

# **Amnesties, Prosecution, Truth Recovery and Dealing with the Past in Northern Ireland**

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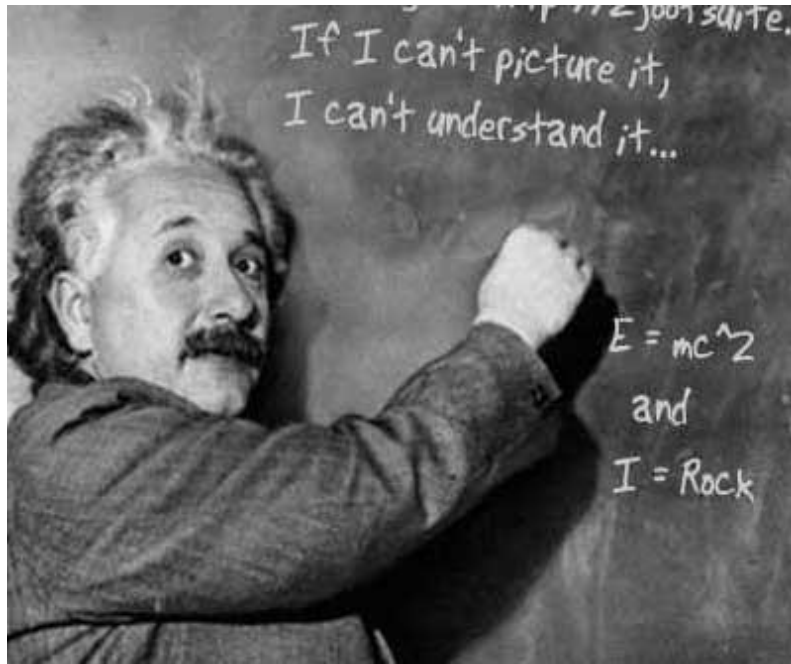
# Amnesties, Prosecution, Truth Recovery and Dealing with the Past in Northern Ireland



# Background

- Partnership between Queens Law School and Healing Through Remembering
- Project drawn from international comparative research
- Designed to inform the debate in NI regarding dealing with the past
- Provide information on the (a) international, (b) historical and (c) legal context of amnesties, prosecutions and truth recover in dealing with the past
- Allowing people to make up their own mind from an informed position on how best to deal with the past

# The Role of The Academic



*"If you can't explain it simply, you don't understand it well enough."*

Albert Einstein

# Research Themes to International Research

- Controversy over terminology
- Can amnesties assist with truth recovery?
- What is the impact of amnesties on victims, perpetrators and communities ?
- Can amnesties encourage forgiveness or reconciliation ?
- What do amnesties tell us about the limitations of legalism and role of lawyers in transition ?

# What is an amnesty ?

- amnesties can be understood as legal tools deployed by governments to prevent or negate criminal prosecutions and/or civil actions for specific offences or against specific individuals
- Extinguish criminal and/or civil liability
- They assume crimes were committed
- They may be limited e.g.. certain crimes, recipients, or specified by time period
- More usually conditional: linked to weapons, truth, remorse, or restorative justice

## International Research

- Database of 530 amnesties in 138 countries
- Over 100 interviews with victims, ex-combatants, lawyers, politicians etc in five jurisdictions
- South Africa – amnesties\truth commission and post TRC prosecutions
- Uruguay – amnesties and political legitimacy – amnesty confirmed by two plebiscites
- Bosnia – amnesties and role of international law
- Argentina – truth, amnesty and role of post truth prosecutions
- Uganda – amnesties and the victim\perpetrator divide

## Key Themes Of Relevance Re NI Debate From International Experience

- Amnesties are often controversial – but in different ways.
- Plurality of voices across sectors
- Amnesties are common internationally -530 in 138 countries since WWII, average 12 per year.
- Amnesties are lawful under international law –but only in certain circumstances
- Amnesties have changed from blanket amnesties to conditional ones – usually linked to truth and other requirements for beneficiaries
- Its very difficult to achieve truth recovery without



# Amnesties in NI : 1969 Amnesty

- Policy of Stormont executive
- Context of growing unrest
- Covered 'events associated with, or arising out of, political protests, utterances, marches, meetings, demonstrations occurring between 5 October 1968' and 6 May 1969
- Covered civilians and RUC
- Excluded 'acts of sabotage'
- Applied to criminal proceedings that were pending, any future proceedings, the collection of fines already imposed, and provided for the remission of sentences for those already convicted
- Unconditional



# Decommissioning from 1997



- ⦿ Legislation enacted before GFA, but commission began functioning in June 1998
- ⦿ Provided that no proceedings ‘will be brought in respect of anything done in accordance with a decommissioning scheme’
- ⦿ Initially the amnesty was to last 12-months, but was continually renewed thereafter
- ⦿ Decommissioned articles or evidence from them cannot be used in criminal proceedings

# Early Release Scheme 1998

- GFA Release of all qualifying prisoners, belonging to terrorist organisations on ceasefire - within two years
- Implemented by sentence review commissioners
- Individuals already convicted
- Released on license
- By Jul 2011 450 qualifying prisoners released in NI
- Since 1998, 23 licences suspended, 10 for involvement in paramilitary offences, 13 for ordinary' crime. A recidivism rate of just over 5 per cent after 13 years, compared to 48 per cent for ordinary offenders within two years



# 'Disappearances' 1999



- Modelled on decommissioning legislation
- To facilitate the recovery of the remains of those who 'disappeared'
- Immunity from prosecution exchanged for evidence on 'disappearances'
- Victims supported this initiative

# 'Bloody Sunday' Inquiry

- Any written or oral evidence given by witnesses could not be used against them – although it could be used to prosecute others
- Policy announced by Attorney General
- Viewed as necessary to encourage testimony
- Now some families seeking prosecution



# On-the-Runs

- Individuals with outstanding arrest warrants or extradition requests – no incentive to reveal information on other actions
- Legislation proposed in 2005 but not enacted – dispute over whether it should apply to security forces
- Key elements:
  - Individual applications – no dead-line
  - ‘Prosecution’ (possibly *in absentia*) before Special Tribunal
  - If found guilty, automatically granted a license
  - Information did not have to be made public
  - NB. Clear weakness, no role for victims, not linked to truth recovery

# Proposed Immunity before the Legacy Commission (Eames Bradley Report)

- ▶ Commission rejected recommending amnesty but said the Legacy Commission could recommend it at the end of its mandate
- ▶ Drawing on precedents from Bloody Sunday Inquiries and Location of Victims' Remains Act
- ▶ Immunity to be given in relation to statements ('protected statements'), not general immunity to the person
- ▶ This immunity means that statement will be inadmissible in legal proceedings against the person making the statement
- ▶ Could cover serious crimes including murder
- ▶ Applied to criminal and civil proceedings
- ▶ Aim was to encourage 'free and frank discussion'

## Difficulties Associated with Historical Prosecutions

*“..the likelihood of solving cases was clearly going to be slight. Witnesses would be old or dead. Exhibits, if still available, could be contaminated or inadmissible. Informants and agents would be in the mix; the original paperwork incomplete or missing... At the height of the Troubles, 497 people were murdered in one year. The forensic laboratory was blown up twice. Numerous police stations were blown up, stations housing much of the investigative material. ... The fact that evidential opportunities lost at the time would be hard to recover did not render the initiative worthless. We had to shift the focus to ensure that, mindful of our primary role as investigators, the driving force behind this initiative would be to deliver a meaningful outcome for the families.’* Sir Hugh Orde, 2009, re establishment of the HET (explicitly not over-selling prosecutions)



# Legal Issues re Historical Prosecutions

- Lack of availability or reliability of eye-witness evidence
- Lack of usable forensic evidence (i.e. available exhibits may be contaminated)
- Confessional evidence (responsible for 90%+ of Diplock era convictions) unlikely in current context
- Investigations contaminated by agents (e.g.. Dennis Donaldson case)
- Unreliability of 'assisting offender' evidence (e.g. collapse of Supergrass trials, Martin O'Hagan non prosecution)
- Anyone convicted of pre-1998 paramilitary offences likely to serve a maximum of 2 years.
- Trials don't facilitate truth – form of symbolic accountability

# Conclusion

- Project is designed to inform the debate and let people make decisions from a position of knowledge.
- Knowledge of the international, the legal and the historical context of the relationship between truth, amnesties and prosecutions
- A series of further events, meetings and a conference planned
- Question of politics not law
- While truth without some form of amnesty is very difficult to envisage, and historical prosecutions are difficult to achieve, neither 'product' should be