inquiry to justify the force they inflicted during the operation on Bloody Sunday.

3 The First Inquiry — The Widgery Tribunal and Report

At the end of January 1972, the British government formed a tribunal of inquiry into the events of Bloody Sunday, presided over by Lord Chief Justice Widgery.⁴⁴ MP Reginald Maudling read the British Army and government’s account of Bloody Sunday to the House of Commons, which he noted was ‘disputed’ by some members of the general public in the United Kingdom.⁴⁵ Official records document Maudling’s subsequent interaction with MP Devlin, during which Maudling asserted that 1 Para were returning the ‘assault’ of a ‘large number of trouble makers’ using firearms.⁴⁶ Devlin notably queried Maudling’s account, ultimately asking: ‘Is it in order for the Minister to lie to this house?’⁴⁷ Indeed, analysis of both the Widgery and Saville Reports proves Maudling’s claim that British soldiers were attacked with firearms to be false.⁴⁸ Whilst the proceedings were intended to be

⁴² HC Deb 1 Feb 1972, vol 830, col 293.

⁴³ *ibid*; HC Deb 31 Jan 1972, vol 830, col 41.

⁴⁴ HC Deb 31 Jan 1972, vol 830, col 33.

⁴⁵ *ibid*.

⁴⁶ HC Deb 31 Jan 1972, vol 830, col 32.

⁴⁷ HC Deb 31 Jan 1972, vol 830, cols 36–37.

⁴⁸ John Widgery, *Report of the Tribunal Appointed to Inquire into the Events on Sunday, 30th January 1972: Which Led to Loss of Life in Connection with the Procession in Londonderry on That Day* (Stationery Office 1972) 31–38; *Principal Conclusions* (n 1) 36–38.

impartial, Maudling's stance became indicative of the position held by those at the highest level of the British Army and government as acting in defence of 1 Para's actions.⁴⁹

According to Hegarty, a public inquiry was considered to be the most suitable form of truth-telling in the context of Bloody Sunday as mechanisms governed by law are the primary method by which accountability can be achieved.⁵⁰ Public inquiries are susceptible to outside influences, however, with Gilligan highlighting that they can be 'staged, managed and manipulated' in order to promote a political agenda.⁵¹ The Widgery Tribunal is arguably illustrative of this contention, as judicial and political bias was present in the proceedings. The tribunal primarily investigated eyewitness evidence, including statements made by an insufficient number of march attendees and several, but not all, of the wounded.⁵² By not hearing evidence from most civilian eyewitnesses and all of the wounded, Widgery was heavily influenced by information provided by the British Army.⁵³ One example of bias was highlighted in 1995, when a record of a meeting between PM Heath and Lord Widgery became known. Prior to the beginning of the Tribunal's proceedings, Heath instructed Widgery that, whilst presiding over the inquiry, he should 'never forget it is a propaganda war we are fighting'.⁵⁴

Published in April 1972, ten weeks after Bloody Sunday, Lord Widgery's report seemingly accommodated PM Heath's instruction.

⁴⁹ HC Deb 31 Jan 1972, vol 830, col 33.

⁵⁰ *ibid*; Hegarty (n 10) 199.

⁵¹ George Gilligan and John Pratt (eds), *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge* (Willan 2004) 63.

⁵² Widgery (n 48) 3.

⁵³ Hegarty (n 10) 212.

⁵⁴ Museum of Free Derry, 'The Widgery Memo — Widgery Memo Damns British' (*Museum of Free Derry*)

<<https://www.museumoffreederry.org/content/%E2%80%98widgery-memo-damns-british%E2%80%99>> accessed 19 January 2020.

Whilst the document concluded that none of the deceased men were handling firearms at the time they were shot by 1 Para, the Widgery Report found that the deceased men had most likely possessed firearms at undetermined times during the march on Bloody Sunday.⁵⁵ In actuality, the only man with a weapon shot by 1 Para was Donaghey, who was found with four nail bombs in his pockets.⁵⁶ It was alleged to the Tribunal by some attendees of the march that these weapons were planted on his body by British Army personnel after he was shot. However, this testimony was disregarded by Widgery with the incident reported in the report as ‘mere speculation’.⁵⁷ This, and the suggestion that the deceased men were in possession of firearms, was found by Widgery to be one of the principal justifications of 1 Para opening fire. This contrasts strongly with the findings of the subsequent Saville Inquiry, published some 38 years after Widgery, which determined that the bombs were not visible to either the soldier that shot Donaghey or the medical officers that subsequently aided him. Further, the Saville Report contradicted the conclusions of Widgery, vindicating the rest of the deceased men by asserting that they had not wielded firearms during the march on Bloody Sunday.⁵⁸ Despite the Widgery Report portraying the deceased men as ‘hooligans’, it went on to conclude that the men killed were ‘not acting aggressively and ... the shots were fired without justification’.⁵⁹ This statement ostensibly implicates the soldiers as acting unlawfully. However, one of the report's central contradictions was its further statement that ‘there was no general breakdown in discipline’ on the part of 1 Para, further complexifying the issue of apportioning blame as the report seemingly vindicates both 1 Para and the deceased men. The report's obfuscation has provoked academic speculation that Widgery was acting to sustain the British government

⁵⁵ Widgery (n 48) 28–30.

⁵⁶ *Principal Conclusions* (n 1) 32.

⁵⁷ Widgery (n 48) 32–33.

⁵⁸ Widgery (n 48) 32.

⁵⁹ Widgery (n 48) 31–32.

and Army's 'concoction of deceit'.⁶⁰

These examples combine to indicate, as Gilligan noted, that the British government in 1972 had a desire to document a 'self-serving version of the truth'.⁶¹ This was demonstrated by the Widgery Report's clear conclusion that there would have been no fatalities had the NICRA not organised the march.⁶² By finding that NICRA were responsible for the events of Bloody Sunday, the Widgery Report demonised the civil rights movement and signalled to Nationalists in Northern Ireland that their right to protest against oppressive measures would be met with fatal force and further validated in official discourse.⁶³ This version of the 'truth' perpetuated by the Widgery Report was presented to the House of Commons on 19 April 1972 by PM Heath.⁶⁴ However, it was rebutted by Frank McManus MP as a 'whitewash' of the 'activities of the Army on that Sunday'.⁶⁵ This was also echoed in the literature, as Dawson states that by not exercising the evidential scope provided by the Tribunals of Inquiry Act 1921 to thoroughly investigate the events of Bloody Sunday, nor holding the 1 Para to account, the tribunal's conclusions amounted to a 'denial of justice'.⁶⁶

4 The Second Inquiry — The Saville Report

The inconsistencies and partial investigations of the Widgery Tribunal have led scholars such as Hegarty to contend that the mechanism was ultimately used as a political tool by Heath's government to prevent 'the

⁶⁰ Widgery (n 48) 38; Don Mullan, *Eyewitness: Bloody Sunday* (3rd edn Wolfhound Press 1997) 219.

⁶¹ *Crime, Truth and Justice* (n 53) 65.

⁶² Widgery (n 48) 38.

⁶³ Hegarty (n 11) 222.

⁶⁴ HC Deb 19 April 1972, vol 835, col 519.

⁶⁵ HC Deb 19 April 1972, vol 835, col 526.

⁶⁶ Graham Dawson, 'Trauma, Place and the Politics of Memory: Bloody Sunday, Derry, 1972–2004' (2005) 59(1) *History Workshop Journal* 151, 163.

truth of the events emerging'.⁶⁷ Naturally, this discouraged public trust in the British justice system across the United Kingdom. In 1998, in response to 'new' material presented by the Irish government and the Bloody Sunday Campaign, British PM Tony Blair stated in Parliament that 'there are indeed grounds for ... a further inquiry'.⁶⁸ Walsh notes that this material formed an 'impressive dossier' of evidence gathered from a range of sources.⁶⁹ Integral to this dossier was eyewitness evidence and statements that the British soldiers had shot from Derry's walls on Bloody Sunday.⁷⁰ From assessing the trajectory of the entrance wounds, it was alleged that Young, Nash, and McDaid had been shot from the protected position of the walls.⁷¹ This, corroborated by the evidence that none of the three deceased had handled firearms on Bloody Sunday,⁷² signified the falsehoods in the claims made by the British Army that 1 Para only fired in retaliation to being fired upon.⁷³ The evidence presented in the dossier was not 'new', having been available but disregarded by the Widgery Tribunal in favour of the accounts of the British Army.⁷⁴ When the Irish government produced the dossier, they pressured the British government, headed by then PM

⁶⁷ Hegarty (n 10) 220.

⁶⁸ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 292–93; HC Deb 29 Jan 1998, vol 305, col 502. According to the Museum of Free Derry, The Bloody Sunday Justice Campaign was 'founded on the 20th anniversary to demand the repudiation of Widgery; the formal acknowledgement of the innocence of the victims; and the prosecution of those responsible'. See Museum of Free Derry, 'Bloody Sunday Justice Campaign' (*Museum of Free Derry*) <<https://museumoffreederry.org/bloody-sunday-justice-campaign/>> accessed 5 June 2021.

⁶⁹ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 293; Irish Government, 'The Irish Government's Assessment of the New Material Presented to the British Government in June 1997' (CAIN Web Service, 1997) <<https://cain.ulster.ac.uk/events/bsunday/irgovt.htm>> accessed 19 March 2020.

⁷⁰ *ibid*; Mullan (n 60) 70.

⁷¹ *ibid*; Mullan (n 60) 70–91.

⁷² Widgery (n 48) 31–38.

⁷³ *ibid*.

⁷⁴ Don Mullan is an Irish author and media producer and Dermot Walsh is a former barrister and senior lecturer; Channel 4 Investigations; *Sunday Business Post* Investigations.

Tony Blair, to acknowledge the failings of the Widgery Tribunal and establish a new inquiry into the historical events of Bloody Sunday to restore ‘public confidence in the justice system’.⁷⁵

Headed by Lord Saville, the second tribunal of inquiry began in 2000. Before its commencement, PM Blair stated that, in order to succeed, the tribunal needed to consider both the evidence originally presented by the 1972 Widgery Tribunal and the documents raised in the Irish government’s dossier.⁷⁶ Seeking to address one of the principal criticisms of Widgery — its partial investigations — Blair stipulated that the second inquiry must dedicate a sufficient period of time in which to thoroughly investigate the available evidence.⁷⁷ Second, an important factor in instigating the Saville Inquiry was the disparity in nature of the legal representation of the families of those who died on Bloody Sunday and the soldiers in the Widgery Tribunal.⁷⁸ Across ten volumes, the Saville Report outlined the judicial processes adopted by the inquiry, which were designed to facilitate balanced legal representation between the Ministry of Defence (MoD) and the Bloody Sunday families. The literature highlights that the adversarial nature of legal representation at the Widgery Inquiry, where the MoD’s legal assets far outweighed those of the ‘under-resourced’ Bloody Sunday families, prompted this provision.⁷⁹ The Saville Inquiry sought to ensure that all parties had ‘confidence in the inquiry’ by having the capacity to thoroughly explore the events of 30 January 1972.⁸⁰

⁷⁵ HC Deb 29 Jan 1998, vol 305, col 503.

⁷⁶ *ibid.*

⁷⁷ The introductory volume of the Saville Report echoed Blair’s instruction by outlining the necessity of time in the collection, analysis, hearing, and consideration of the evidence, which is voluminous. See Lord Saville, William L Hoyt, and John L Toohey, *Report of the Bloody Sunday Inquiry* (vol 1, Stationery Office 2010) 15.

⁷⁸ *ibid* 16; Lord Saville, William L Hoyt and John L Toohey, *Report of the Bloody Sunday Inquiry* (vol 10, Stationery Office 2010) 4–25.

⁷⁹ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 298.

⁸⁰ *Report of the Bloody Sunday Inquiry* (vol 1) (n 77) 6–7.

The Conclusions of the Saville Inquiry

In Channel 4's documentary *Secret History: Bloody Sunday*, Bishop Daly recalled that 'what really made Bloody Sunday so obscene was the fact that people ... at the highest level of British justice, justified it'.⁸¹ Mansfield postulates that this criticism was addressed throughout the volumes of the Saville Report by its explicit emphasis on 'fairness, thoroughness and impartiality'.⁸² Further, the report was unambiguous in its conclusion that Widgery's assertion that NICRA and the attendees of the civil rights march engaged in criminal activity on Bloody Sunday was invalid.⁸³ Further, the Saville Inquiry reviewed evidence of causative links between the actions of senior members of the British Army and the direct killings perpetrated by 1 Para on Bloody Sunday.⁸⁴ Its report found that Colonel Wilford, in giving orders to 1 Para to enter the Bogside on Bloody Sunday, created a 'significant' and foreseeable risk that people other than 'justifiable targets' would be killed or injured.⁸⁵ Saville goes on to attribute blame, surmising that, if Wilford had not given those orders, the terror of Bloody Sunday may have been avoidable.⁸⁶ This conclusion represents a defining moment in the wider story of Bloody Sunday, as the report found that there had been a 'serious and widespread loss of fire discipline' amongst 1 Para.⁸⁷ Further, the report asserts that the response of the paratroopers could not be justified as their targets were not 'posing a threat or causing death

⁸¹ Bishop Daly was present on Bloody Sunday. He also delivered the last rites to Jackie Duddy as he lay on the ground after being shot by 1 Para. Derry Janner, *Channel 4 — Secret History: Bloody Sunday* (originally screened 5 December 1991, 1 January 2019) 3.58–4.08 <<https://www.youtube.com/watch?v=hdcYhTPg1wQ>> accessed 15 March 2020.

⁸² *Report of the Bloody Sunday Inquiry* (vol 1) (n 77) 43–53.

⁸³ Nevin Aiken, 'The Bloody Sunday Inquiry: Transitional Justice and Post Conflict Reconciliation in Northern Ireland' (2015) 14(1) JHR 101, 111.

⁸⁴ *Principal Conclusions* (n 1) 53.

⁸⁵ *Principal Conclusions* (n 1) 53.

⁸⁶ *Principal Conclusions* (n 1) 52.

⁸⁷ *Principal Conclusions* (n 1) 57.

or serious injury’.⁸⁸ This conclusion stands in almost direct opposition to the earlier outcomes of the Widgery Report; as previous sections of this paper have discussed, Widgery notably asserted that several of the dead had used or carried firearms or bombs, which seemingly justified the response of 1 Para.⁸⁹

As Aiken notes, in publicly exculpating the victims and institutionally acknowledging Bloody Sunday as an historic injustice, the Saville Report served as a form of closure for the families of the victims.⁹⁰ On the day of its publication in 2010, the Saville Report was welcomed by Tony Doherty — whose father, Patrick, was killed on Bloody Sunday — when he condemned the actions of 1 Para on behalf of the victims’ families.⁹¹ The newly-elected British PM David Cameron made an official apology in the House of Commons, where he stated that to justify the actions of 1 Para would be ‘defending the indefensible’.⁹² However, Cameron’s gesture has been diluted by his successors. Consecutive PMs Theresa May and Boris Johnson have endorsed a statutory ‘presumption against prosecution’ for British soldiers for ‘alleged offences committed in the course of duty’, validating a political climate where accountability for alleged war crimes perpetrated by British soldiers is unimportant.⁹³ It can be inferred from the resistance of successive UK prime ministers to criticise British soldiers that supporting justice for unlawfully killed civilians is not politically viable, which is illustrated by the current controversy surrounding retrospective prosecutions of L/C F.

⁸⁸ *Principal Conclusions* (n 1) 53.

⁸⁹ Widgery (n 48) 38, 69–82.

⁹⁰ Aiken (n 83) 112.

⁹¹ Museum of Free Derry, ‘Bloody Sunday Trust — Innocent: Remembering 15 June — Reactions to the Saville Report on Bloody Sunday’ (Derry, 2011).

⁹² HC Deb 15 June 2010, vol 305.

⁹³ Boris Johnson is the PM of the United Kingdom from 2019 to the present (as of April 2021); Overseas Operations (Service Personnel and Veterans) Act 2021; ECCHR (n 3) 43.

5 2019: The Charges Against L/C F and 1 Para

The scope of the two tribunals discussed thus far, Widgery and Saville, were governed by the Tribunals of Inquiry Act 1921.⁹⁴ According to Blom-Cooper, this Act effectively limited the jurisdiction of the Inquiries to truth-finding initiatives.⁹⁵ Despite the Saville Report being unambiguous in its findings regarding 1 Para's misconduct, both the Widgery and Saville Tribunals lacked the inherent jurisdiction to rule on civil or criminal liability.⁹⁶ The authority to bring public prosecutions rests with the Northern Ireland Public Prosecution Service (PPS), which has the authority to infer findings of criminal or civil liability from the evidence presented in the Saville Report for the Bloody Sunday killings.⁹⁷ In 2019, the PPS announced that there was sufficient evidence to prosecute L/C F for murder and attempted murder.⁹⁸ This section of the paper will focus on the charges against L/C F as the only member of 1 Para being charged for his actions on Bloody Sunday.

Whilst the British Army personnel active in Northern Ireland were 'constitutionally the responsibility of the MoD in London', the Northern Irish courts take legal responsibility for prosecuting the soldiers involved in Operation Banner.⁹⁹ This section of discussion considers the legal precedents for unlawful force inflicted by British Army personnel on military operations in Northern Ireland. As noted in the House of Lords judgment in *R v Clegg*, any legal proceedings brought against a member of the armed forces of the Crown are

⁹⁴ HC Deb 29 Jan 1998, vol 305, col 503.

⁹⁵ Louis Blom-Cooper, 'What Went Wrong on Bloody Sunday: A Critique of the Saville Inquiry' [2010] PL 64.

⁹⁶ *ibid* 65.

⁹⁷ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 300.

⁹⁸ *Principal Conclusions* (n 1).

⁹⁹ *Report of the Bloody Sunday Inquiry* (vol 9) (n 15) 211. This means that it is within PPS's jurisdiction to decide to prosecute any of the British soldiers involved in the killings of Bloody Sunday.

considered by the same principles of law as the ordinary citizen.¹⁰⁰ This judgment highlights that the duties of armed soldiers to ‘search for criminals’ and ‘risk his life’ permit coercive action.¹⁰¹ Nevertheless, as *Clegg* stipulates, this notion does not allow soldiers to act ‘beyond that which was reasonable’.¹⁰² In this case, the defendant, a soldier in Northern Ireland, was on patrol when a stolen vehicle approached a checkpoint and did not stop. The defendant fired three shots at the vehicle, which missed the target, before firing a fourth shot which hit the passenger and was a significant cause of her death. The defendant argued at his murder trial that he fired in self-defence — this was not accepted for the fourth shot, which was fired after danger had passed. Upon appeal, the House of Lords upheld the murder conviction, holding that the defendant was guilty of murder because he had exhibited a ‘grossly excessive and disproportionate use of force’ that refutes the claim of self-defence.¹⁰³ Several aspects of *Clegg* are pertinent in the context of Bloody Sunday. First, 1 Para claimed to both tribunals that they used lethal force in response to being fired upon first, which was untrue, and thus the notion of coercive action and self-defence cannot be engaged. Second, it suggests that 1 Para ought to be judged in a court of law on the same criterion for murder as an ordinary citizen. This requires the *actus reus* and *mens rea* to be determined. For the prosecution of L/C F to succeed, it must be determined that he had the intent to kill or cause grievous bodily harm under the Queen's peace.¹⁰⁴ Using primarily the Saville Report, the following discussions seek to understand the extent to which the actions of 1 Para, and L/C F in particular, constitute murder.

In March 2019, 47 years after Bloody Sunday, the PPS charged L/C F with the murder of James Wray and William McKinney and the

¹⁰⁰ *R v Clegg* [1995] UKHL 1, [1995] 1 AC 482.

¹⁰¹ *ibid* 497 (Lord Lloyd).

¹⁰² *ibid* 497 (Lord Lloyd).

¹⁰³ *ibid* 489 (Lord Lloyd).

¹⁰⁴ 3 Co Inst 47.

attempted murder of Patrick O'Donnell, Joseph Friel, Joe Mahon, and Michael Quinn. This is based on evidence from eyewitness testimonies and forensic data incriminating 1 Para collectively.¹⁰⁵ Based upon this evidence, provided to the Saville Inquiry by the Irish government, Walsh suggests that 1 Para may have acted in a joint enterprise to commit murder and attempted murder on Bloody Sunday.¹⁰⁶ Further, the report considered evidence that L/C F was responsible for killing three more men and grievously harming two others, which is not reflected in the charges brought against him by the PPS.¹⁰⁷ The charges made, and not made, against L/C F by the PPS will be explored below in conjunction with an evidenced discussion of the possibility of a joint enterprise between 1 Para.

The report states that in an area of the Bogside, namely Glenfada Park North, either L/C F or Private H, another member of 1 Para, 'fired the shot that mortally wounded William McKinney'.¹⁰⁸ The report stated that 'each hit ... McKinney with one shot' in the back, one of which passed through his body and hit Joe Mahon.¹⁰⁹ In their decision not to prosecute Private H, the PPS noted that 'there was no admissible evidence to prove' that he fired his weapon in Glenfada Park North, thus attributing the murder of McKinney and attempted murder of Mahon to L/C F.¹¹⁰ The second count of murder attributed to L/C F by the PPS is that of Jim Wray.¹¹¹ Despite Saville concluding that either Private G or H fired the first shot to hit Wray, not L/C F, the report noted

¹⁰⁵ *Principal Conclusions* (n 1).

¹⁰⁶ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 160.

¹⁰⁷ *Principal Conclusions* (n 1) 30–57.

¹⁰⁸ *Principal Conclusions* (n 1) 34.

¹⁰⁹ Lord Saville, William L Hoyt, and John L Toohey, *Sector 4: Events in Glenfada Park North and Abbey Park* (vol 6, Stationery Office 2010) 584–85.

¹¹⁰ Northern Ireland Public Prosecution Service, *Bloody Sunday — Summary of Decisions Not to Prosecute* (Northern Ireland Public Prosecution Service 2019) 11 <<https://www.ppsni.gov.uk/publications/bloody-sunday-summary-reasons>> accessed 20 March 2020.

¹¹¹ *ibid.*

that, between L/C F and three other members of the unit, they killed McKinney and Wray, and injured Mahon, Friel, Quinn, and O'Donnell.¹¹² The implication of a joint enterprise between the soldiers of 1 Para is considered in the literature. Walsh, for example, hypothesises that even if it cannot be established which paratrooper discharged fatal rounds in the Bogside, the group of soldiers may all be criminally liable if they were aware that one or more of them was contemplating the use of unlawful lethal force.¹¹³ The actions of 1 Para on Bloody Sunday can be considered against the precedent of joint enterprise's wider case law.

Joint Enterprise between 1 Para

According to the case law of the UK's Supreme Court, the expression 'joint enterprise' is 'not a legal term of art'.¹¹⁴ Outlined in *R v Jogee*, it is a doctrine that accords responsibility if several parties agree to carry out a criminal venture.¹¹⁵ As the judgment states, each party is therefore 'liable for acts to which they have expressly or impliedly given their assent'.¹¹⁶ When applied to the context of Bloody Sunday, the principle of joint enterprise is engaged if one soldier committed the act of murder against a civilian but several other soldiers encouraged or facilitated it. According to the precedent set forth in *Jogee*, this would be an act of joint enterprise whereby the first soldier was the 'principal' offender

¹¹² *Principal Conclusions* (n 1) 34–43.

¹¹³ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 160.

¹¹⁴ *R v Jogee* [2016] UKSC 8, [2017] AC 387 [77] (Lord Hughes and Lord Toulson SCJJ). *Jogee* was a landmark ruling which set a precedent on defendants being convicted as accessories to an offence if they acted to 'aid, abet, counsel, or procure' the commission of a crime with the intent to do so. Explained in depth and with examples in Jessica Jacobson and others, 'Joint Enterprise: Righting a Wrong Turn? Report of an Exploratory Study' (Institute for Criminal Policy Research, University of London, 2016).

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

and the others were ‘secondary’ offenders.¹¹⁷ When considered together with the evidentiary language of the Saville Report, Walsh’s contention of a joint enterprise between four members of 1 Para to murder two civilians and injure a further four addresses the conflicting charges brought against L/C F for actions he alone did not commit. For L/C F and his cohort to have been acting in a joint enterprise, it must be determined that they had a common pursuit that caused the deaths in the Bogside.¹¹⁸ Across the extensive documentation that comprises the Saville Report, there are a number of instances where the shared intent of 1 Para is evidently discernible. In one example, the report describes how the soldiers would have been ‘highly apprehensive’, if not ‘frightened’ that they were going to come under ‘attack by paramilitaries using bombs and firearms’.¹¹⁹ The possibility that 1 Para were therefore mentally prepared for conflict, rather than conducting an arrest operation, is further evidenced in other sections of the report. This mentality was exacerbated by General Ford, the most senior British Army commander in Northern Ireland at the time of Bloody Sunday, who is reported as having incited a sense of ‘war-zone urgency’ in 1 Para as the soldiers entered the Bogside, shouting ‘Go on the Paras, go and get them, go on, go and get them’.¹²⁰ The report goes on to criticise the unit’s commander, Wilford, because he ordered 1 Para into the Bogside to ‘as he himself put it, seek out the “enemy”’.¹²¹ Drawing upon these accounts, it could be suggested that senior members of the British Army encouraged 1 Para to act outside their duty, and in doing so committed gross negligence in their incitement of a foreseeably

¹¹⁷ *ibid* [78] (Lord Hughes and Lord Toulson SCJJ).

¹¹⁸ *ibid* [21]–[54] (Lord Hughes and Lord Toulson SCJJ).

¹¹⁹ *Principal Conclusions* (n 1) 39.

¹²⁰ British Irish Rights Watch, ‘Bloody Sunday: Submission to the United Nations’ Special Rapporteur on Summary and Arbitrary Executions: the Murder of 13 Civilians by Soldiers of the British Army on “Bloody Sunday” 30th January 1972’ (CAIN Web Service, 1994) <<https://cain.ulster.ac.uk/events/bsunday/birw.htm>> accessed 13 March 2020.

¹²¹ *Principal Conclusions* (n 1) 53.

deadly environment on Bloody Sunday.¹²² Once deployed, the members of 1 Para ‘reacted by losing their self-control ... forgetting or ignoring their instructions and training’.¹²³ It can be concluded that the common pursuit between 1 Para, encouraged by senior officers, fulfils the criterion of a joint enterprise by the soldiers and their superiors on Bloody Sunday.

It is also crucial to the fulfilment of the criteria for joint enterprise that at least one of the victims was killed unlawfully.¹²⁴ Throughout their involvement in the Northern Ireland conflict, the British Army used the Yellow Card, which set out the conditions of permissibility for British soldiers to discharge weapons. These conditions stipulated that soldiers must not use more force than necessary and to only fire without warning when a person can be ‘positively identified’ as carrying a weapon.¹²⁵ According to Mills, contravention of these rules amounted to unlawful use of force.¹²⁶ As preceding sections have discussed, one of the principal conclusions of the Saville Report was that 1 Para shot at civilians without warning, when those civilians were not armed and were ultimately not posing a discernible threat.¹²⁷ These findings, surmises Walsh, indicate that 1 Para were ‘in breach of the Yellow Card rules’ when they allegedly resorted to the unlawful use of lethal force during the events of Bloody Sunday.¹²⁸

Whilst a joint pursuit can be inferred from 1 Para's actions on Bloody Sunday, it can be further solidified in their perjured statements to the Widgery Tribunal.¹²⁹ The Saville Report concluded that the soldiers of

¹²² *Principal Conclusions* (n 1) 57.

¹²³ *Principal Conclusions* (n 1) 53.

¹²⁴ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 207.

¹²⁵ Claire Mills, ‘Investigation of Former Armed Forces Personnel Who Served in Northern Ireland’ (CBP 8352, 2020) 12–14.

¹²⁶ *ibid* 14.

¹²⁷ *Principal Conclusions* (n 1) 35.

¹²⁸ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 207–08.

¹²⁹ *Events in Glenfada Park North and Abbey Park* (n 109) 577–89.

1 Para sought to provide ‘knowingly’ false accounts to both of the Tribunals in an attempt to justify firing their weapons.¹³⁰ Illustratively, L/C F claimed that he had shot at least two men on the streets of the Bogside because he identified them as having a firearm on Bloody Sunday. The report did not find this testimony sufficiently compelling, however, and ultimately determined that L/C F shot unjustifiably at civilians without ‘caring’ whether their behaviour was threatening or not.¹³¹ In the wider context of the perjured statements from 1 Para to the inquiries, the Saville Report suggests the possibility that the soldiers ‘invented details’ in an attempt to make claims of gunmen in the Bogside more credible.¹³² Such obfuscation means that responsibility for a number of deaths and injuries cannot be attributed to any one soldier.¹³³ It is possible that, in taking such steps to mislead the inquiries, members of 1 Para sought to protect one another from incrimination. The development of such a ‘culture of protection’ meant that, as the Saville Report acknowledged, British soldiers in Northern Ireland felt they could ‘fire with impunity’, secure in the knowledge that possible investigation by the RUC or Royal Military Police would be undertaken sympathetically.¹³⁴

As the preceding paragraphs have sought to present, 1 Para worked in joint enterprise to cause death and grievous bodily harm on Bloody Sunday. The paper will now consider the extent to which this has informed the pursuit of legal justice against members of 1 Para. The only charges being brought against the unit are against L/C F, for which he is yet to stand trial. The test for prosecution cannot be applied to two members of the joint enterprise because they are deceased, and there is insufficient evidence to charge the fourth member.¹³⁵ However, whilst

¹³⁰ *Principal Conclusions* (n 1) 38.

¹³¹ *Principal Conclusions* (n 1) 42–57.

¹³² *Report of the Bloody Sunday Inquiry* (vol 1) (n 78) 80.

¹³³ *Principal Conclusions* (n 1) 33–44.

¹³⁴ *Principal Conclusions* (n 1) 50.

¹³⁵ *Summary of Decisions Not to Prosecute* (n 110) 11.

the Saville Report had ‘no doubt’ that L/C F was responsible for the deaths of Kelly, Doherty, and McGuigan, as well as causing injury to two other men, the PPS charges against L/C F do not reflect this.¹³⁶ According the PPS, there was insufficient forensic evidence to ascribe the death of Kelly to L/C F and any accounts of the soldier firing in this area were rendered inadmissible due to the unit's perjury.¹³⁷ It was also for this reason that L/C F could not be charged with the murder of McGuigan and Doherty.¹³⁸

Evidential issues are not the only challenges that the PPS faced in their decision to charge L/C F. In their recent report, entitled *Historical Investigation & Information Recovery*, the Commission for Victims and Survivors determined that the central issue facing contemporary investigations into historical events is the passage of time.¹³⁹ The report notes that witnesses to events under investigation may be deceased. In the case of Bloody Sunday, both of these challenges are evident.¹⁴⁰ However, according to the literature, this reluctance to begin criminal proceedings was outweighed by three factors: first, the seriousness of the offence; second, the delay in criminal proceedings caused by 1 Para's perjury and the British government in 1972 by imploring Widgery to produce a form of propaganda against the IRA; and, third, the PPS determining that the evidence against L/C F proved ‘beyond reasonable doubt’ that he committed an offence and were also satisfied that it satisfied the public interest.¹⁴¹ However indisputable the evidence against L/C F may be, there remains a section of society that does not

¹³⁶ *Principal Conclusions* (n 1) 34–45; *Summary of Decisions Not to Prosecute* (n 110) 9.

¹³⁷ *ibid.*

¹³⁸ *ibid.*

¹³⁹ The Commission for Victims and Survivors & Deloitte, *Research on Historical Investigations & Information Recovery* (Commission for Victims and Survivors 2012) 8–9.

¹⁴⁰ *ibid.*

¹⁴¹ *Report of the Bloody Sunday Inquiry* (vol 10) (n 81) 38–45; Museum of Free Derry (n 54); Northern Ireland Public Prosecution Service, *Code for Prosecutors* (Northern Ireland Public Prosecution Service) 16.

wish for the British Army to be held to account. This will be explored in the succeeding paragraphs using the examples of the reluctance of Conservative PMs to condemn British Army personnel for human rights abuses in Northern Ireland and Iraq.

6 Opposition to the Good Friday Agreement and Prosecution of Operation Banner Veterans

In recent years, public distaste for charges brought against veterans of Northern Ireland has grown across the UK. In 2019, thousands of retired soldiers marched to protest the charges for murder and attempted murder on Bloody Sunday brought against L/C F.¹⁴² This protest reinvigorated conversations about a number of grievances that emerged from the signing of the Good Friday Agreement (GFA) in 1998.¹⁴³ In particular, these concerns centred around the absence of a formal mechanism for dealing with unresolved deaths of those killed in PIRA attacks.¹⁴⁴ This is because some communities, most notably British Army veterans, believe that, whilst Northern Irish civilians killed by British forces have received a large-scale inquiry and public apology by a British PM, the same will not be afforded to those whose lives were lost in paramilitary attacks. Lukowiak notes that it is for the aforementioned reason that the GFA was not received positively by Northern Ireland veterans, who considered it an institutional betrayal

¹⁴² Nicholls (n 6).

¹⁴³ The GFA was signed on 10 April 1998 by the British and Irish Governments and most of the political parties in Northern Ireland. The Agreement comprises three strands: i) the structure of the democratic institutions in Northern Ireland; ii) the relationship between the North and Republic of Ireland; and iii) the relationship between the UK and the Republic of Ireland. It also includes sections addressing constitutional issues, rights, decommissioning of arms, security, policing and prisoners; see Northern Ireland Office, *The Belfast Agreement* (Cm 3883, 1998).

¹⁴⁴ Mills (n 125) 15.

by the British government.¹⁴⁵ Further, there are grievances around the inter-group consensus between the British and Irish governments, which implored PM Blair to authorise the early release of political prisoners to encourage IRA disarmament.¹⁴⁶ This, Neumann argues, was a miscalculation because the British government weakened popular support for the GFA by compromising on a “powerful incentive” for the IRA to make their peaceful means permanent.¹⁴⁷ It can be argued that the public receptiveness towards the prosecution of Northern Ireland veterans across the United Kingdom has been affected by the compromises made in the GFA.¹⁴⁸

Recognising the contentious nature of retrospective prosecution for British Army personnel, the trial of L/C F, if it takes places, represents a significant moment for the enactment of post-conflict peace and justice in Northern Ireland. As Aiken observes, the case may provide an opportunity for intercommunity reconciliation for Nationalists and Loyalists as truth and justice can ‘end impunity for past abuses’.¹⁴⁹ Further, the trial would demonstrate the capacity of the justice system to champion the rule of law to overcome temporal and political adversity. The legal journey of the Bloody Sunday charges in 2019 from the event in 1972 highlights the extent to which political agendas can both interrupt and influence investigative processes.¹⁵⁰ However, lessons have not been learned. In 2019, the Conservative government proposed legislative protection for British military personnel in Iraq

¹⁴⁵ Ken Lukowiak, ‘Bloody Sunday and the Paras’ Guilt’ *The Guardian* (London, 18 June 2010) <<https://www.theguardian.com/commentisfree/jun/18/bloody-sunday-paratrooper-apology>> accessed 27 November 2019.

¹⁴⁶ Donald Horowitz, ‘The Northern Ireland Agreement: Clear Consociational, and Risky’ in John McGarry (ed), *Northern Ireland and the Divided World: Post-Agreement Northern Ireland in Comparative Perspective* (OUP 2001) 101.

¹⁴⁷ Peter Neumann, ‘The Government’s Response’ in James Dingley (ed), *Combating Terrorism in Northern Ireland* (Cass Series on Political Violence, Routledge 2008) 193.

¹⁴⁸ *ibid.*

¹⁴⁹ Aiken (n 83) 108.

¹⁵⁰ Aiken (n 83) 108.

against ‘vexatious’ claims of liability.¹⁵¹ The legislation arguably represents a legal manifestation both of the ‘culture of protection’ that continues to surround the British Army and an entrenched governmental reluctance to hold state forces to account. Catalysed by an unprecedented number of legal claims for damages during military operations in Iraq, the Overseas Operations (Service Personnel and Veterans) Act 2021 was proposed and has subsequently been enacted.¹⁵² Whilst the Act does not apply to the events of the Troubles, it seems likely that the British government will introduce similar legislation to address the statutory gap between legacy issues in Iraq and Afghanistan, and the Troubles in Northern Ireland.¹⁵³

7 Parallels between the Overseas Operations (Service Personnel and Veterans) Act 2021 and the Widgery Report

The Saville Report is considered representative of considerable progress made in the championing of truth recovery initiatives in the UK.¹⁵⁴ However, the Act as it now stands is counterproductive to this progress. The legislation stifles the possibility of historical investigation into claims of civilians unlawfully killed or tortured by Iraq and Afghanistan veterans. In 2019, a joint investigation conducted by BBC Panorama and *The Sunday Times* reported that the British government and Army had covered up war crimes perpetrated by British soldiers in Iraq and Afghanistan.¹⁵⁵ The investigation reported a source at the now-defunct

¹⁵¹ *Conservative Manifesto* (The Conservative and Unionist Party 2019) 52.

¹⁵² Explanatory Notes to the Overseas Operations (Service Personnel and Veterans) Act 2021.

¹⁵³ Mills (n 125) 7.

¹⁵⁴ John Brewer and Bernadette Hayes, ‘Victimhood and Attitudes towards Dealing with the Legacy of a Violent Past: Northern Ireland as a Case Study’ (2015) 17(3) *Brit J Poli* 513.

¹⁵⁵ Editorial, ‘UK Government and Military Accused of War Crime Cover-Up’ *BBC* (London, 17 November 2019) <<https://www.bbc.co.uk/news/uk-50419297>> accessed 2

Iraq Historic Allegations Team (IHAT), stating that the MoD ‘had no intention of prosecuting any soldier’ unless ‘they couldn't wriggle their way out of it’.¹⁵⁶ If true, such institutional denial of accountability arguably serves as a contemporary manifestation of the culture of protection, reminiscent of the lack of parliamentary oversight when PM Heath presented the findings of the Widgery Report to the House of Commons without providing copies to other members of the House.¹⁵⁷

The closure of IHAT, tasked with investigating allegations of human rights abuses by British Army personnel in Iraq, suggests the continuation of the denial of military accountability by the British government.¹⁵⁸ The ECCHR suggested that, whilst allegations of abuse of Iraqi detainees have indeed been acknowledged by chief Army advisers and British politicians, IHAT's closure represented a failure in obtaining justice for those subjected to abuse by British armed forces.¹⁵⁹ In an attempt to hold the UK to account for this failure, the ECCHR invited the International Criminal Court¹⁶⁰ to investigate the alleged crimes committed by British forces during the Iraq War.¹⁶¹ Despite these movements, the British government remains insistent that the claims of abuse of Iraqi detainees are ‘without foundation’.¹⁶² This continued stance has been interpreted by the ECCHR as an institutional

April 2020.

¹⁵⁶ Closed by the Secretary of State for Defence in 2017 amidst ‘domestic political pressure’; European Center for Constitutional and Human Rights (n 3) 45.

¹⁵⁷ HC Deb 19 April 1972, vol 835, col 521.

¹⁵⁸ European Center for Constitutional and Human Rights, ‘War Crimes by UK Forces in Iraq: Q & A on the Legal Basis’ (updated December 2020, Berlin) 1.

¹⁵⁹ European Center for Constitutional and Human Rights (n 3) 21.

¹⁶⁰ ‘The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression’; International Criminal Court, About the Court <<https://www.icc-cpi.int/about>> accessed 2 February 2021.

¹⁶¹ ‘War Crimes by UK Forces in Iraq: Q & A on the Legal Basis’ (n 158) 2.

¹⁶² European Center for Constitutional and Human Rights (n 4) 43.

reluctance to investigate British armed forces.¹⁶³

In an address to the House of Commons, PM Boris Johnson stated that it ‘cannot be right that people should face unfair prosecutions when no new evidence has been forthcoming’.¹⁶⁴ This sentiment has translated into Section 2, Part 1 of the Act which names a ‘presumption against prosecution’.¹⁶⁵ For this presumption to be fulfilled, a number of conditions must be met: first, the person must be a member of the armed forces, deployed overseas at the time of the alleged conduct; and, second, it must have been no longer than five years since the conduct took place.¹⁶⁶ The inclusion of an expiration date has specific implications for historical investigation. It places pressure on victims of violence in conflict to cooperate at the time of the event, which may not be possible. Rourke's research can be used to suggest that statutory expiration dates do not allow for the existence of a psychological phenomenon; it excludes those experiencing ‘amnesia and delayed recall for some memories’ as a consequence of suffering from delayed-onset trauma.¹⁶⁷ This is important because this type of trauma has been suffered by victims of sexual abuse and political torture, which are crimes known to have been perpetrated by British Army personnel in both Northern Ireland and Iraq.¹⁶⁸ However, Article 6 of the European Convention on Human Rights (ECHR) stipulates that ‘everyone is entitled to a fair and public hearing’.¹⁶⁹ Clarificatory documentation

¹⁶³ *ibid.*

¹⁶⁴ HC Deb 14 October 2019, vol 666.

¹⁶⁵ Overseas Operations (Service Personnel and Veterans) Act 2021 (n 93) pt 1, s 2.

¹⁶⁶ *ibid* ss 1(3)–(4).

¹⁶⁷ US Department of Health and Human Services, *Treatment Improvement Protocol: Trauma-Informed Care in Behavioral Health Services* (Substance Abuse and Mental Health Services Administration, US Department of Health and Human Services 2014) 57, 129.

¹⁶⁸ Catherine O'Rourke and Aisling Swaine, ‘Gender, Violence and Reparations in Northern Ireland: A Story Yet to Be Told’ (2017) 21(9) *IJHR* 1302, 1308–11; European Center for Constitutional and Human Rights (n 4) 21.

¹⁶⁹ European Convention on Human Rights, art 6(1).

further notes that this must take place ‘within a reasonable time’.¹⁷⁰ Whilst the ECHR endorses expiration dates for legal investigations, it can be argued that the blanket ‘five year’ period in the Act does not appreciate the complex nature of allegations against the armed forces. As illustrated by the case of L/C F, a blanket expiration date on proceedings is not a reasonable component of legislation as it does not allow for cases to be assessed individually based on their circumstances and varying temporal requirements.¹⁷¹ Whilst the legislation applies to the operations in Iraq and Afghanistan, Mills claims that similar but separate legislation is being proposed for legacy issues in Northern Ireland.¹⁷² If this is true, it will be founded on the claim that investigations into the actions of the armed forces in past conflicts are ‘disproportionately high’ and ‘unnecessary’.¹⁷³ This statement is contradicted by the figures published by *The Guardian* in 2019: of the 300,000 British Army personnel who served in Northern Ireland, the MoD informed the media outlet that approximately 150 to 200 of them currently face investigations.¹⁷⁴ If accurate, these figures suggest that future legislation will have been designed to protect less than 1 per cent of the personnel involved in Operation Banner.¹⁷⁵

The vigour of the British government in protecting the British Army through legal instruments, despite acknowledging the abuses of civilians overseas, is reminiscent of MP Maudling's praise of 1 Para in his erroneous statements to the House in 1972.¹⁷⁶ This attitude persists

¹⁷⁰ European Convention on Human Rights, ‘Guide on Article 6 of the European Convention on Human Rights — Right to a Fair Trial (Criminal Limb)’ (2020), 59.

¹⁷¹ *ibid* 60.

¹⁷² Mills (n 125) 15.

¹⁷³ HC Deb 20 May 2019, vol 660.

¹⁷⁴ Ministry of Defence, ‘Armed Forces Mark 50 Years since the Start of Operations in Northern Ireland’ (*Gov.uk*, 2019) <<https://www.gov.uk/government/news/armed-forces-mark-50-years-since-the-start-of-operations-in-northern-ireland>> accessed 4 April 2020; Bowcott (n 4).

¹⁷⁵ HC Deb 20 May 2019, vol 660.

¹⁷⁶ HC Deb 31 Jan 1972, vol 830, col 32.

in House of Commons debates, as Damien Moore MP stated in 2019 that the deaths attributed to the British forces in Northern Ireland were a ‘result of entirely lawful’ actions.¹⁷⁷ This is a contravention of ministers’ duties to honesty and integrity.¹⁷⁸ It directly contrasts with evidenced narratives of excessive force used by British soldiers in Northern Ireland, one example being documented in the Saville Report.¹⁷⁹ As made abundantly clear in the debates about the legacy of the Troubles cited throughout this paper, the victims of violence perpetrated by personnel of the British armed forces have not been consistently and collectively prioritised by British politicians.¹⁸⁰ However, there have been statements made to the House by MPs, such as Stephen Pound, who have advocated for the importance of mentioning victims in House of Commons debates. Whilst recognising that it is indeed ‘unfortunate’ that veterans are being investigated for historical allegations, Pound underscored the significance of victims of violence, concluding that, ultimately, ‘we have to look into the eyes of those whose relatives were killed’.¹⁸¹ McEvoy echoes this sentiment, arguing that the most difficult issue regarding the Northern Irish peace process is ‘the impact upon those who have been victims’.¹⁸² In pushing through legislation that opposes historical investigation, the British government is prioritising the preservation of the reputation of British armed forces over justice for civilians unlawfully killed in conflict.

¹⁷⁷ HC Deb 20 May 2019, vol 660.

¹⁷⁸ *The Code of Conduct for Members of Parliament* (Houses of Parliament, 2018), 1.

¹⁷⁹ Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (n 11) 12.

¹⁸⁰ HC Deb 20 May 2019, vol 660.

¹⁸¹ *ibid.*

¹⁸² Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’ (1998) 22 *Fordham Int’l LJ* 1539, 1567.

8 Conclusion

This paper has discussed the case of Bloody Sunday and the charges that have subsequently been brought against L/C F, a member of the 1st Battalion of the Parachute Regiment of the British Army. By chronologically analysing the events of 30 January 1972, the paper has sought to demonstrate the importance of government-facilitated historical investigations to secure justice for civilians unlawfully abused and killed by British Army personnel during conflict. Discussions have determined that the British government in 1972 had an institutional responsibility to inquire into the events of Bloody Sunday and hold accountable those who caused the deaths of 13 boys and men and the injury of 15 more. Instead, the Widgery tribunal of inquiry and subsequent report was driven by political motivations to deal a ‘blow’ to the IRA’s campaign by justifying the actions of 1 Para.¹⁸³ Had an impartial and thorough investigation into the evidence been taken in the immediate aftermaths of Bloody Sunday, there would not have been a need for historical investigation into the events.¹⁸⁴ However, owing to the flawed nature of the Widgery Report, the second inquiry sat for ten years to consider the evidence to establish the truth of the events, which led to charges being brought against one member of 1 Para in 2019, L/C F. Any possible charges of murder or attempted murder against other members of the unit were unable to be carried forward by the PPS due to the inadmissibility of perjured statements made by 1 Para about their actions on Bloody Sunday.

The charges brought against L/C F for murder and attempted murder are a positive step towards reconciliation and societal healing in Northern Ireland.¹⁸⁵ Despite this, there are sections of the general public, particularly British Army veterans, that do not accept the historic prosecution of soldiers. This is reflected in the media, who

¹⁸³ HC Deb 19 April 1972, vol 835, col 527.

¹⁸⁴ *Crime, Truth and Justice* (n 51) 65.

¹⁸⁵ Brewer and Hayes (n 154) 513.

perpetuate a narrative of a legal ‘witch hunt’ against Northern Ireland veterans.¹⁸⁶ The Saville Report offered the British government the opportunity to reflect on the way in which allegations against the armed forces are addressed and the mechanisms in place to seek justice for unlawfully killed civilians. However, the unwillingness to investigate such allegations appears largely unchanged since 1972; thus, known abuses of civilians in Iraq by British forces have been ignored, and justice for unlawfully killed and abused civilians obstructed. Such obstruction to the investigation of historical allegations has been formalised by the Overseas Operations Act. As a statute of limitations on allegations made against British soldiers during operations, the Act does not appreciate the complex nature of trauma associated with soldier misconduct in conflict, as demonstrated by the case of Bloody Sunday. Instead, known allegations of abuse against Iraqi civilians by British Army personnel have failed to be investigated, and further historic allegations will be opposed in statute by the ‘presumption against prosecution’ of British soldiers enshrined in the Act.¹⁸⁷

¹⁸⁶ HC Deb 11 March 2020, vol 673.

¹⁸⁷ Overseas Operations (Service Personnel and Veterans) Act 2021 (n 93) pt 1, s 2.