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‘Standing with Soldier F’: Bloody Sunday, disrupting the degradation ceremony and the court of public opinion

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Abstract
This article merges the literatures on crime and punishment, law and performance and transitional justice to critically examine how high-profile prosecutions for historic state violence become contested in societies attempting to address the legacy of prolonged conflict. Drawing empirically from the case study of the prosecution of Soldier F for the 1972 Bloody Sunday killings in the North of Ireland, it demonstrates how legacy case prosecutions become a proxy for wider societal and political disagreement over the causes and consequences of past violence. It argues that when the legal basis for prosecution becomes obscured by extra-legal factors the expressivist function of punishment and criminal law is fundamentally undermined. By concentrating on these extra-legal factors rather than focusing on the legal semantics of the case, certain constituencies can challenge the legitimacy of the prosecution, question whether it is helpful to a post-conflict society that needs to ‘move on’ and prevent the accused being ‘othered’ as an ‘outsider’. In disrupting the expressivist logic of criminal prosecution like this, it is concluded the accused can be reframed by sympathetic audiences as a victim who needs solidarity and support rather than a victimiser who needs to be denounced and punished.

Keywords
punishment, elderly perpetrators, transitional justice, state crime

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Introduction

On 14 March 2019, the Public Prosecution Service (PPS) for Northern Ireland (NI) announced that a former British soldier would be sent to trial for shooting civil rights marchers on Bloody Sunday in January 1972. The decision was welcomed by victims of state violence (Bentley, 2021b; Butler, 2021) yet criticised by military veterans, Unionist and Conservative politicians and the right-wing UK media as a ‘witch-hunt’ against former security force members (McGovern, 2019; Hearty, 2023). Even though the criminal trial has not yet commenced, the prosecution of Soldier F has already become what Steinitz (2005) calls a ‘big case’ that turns less on the individual responsibility of the defendant on trial and more on competing interpretations of the past. Opposing positions on the prosecution, Butler (2021) points out, are determined by different ideological and political perspectives on prosecuting historic state violence rather than by objective legalistic considerations of the strength or otherwise of the case against him. The prosecution, then, is not simply about Soldier F or Bloody Sunday but is a contested carrier of meaning in a society that remains deeply divided over who was responsible for past political violence and who should be held accountable for it.

The roots of the disagreement above can be traced back to the initial failure of the 1998 Good Friday Agreement (GFA) peace accord to offer any substantive clarification on past violence and the continued absence since then of ‘joined up’ transitional justice (TJ) mechanisms. A ‘piecemeal’ approach emerged whereby separate and disparate mechanisms such as public inquiries, criminal prosecutions and inquests have addressed individual cases (Mallinder, 2019, 2020, 2021; Bryson et al., 2021a). This approach, much like the GFA, has failed to provide any consensus on the causes, nature and consequences of the tripartite political violence that claimed over 3600 lives from the late 1960s. A ‘meta-conflict’ – a latter day discursive conflict about past physical conflict – persists 25 years on from the GFA, with different protagonists retaining competing narratives on who the primary perpetrators and victims of violence were (Breen-Smyth, 2009). Accordingly, the anti-state violence of Irish republican armed groups is framed as a national liberation struggle, the pro-state violence of Ulster loyalists is framed as an armed campaign of ‘counter-terrorism’, and the UK Government frames the actions of the security forces as a response to a sectarian conflict between warring Irish factions.

Yet patterns of violence were more complex than these narratives imply: Irish republican armed groups killed more Catholics – whether through mistaken identity, as ‘collateral’ or as collaborating ‘legitimate targets’ – than the British Army did; only 4% of those killed by Ulster loyalist armed groups were republican activists; and, as has been increasingly established by public inquiries, inquests, civil law suits and official apologies (Lundy and Rolston, 2016; Bryson et al., 2021a; Bryson and McEvoy, 2023), the security forces killed dozens of unarmed people through unjustified lethal force (CAIN n.d). Most of those killed during the conflict were civilians who had the misfortune of being ‘the many “little people” caught up in violence’ as they went about their daily lives (Bloomfield, 1998: para 5.15). Thousands of these deaths remain unpunished (Mallinder, 2021: 16; Bryson et al., 2021a), with the UK Government’s recent legacy legislation further removing the ‘justice option’ from bereaved families (Bryson and
McEvoy, 2023). Despite this, as Breen-Smyth (2020: 259) highlights, ‘the demand for justice and grievances about past killings’ attributed to both state and non-state violence have grown, rather than abated, since the GFA.

The piecemeal approach has proven divisive among victims too. Some victims feel that other victims have been prioritised at their expense (Rolston, 2020), while others feel that confidence building measures like the early release of politically motivated prisoners under the GFA have taken precedence over delivering truth and justice (Breen-Smyth, 2009). Victims have thus reified and contested the ‘hierarchy of victims’ (Jankowitz, 2018) and found themselves instrumentalised as ‘moral beacons’ in competing political discourses on whether the compromises of the GFA should be accepted (Brewer and Hayes, 2011). It is difficult to distinguish this division from meta-conflict positions. Capturing this reality, Rolston (2020: 325) has identified differing perspectives between victims of state violence who view their suffering as being ‘denied, ignored or downplayed’ and the victims of non-state (primarily Irish republican) violence who feel that ‘a narrative of peace and conflict transformation privileges former ‘terrorists’ over their dead’. Likewise, Mallinder (2019) notes more politicised division between the Nationalist community (the community most directly victimised through state violence) who see inquiries, inquests and prosecutions as belatedly acknowledging the state’s role in the conflict and the pro-state Unionist community (most directly victimised by Irish republican violence) who believe former ‘terrorists’ are using these processes to ‘rewrite the past’ by focusing blame on state actors.1

Amidst the clamour of the meta-conflict blame game, the UK Government narrative that the British Army were engaged in a ‘peacekeeping’ campaign in NI has been championed by a broad pro-state alliance of military veterans, the right-wing media and Unionist and Conservative politicians (Hearty, 2023). Accordingly, these pro-state constituencies oppose the ongoing investigation and prosecution of former state actors on several grounds. The first is a qualitative distinction between state and non-state violence (Lawther, 2014; Mallinder, 2019); whereas the latter is framed as ‘terrorist’ violence committed in violation of the law, the former is seen as the unfortunate yet foreseeable use of violence in furtherance of upholding the rule of law amidst escalating sectarian violence. The second is a quantitative distinction whereby the security forces were directly responsible for less deaths than non-state armed groups were.2 Instead of ‘following where the evidence leads and recognising the suffering of victims from all communities’, the pro-state logic demands that prosecutions and/or truth recovery should reflect ‘the balance of responsibility’ for conflict-related death by focusing on the violence of non-state actors (Mallinder, 2019: 26). Finally, they point to Martin McGuinness citing an Irish Republican Army (IRA) ‘code of honour’ at the Bloody Sunday Inquiry (Lawther, 2014: 98) and to criticism over the arrest of leading Sinn Féin figures in earlier legacy case investigations (Breen-Smyth, 2020: 262) and argue that Irish republicans are demanding truth and justice that they themselves are not prepared to deliver.3 Despite these misgivings about Irish republicans using the ‘dealing with the past’ process to disown their own misdeeds and to discredit the security forces (Lawther, 2014; Mallinder, 2019), dismissing post-conflict campaigns for truth and justice and/or legacy case prosecutions as a joint enterprise in ‘rewriting the past’ denies both the
natural and foreseeable desire for truth and justice among victims of the state (Lundy and Rolston, 2016; Rolston, 2020) and the commitment to upholding human rights by civil society, human rights groups and lawyers (Mallinder, 2019; Bryson and McEvoy, 2023). Unlike other external actors in the broader pro-state alliance, Unionists in NI have been placed in a uniquely conflicted position on legacy case prosecutions. Many Unionists reject the UK Government’s legislative attempt to stop criminal prosecutions in unsolved legacy cases because this would deprive victims of ‘terrorism’ truth and/or justice yet at the same time a particularly vocal element within Unionism has criticised legacy cases prosecutions taken against state actors.

Locating itself within the literature on crime and punishment, law and performance and TJ, this article draws on open-source media and social media commentary to critically examine how pro-state constituencies have contested the prosecution of Soldier F.4 Building on Butler’s (2021) observation that the legal aspects of the prosecution have become obscured in broader societal discussion, it explores how the case has been contested in what Moses (1995) calls the ‘court of public opinion’ where substantive legal points are secondary to extra-legal factors and perceptions of fairness. The article begins by providing an overview of the events of Bloody Sunday and how charges were brought against Soldier F 47 years later. It then unpacks how taking the case into the court of public opinion undermines the expressive power of criminal prosecution as a ‘degradation ceremony’ designed to rebuke and punish an identifiable wrongdoer (Garfinkel, 1956). This theory is then applied to open-source coverage of the prosecution of Soldier F, critiquing how oppositional mobilisation has coalesced around the mantra ‘standing with Soldier F’ The readiness of politicians, military veterans and particular sections of NI society to publicly ‘stand with Soldier F’, it will be argued, evidences the disruption of a degradation ceremony when a case is brought into the court of public opinion. By undertaking this endeavour, the article uses an insightful and compelling case study on the North of Ireland in response to Houge’s (2019) recent argument about needing to study how various audiences understand the act of punishing perpetrators rather than limiting our understanding to critiques of that punishment or the legal facets of the case.

A long road to prosecution

Bloody Sunday was preceded by the mass killing of unarmed people in Ballymurphy by the British Army, at McGurk’s Bar by loyalists and at the Balmoral Furniture Company showroom by the IRA the previous year, before ominously setting the tone for the bloodiest year of the conflict that included the IRA Bloody Friday bombs, the shooting of five people in Springhill by the British Army and a series of random sectarian attacks across the island of Ireland by loyalists (CAIN n.d.). Notwithstanding this, on Sunday 30 January 1972, British soldiers opened fire on an illegal, yet peaceful, civil rights march against internment without trial organised in Derry by the Northern Ireland Civil Rights Association (NICRA). The killing of 13 unarmed marchers5 quickly became one of the most contested events of the conflict. According to the British Army, it had opened fire on gunmen and bombers hidden among the marchers who were attacking
the security forces. This account was contradicted by eyewitnesses who maintained that the victims had been unarmed protestors either fleeing the ensuing mayhem, trying to take cover or tending to the wounded (McCann and Shiels, 1992; Mullan and Scally, 1997; Pringle and Jacobson, 2000).

Amidst growing national and international disquiet, the UK Government quickly convened an official inquiry chaired by Widgery (1972). This inquiry would, however, continue the British Army’s earlier pattern of victim blaming and denial by concluding that there was a ‘strong suspicion’ that those killed were involved in attacking British soldiers and by attributing responsibility for the deaths to the NICRA for illegally taking people onto the streets. Just as the British Army’s claims had been rejected by those present on the day, so too were Widgery’s findings, as the event became seared into the Nationalist community’s collective memory of state violence and injustice (Hegarty, 2004; Conway, 2010; Campbell, 2013; Bentley, 2021a).

Decades of campaigning for truth and justice eventually led to a new public inquiry chaired by Lord Saville. Saville’s conclusion in 2010 that the victims were not posing any threat to the British Army when shot, along with acknowledgment that several of those shot had been trying to escape, surrender or assist the dying and injured, represented a significant corrective to Widgery (Saville et al. 2010). The profundity of Saville’s conclusion would lead the then UK Prime Minister David Cameron to acknowledge that ‘what happened on Bloody Sunday was both unjustified and unjustifiable’.6

Reflecting the natural tension between competing demands for truth and those for justice (Roht-Arriaza and Mariezcurrena, 2006; Rothberg and Thompson, 2010; Hayner, 2010), the Saville Report presented the prospect of further criminal investigation of the soldiers involved – including the soldier identified as Lance Corporal F whose conduct seemed particularly troublesome. According to Saville, this individual was responsible for shooting an unarmed youth, a man who was crawling away, and another man who was waving a white handkerchief as he went to the aid of victims. Saville found that:

Lance Corporal [Soldier] F did not fire in a state of fear or panic… he fired either in the belief that no one in the area into which he fired was posing a threat of causing death or serious injury, or not caring whether or not anyone there was posing such a threat (cited in Lane, 2019).

Unsurprisingly, when the PPS announced that charges were being brought against one of the 16 soldiers investigated following Saville that soldier was Soldier F.7

The prosecution, though, would prove bittersweet for the Bloody Sunday families; a prosecution was finally taking place yet this was only of one soldier who was only being charged for the murder of two victims (William McKinney and James Wray) and the attempted murder of a number of others (BBC News, 2019). This would later be compounded by protracted legal wrangling over the prosecution, with the charges against Soldier F even being withdrawn by the PPS in July 2021 following the collapse on evidential grounds of an unrelated legacy case prosecution against two former British soldiers (BBC News, 2021).8 While the withdrawal of charges was condemned by the
Bloody Sunday families as ‘shield[ing] British soldiers from prosecution for the murders of unarmed civilians’ (Morris, 2021), the charges against Soldier F were subsequently reinstated in March 2022 following a successful judicial review.

The decision to prosecute Soldier F was quickly embroiled in the wider disagreement over the causes, nature and consequences of past violence in the North of Ireland that has seeped from political discourses into murals, memorialisation and campaigns for truth and justice (Rolston, 2020). On the one hand, political opposition to the prosecution is seen to reify patterns of exclusion experienced by victims of state violence during the conflict – the denial of their victimhood, impunity for state actors and the questioning of their right to truth and justice (Rolston, 2020). On the other hand, the prosecution has been criticised for deliberately targeting state actors decades after the early release of politically motivated prisoners under the GFA9 and/or for further advantaging the Bloody Sunday victims at the expense of the victims of Irish republican violence who have not had a lengthy and costly inquiry or prosecutions in their case (Breen-Smyth, 2009; Lawther, 2014; Mallinder, 2019). Within this climate, Soldier F quickly became a cause celebre for pro-state constituencies, the insignia of his regiment (the Royal Parachute regiment) was co-opted into the array of weaponised and divisive symbolism (Pinkerton, 2021), and his prosecution folded seamlessly into a narrative of ‘vexatious litigation’ against military veterans (McGovern, 2019; Hearty, 2020, 2023; Bryson et al., 2021a; Butler, 2021).

From degradation ceremony to the court of public opinion

In today’s digital age, whatever happens in the criminal courts invariably and instantaneously seeps into wider public discussion, media coverage and political debates (Surette, 2015; Flower and Ahlefeldt, 2021). This often obscures the legalistic aspects of the prosecutorial process as a discernible disconnect between the formal legal process overseen by the criminal justice system and broader societal (mis)understandings of this emerges. While social media and media coverage may focus on the personalities at the centre of high-profile cases, rarely is the necessary legalistic context to the case provided (Burns, 1999: 6). There is, then, an important distinction to be made between the ‘small play’ of the criminal court and the ‘large play’ that takes place outside the criminal justice system.

The law and performance literature suggests that criminal trials are sites of dramatic performance and discursive battles between heroes and villains, guilt and innocence as well as good and evil (Drumbl, 2011), yet as an ‘institutional device’ the criminal trial must ‘follow the law’ in its pursuit of the ‘truth’ (Burns, 1999: 11). The ‘small play’ of the criminal trial is therefore a legalistic process premised on procedure and evidence and involves a restricted number of actors – the prosecution, defence, witnesses, judge and jury – within the courtroom (Ball, 1981). Yet, as Knapp (1977) has noted, the physical layout of the criminal court is predicated on restricting these various actors to separate physical spaces. This physical segregation, Knapp argues, provides a symbolically important protection against societal contamination of the accused’s anti-social values.
Thus, the criminal trial represents a degradation ceremony whereby a denouncer with the requisite moral authority to speak on behalf of a community (i.e., the criminal justice system) distances themselves from an identifiable wrongdoer (i.e., the accused) while the wider community witnessing this process of denunciation does likewise (Garfinkel, 1956). Judgement is not dispensed in the name of the individual judge (‘I’) but on behalf of the broader community (‘we’) who provide and subscribe to the shared norms that the wrongdoer has violated (Duff, 2003: 400). Success of the degradation ceremony, though, depends on the witness community accepting the denunciation of the wrongdoer that is made in their name by the denouncer (Garfinkel, 1956). The existence of a moral community premised on shared norms is not enough to have the wrongdoer successfully censured; there must be consensus within that moral community on who has the correct moral standing to judge and punish the wrongdoer (Duff, 2003: 403).

A successful degradation ceremony will place the wrongdoer ‘outside’ the moral community (Garfinkel, 1956) and render their misdeeds ‘unthinkable’ (Mead, 1918). Through public denunciation the identity of the wrongdoer becomes ‘reconstituted’ and their conduct ‘redefined’ as injurious to shared norms and values (Garfinkel, 1956: 422). In the eyes of the witness community, the wrongdoer becomes ‘a different person’ (Garfinkel, 1956: 422); a threat to, rather than member of, the moral community. Accordingly, those brought before the criminal justice system become what Becker (1963) termed ‘outsiders’ who cannot be trusted to live by society’s norms. Once their guilt has been determined in accordance with evidentiary rules, legalistic procedure and judicial precedence, formal legal punishment reflects public condemnation of their misconduct (Fyfe, 2022). Disapproval and exclusion become the price that the wrongdoer incurs for transgressing the ‘moral minimum’ that criminal law applies across society (Fuller, 1942).

Yet the prosecution of Soldier F for Bloody Sunday neither begins nor ends as a degradation ceremony in the criminal court. Because high-profile cases capture the public imagination they are often more keenly contested in the court of public opinion than through the criminal courts (Roberts and Stalans, 1998: 31; Roberts and Stalans, 2018: 1; Haggerty, 2009: xxiii). Much of this societal debate, however, is focused on extra-legal factors with little relevance to the substantive legal issues at play. Whereas the criminal court premises itself on evidence, procedure and legality, the court of public opinion is primarily driven by identity bias, ideology and politics (Moses, 1995). Consequentially, even if the ‘small play’ of the criminal trial plays itself out as a formal legal process within the courtroom involving the prosecution, defence and jury, the extra-legal ‘large play’ draws in a wider public audience with little to no interest in the technicalities and procedures of criminal law (Ball, 1981: 48). Prosecutions, particularly those within TJ contexts, are not only played out in front of the ‘small audience’ within the court but are also keenly observed by the ‘large audience’ beyond these spatial boundaries (Steinitz, 2005). This latter point is especially relevant to the case of Bloody Sunday, where the contested history of the event has been persistently (i.e., before, during and after the Saville Inquiry) played out in societal, political and ideological debates that transcend formal legal processes (Aiken, 2015; Ruiz-Resa, 2020).
There was, of course, a precedent of the ‘large play’ being used to challenge the legitimacy of the criminal justice process during the conflict itself. Here, Irish republicans used their anti-colonial framing of the conflict to reject both the legitimacy of British rule through British courts in Ireland and the state’s attempt to criminalise those engaged in political violence (Jamieson, 2015; Bryson, McEvoy and Albert, 2021b). Oppositional mobilisation against criminal justice policies such as internment, the denial of political status and the use of supergrass trials gave this contest heightened visibility in the ‘court of public opinion’ (Wright and Bryett, 1991). While there is contextual difference between these efforts by anti-state constituencies during the conflict and those of pro-state constituencies today, there is nevertheless a commonality in ideological and emotive appeals being leveraged in the ‘court of public opinion’ to challenge the legitimacy of the ‘degradation ceremony’. In effect, then, the highly performative public challenge to legacy case prosecutions by pro-state constituencies discussed below represents an inversion of the position and strategy originally adopted by anti-state constituencies during the conflict.

If the logic underpinning the degradation ceremony is applied to the Soldier F case, then the unthinkable of his deviation from societal norms seems, at initial glance at least, fairly obvious. He was, after all, facing serious criminal charges after the Saville Report concluded that he had shot dead unarmed civilians who were wounded and/or in the process of surrendering. Moreover, the official apology from Cameron had labelled the killings as ‘unjustified and unjustifiable’. The follow through of this, it might be assumed, is that there should be a consensus that, as both a person and a professional soldier, Soldier F transgressed society’s ‘moral minimum’. The corollary of this, then, should be societal acceptance of the need for Soldier F to be denounced and then subsequently distanced from the rest of law-abiding society as an ‘outsider’.

In contemporary NI, however, society remains divided over the past. The nexus between competing interpretations of past conflict and contested prosecutions in its aftermath means that consensus on the need to punish certain actors will invariably struggle to gain traction across sectional boundaries (Cockayne, 2005). Ongoing disagreement over how to ‘deal with the past’ means that the ‘large audience’ for any legacy case prosecution in NI is essentially a society that remains deeply divided over past violence. This means, to draw from Duff’s (2003: 403) argument on punishment as communication, that not only is there no singular ‘we’ in terms of moral community but there is also no consensus on whether ‘we’ have the moral standing to judge Soldier F.

**Disrupting the degradation ceremony**

Contrary to the logic of the degradation ceremony, and despite Saville’s conclusions and Cameron’s apology, certain sections of the ‘large audience’ are willing to publicly ‘stand with’ Soldier F. However, their support turns less on the legalistic merits or otherwise of the case against Soldier F and more on cultural, social and political antipathy towards punishing historic state violence in the North of Ireland (McGovern, 2019; Hearty, 2020, 2023). Supporters of Soldier F have subsequently disrupted the degradation ceremony logic behind his prosecution by taking the case into the court of public opinion.
where they can eschew the legal basis for prosecution by focusing on claims that it is part of an imbalanced process that disadvantages former security force members, by framing it as intrinsically rooted to wider disagreement over how to ‘deal with the past’ in NI, and by preventing the ‘othering’ of Soldier F as a denounced ‘outsider’.

**Challenging the legitimacy of the prosecution**

If a degradation ceremony is to lead to a successful denunciation then the denouncer must be able to reflect universal rejection of the perpetrator’s acts, deliver a denouncement in society’s name and get society to agree that the perpetrator needs denouncing (Garfinkel, 1956). When society – or at least certain communities within it – questions the legitimacy of the degradation ceremony process, any subsequent denunciation struggles to gain traction (Leader, 2020). Accordingly, those ‘standing with Soldier F’ have sought to disrupt the degradation ceremony by questioning the legitimacy of legacy prosecutions being taken against military veterans.

Rather than engaging with the legal semantics of the case, the court of public opinion has framed the prosecution of Soldier F within the metrics of an imbalanced ‘dealing with the past’ process that advantages ‘terrorists’ over veterans. Democratic Unionist Party (DUP) MP Gregory Campbell, for example, argued that the prosecution exposed ‘the imbalance of the legacy of the past’ (quoted in *Breaking News*, 2019). This perception of unfairness has filtered into the veteran discourse, leading one British Army veteran attending a Soldier F protest to argue that:

> It’s appeasement by the British Government, it’s just to appease the IRA – we’ve got a peace process with Northern Ireland and all the terrorists were pardoned, they were all set free for the horrific crimes they committed. Now we are suddenly prosecuting only British soldiers. You either have a peace agreement for all or nobody (quoted in *Corbishley*, 2019).

The narrative of imbalance against former British soldiers has also characterised sympathetic media coverage. An article in the right-wing *The Spectator* magazine argued that ‘for some time it has been all but impossible to prosecute IRA men for murders committed during the Troubles. British security forces, however, remain vulnerable, although most are now in their seventies and long retired’ (Tettenborn, 2022).

Again, though, the protests above seem to miss the mark in terms of the Soldier F case. To begin with, it has been consistently shown that statistically the majority of legacy investigations, prosecutions and convictions have involved non-state actors rather than former members of the security forces (McGovern, 2019; Mallinder, 2021). Furthermore, it also overlooks the fact that Soldier F was, according to the PPS, initially charged following a ‘wholly objective’ consideration of the material available to the Saville inquiry that followed ‘strict rules of evidence’ (quoted in *Bowcott*, 2019). The decision to continue with proceedings against Soldier F following successful legal action was, the PPS argued, taken ‘after careful consideration of the Court ruling’ (PPSNI, 2022). The pushback against the prosecution by pro-state constituencies reflects Duff’s (2003: 404) argument that the political and social context within which the
criminal justice system operates, rather than its internal workings, is a more significant determinant of whether denunciation is successful or not.

More fundamentally, their grievance about the purportedly fairer treatment of ‘terrorists’ is completely immaterial in terms of whether or not a legal case for proceeding with charges against Soldier F existed. Yet if the wider legacy process is rejected as inherently unfair towards veterans, then any subsequent prosecutions can be framed in the court of public opinion as part of a politicised imbalance. Here, a politicised perception of general unfairness in bringing charges against veterans appears to have trumped any legal examination of the strength of the case against Soldier F.

‘Moral panic’ over legacy case prosecutions being taken against former British soldiers has subsequently emerged in the court of public opinion. Oblivious to, and uninterested in, any of the legal considerations around these cases, moral panic merges identity politics, ideology and social networks when demanding that the public chooses a ‘side’ (Cohen, 2011). In moral panics, it is the perspective and analysis of the media and social media influencers, rather than the professional and/or objective opinion of legal experts, that determines both the nature of the problem and the potential solution (Vegh Weis, 2023). With significant support among the right-wing media and a strong social media presence (Hearty, 2023), supporters of Soldier F have been able to create, and subsequently sustain, moral panic over what they claim is a campaign of ‘lawfare’ being waged against military veterans (Mallory et al., 2020). Protests about ‘lawfare’ in the North of Ireland are, of course, enrooted in long-standing narratives of a ‘witch-hunt’ being pursued by former ‘terrorists’ and human rights groups against military veterans (McGovern, 2019; Mallinder, 2019; Hearty, 2020). Legal experts and human rights activists have long since debunked the ‘lawfare’ and ‘witch-hunt’ narrative in NI (McGovern, 2019; Mallinder, 2019, 2020, 2021; Mallory et al., 2020; Bryson et al., 2021a; Bryson and McEvoy, 2023), yet in the midst of moral panic the empty vessels of military veteran social media campaigns and right-wing media coverage resonate more loudly in the court of public opinion.

As the Soldier F prosecution becomes enveloped by moral panic, the legal basis for pursuing a prosecution is further obscured. The prosecution is thus framed as a ‘political trial’, and, as Gerry Simpson (2007: 13) argues, defining it as such places the focus solely on the apparent political nature of the prosecution rather than on the legal, procedural and formal elements to it. Hence, one veteran speaking at a Soldier F protest event decried the prosecution as ‘a political thing rather than a justice thing’ (quoted in Hampshire Chronicle, 2019). When forced to ‘pick a side’, in Cohen’s terms, those who propagate and/or subscribe to the ‘witch-hunt’ narrative clearly side with Soldier F. Resultantly, the legitimacy of the prosecution is undermined and consensus around having Soldier F denounced and subsequently punished is lost.

Part of the meta-conflict

Legacy case prosecutions in NI are taking place in an environment where the criminal justice response is essentially trying to plug the vacuum caused by the absence of an overarching TJ process and/or mechanisms. Within this context, the degradation ceremony
logic of prosecution in the Soldier F case is impeded by the twin pillars of the ongoing meta-conflict; continued disagreement over the causes and consequences of past violence and politicised debate about whether or not criminal prosecutions are currently helpful.

Persistent and fundamental contestation over who was responsible for past violence, who suffered the most and who should be held accountable – and how – raises the awkward, yet hugely significant, question of exactly what ‘community’ the post-conflict degradation ceremony is targeted at (Cockayne, 2005). The claim to be administering justice via the criminal law is by necessity premised on the claim to be speaking on behalf of post-conflict society (Steinitz, 2005), yet in post-conflict societies, views on the justness or otherwise of punishing past violence remain predetermined by war time identities and experiences. Any perpetrator of past violence will represent either a hero to be defended or a human rights abuser to be punished (Drystad and Binningsbo, 2019). Amidst the meta-conflict in the North of Ireland, it is more accurate to speak of witness communities rather than a witness community because reactions to legacy case prosecutions are provoked by how various communities interpret, and subsequently seek to represent, the violence of state and/or non-state actors.

As discussed previously, pro-state constituencies seek to solve this meta-conflict quandary through a discursive oversimplification that differentiates the seemingly law-preserving violence of state actors from the law-breaking violence of non-state actors. While this reflects long-standing political desperation to prevent state violence being labelled as criminal murder (Sanders, 2021), today the logical meta-conflict consequence is a belief that while the ‘terrorist’ should be held accountable for past violence the same does not apply to state security forces. Perhaps this is best captured in the remarks of Conservative MP Bob Stewart, himself a former colonel in the British Army, that while Soldier F may have made ‘big mistakes’ on Bloody Sunday ‘he didn’t go out to murder’ (quoted in Halliday, 2019). Setting aside the obvious fact that his assertion flies in the face of Saville’s conclusions, the remarks nevertheless suggest that opposition to prosecuting Soldier F is premised on who he is rather than on what he is supposed to have done. This was discernible during the conflict too, where media-led campaigns endorsed by politicians called – successfully – for the few British soldiers convicted of unlawful killing to be released from prison and returned to their regiments (Sanders, 2021).

More recently, the meta-conflict has progressed from simply contesting the causes and nature of past violence to debating how its consequences should be addressed. This has involved significant disagreement over the use and/or worth of criminal prosecution in legacy cases. Echoing broader opposition to legal accountability for human rights abuses by British soldiers in Iraq and Afghanistan (Mallory et al., 2020; Williams, 2023), successive Conservative Party administrations have sought to frustrate legal accountability for historic state violence in NI. Despite persistent and consistent rejection of UK Government proposals for an overarching amnesty by victims, human rights groups and political parties across the island of Ireland (Bryson et al., 2021a; Mallinder, 2021; Bryson and McEvoy, 2023), UK Government discourse on ‘dealing with the past’ has increasingly been built on the dubious argument that foreclosing prosecutions – as well as civil cases and inquests – is a prerequisite to achieving truth and
reconciliation. Unionist politicians have diverged slightly from other actors in the pro-state alliance here; Emma Little-Pengelly told the DUP party conference that while it was right that the UK Government should move to end the ‘witch-hunt’ against veterans any legislative foreclosing of criminal prosecutions would be ‘an affront to justice’ that would deny justice to ‘the many, many innocent victims of terrorism’ (McCambridge, 2023). Despite this, for those actors in the pro-state alliance outside of NI itself not only is the prosecution of Soldier F rejected because it is purportedly part of a politicised ‘witch-hunt’ but it is now also rejected as being unhelpful to attempts to ‘move on’ in post-conflict NI.

For example, the spokesperson for one veterans’ organisation responded to the announcement of the prosecution by arguing that ‘no soldier should be charged. It happened 47 years ago, a line in the sand needs to be drawn and people need to move on’ (BBC News, 2019). While arguments based on the passage of time and the advanced age of the defendants have more emotive currency than they do legal relevance (Hearty, 2023), they have nonetheless pervaded media framing of the case. An article in The Spectator, for instance, argued that ‘it may well be that the court’s decision is right in law… one can equally argue, entirely respectably, that courts overreach if they demand that prosecutors emphasise technical rules of evidence and vague euro-legislation on victims’ rights over more general political and humanitarian considerations’ (Tettenborn, 2022).

Again, we see the primary lens of analysis shifting away from the legal obligation of the state to investigate, and where necessary punish, past state violence (Mallinder, 2019, 2020, 2021; Mallory et al., 2020; Bryson et al., 2021a), in favour of ‘political and humanitarian considerations’ that seemingly demand non-prosecution. While what these ‘political and humanitarian considerations’ actually are remain unclear, pleas based on the passage of time and the advanced age of perpetrators are nevertheless expedient when certain constituencies seek to close down a discussion of, and evade accountability for, their past violence (Aboueldahab, 2021). In the Soldier F case more specifically, these claims must be contextualised within the intrinsically linked contexts of how colonial powers respond to their past abuses (Black et al., 2021) and the socio-cultural and ideological sensitivities that the history of empire has couched the British Army (McGovern, 2019; Hearty, 2020). Mallinder (2021: 18) thus argues that, contrary to the contrived discourse on reconciliation, ‘the government’s preference for amnesty and only weak forms of truth recovery suggests that their goal is rather to prevent any information coming to light that would tarnish their preferred narrative of state forces’ role in the conflict as being upholders of the rule of law’.

‘Standing with’ Soldier F

If a successful degradation ceremony ‘reconstitutes’ the identity of a perpetrator as an untrustworthy and dangerous ‘outsider’ and ‘redefines’ their conduct as wrong (Garfinkel, 1956), then the prosecution of Soldier F has patently failed. Far from being cast out as a wrongdoer, public solidarity has coalesced around the mantra of ‘standing with Soldier F’. The mantra has been enacted by pro-state constituencies across the
North of Ireland: banners bearing this slogan were erected in predominantly Unionist towns (O’Neill, 2019; Robinson, 2019), loyalist flute bands wore Soldier F insignia on their uniforms (ITV, 2019),10 and t-shirts, badges and stickers bearing the slogan quickly emerged. While a highly visible and politically important constituency within Unionism has openly championed Soldier F like this, other Unionists who may not necessarily support the prosecution have nevertheless been critical of the insensitivity such open support shows towards victims’ families – particularly when expressed in Derry itself.11

Soldier F has also enjoyed the support of politicians. For example, DUP MP Sammy Wilson remarked that supporters were ‘absolutely correct’ to be wearing Soldier F insignia (ITV, 2019), while several of Wilson’s DUP colleagues were pictured posing under a Parachute Regiment banner in Derry (Cross, 2019). Given that there are dozens of former British soldiers elected to Westminster (Sanders, 2021), it is unsurprising that Soldier F has found support among parliamentarians. In particular, Conservative MP Johnny Mercer became increasingly outspoken in his criticism of legacy case prosecutions, eventually withdrawing his support for then Prime Minister Theresa May shortly after the prosecution of Soldier F was announced (Barnes, 2019).

More significantly, fellow veterans have shown their willingness to publicly ‘stand with Soldier F’. The ‘Rolling Thunder’ motorcycle cavalcade protest started by a group of veterans in response to the prosecution was designed to ‘show the vets [prosecuted veterans] that not just other vets but also civilians were behind them and felt angry at the injustice’ (Rolling Thunder UK, 2021). Their campaign culminated in a protest rally at Westminster in favour of Soldier F that attracted thousands of veterans (Halpin, 2019). Rather than believing Soldier F to be a dangerous ‘outsider’ in need of denouncing, the veteran constituency has closed ranks in support of what they believe to be a beleaguered peacekeeper facing the injustice of a ‘witch-hunt’ (Hearty, 2023).

This public expression of solidarity by those prepared to ‘stand with Soldier F’ evidences the abject failure of his prosecution as a degradation ceremony. The very nature of their mobilisation is premised on standing with Soldier F as the victim of a political ‘witch-hunt’, rather than standing against him as a denounced ‘outsider’. If anything, the degradation ceremony process through which Soldier F is meant to be denounced has itself been rejected. The denouncer, as opposed to the denounced, is interpreted as being morally bereft by these audiences, causing the collapse of the logic by which the degradation ceremony works.

For example, one veteran stated that they were attending a Soldier F protest rally to ‘show him that he has our support and the Government are bang out of order’ (quoted in Owen, 2019). A Facebook support group called ‘I stand with Soldier F’ more explicitly made its point by self-describing as ‘a place where we can respectfully stand together and denounce the actions taken by the Government to charge Soldier F with the murders during Bloody Sunday’.12 Criticism like this heroizes rather than vilifies those facing prosecution (Houge, 2019), meaning that supporters of Soldier F have transmuted the unsuccessful degradation ceremony into an elevation ceremony that makes a martyr out of Soldier F in the court of public opinion (Cockayne, 2005). By framing Soldier F as a scapegoated peacekeeper, his supporters have rejected attempts to have his
actions on Bloody Sunday ‘redefined’ as criminal violence and him ‘reconstituted’ as a murderer like the ‘terrorist’. The mere expression of denunciation by the criminal justice system cannot, as Duff (2003: 403) argues, in and of itself guarantee reception by and acceptance among the witness community. Condemnation can, as it has done so here, fall on collective deaf ears.

**Conclusion**

The success of a degradation ceremony, Cockayne (2005) argues, is not seen in either conviction or acquittal but in the social outcome of it. The Soldier F case demonstrates how a degradation ceremony can be disrupted at the initial stage of prosecution long before the ‘big stick’ (Fuller, 1942) of criminal law dispenses formal punishment. Through contesting, and subsequently rejecting, the earliest attempt at denunciation, supporters of Soldier F have blunted the expressivist function of criminal law that a successful degradation ceremony depends on (Feinberg, 1965; Duff, 2003; Fyfe, 2022). This has only been possible by displacing the prosecution from the criminal justice system into the court of public opinion. As Garfinkel (1956: 424) readily concedes, the structural factors that a successful degradation ceremony relies upon tell us not only ‘how to construct an effective denunciation but also how to render denunciation useless’.

The court of public opinion becomes the theatre in which the legal process of criminal prosecution can be questioned, challenged and subsequently rejected on what are patently non-legal grounds. By cultivating ‘moral panic’ (Cohen, 2011) around the prosecution of British Army veterans, supporters of Soldier F have transformed themselves into counter ‘moral entrepreneurs’ (Becker, 1963) who subvert the logic of the degradation ceremony by contesting who should and should not be denounced and punished for past violence. Avoiding any substantive engagement with the legal case for prosecuting Soldier F, they instead question the legitimacy of the prosecution, locate it within wider disagreement over ‘dealing with the past’, and stand in solidarity with, rather than against, someone already censured by a public inquiry for shooting dead unarmed and injured victims.

If the prosecution of Soldier F has already led to significant pushback among pro-state constituencies, then it remains to be seen how any subsequent conviction and/or punishment could possibly be accepted as legitimate by these same constituencies. Rather than ‘reconstituting’ the identity of Soldier F into a dangerous ‘outsider’, any subsequent punishment is only likely to reinforce their belief that he is the victim of a ‘witch-hunt’ being driven by former ‘terrorists’ and their nefarious fellow travellers. If anything, Soldier F will be ‘misrecognised’ in such quarters as the primary victim of Bloody Sunday today at the expense of those bereaved, harmed and killed on the day (Hearty, 2020). The clamour to reframe Soldier F as a victim who should not be punished for his actions on Bloody Sunday, then, evidences how criminal prosecution can be fatally undermined as a degradation ceremony in post-conflict societies that place a premium on identity politics and ideology in ongoing disputes over addressing past violence.
Notes

1. ‘Terrorism’ and ‘terrorists’ appear in parenthesis throughout this article to reflect the fact that the labelling of actors involved in any given conflict (and that of their conduct) is a contested matter. The more politically neutral terms ‘non-state violence’ and ‘non-state actor’ are employed herein instead.

2. It is difficult to ascertain exactly how many deaths state agencies had some element of involvement in due to proven and/or suspected collusion with non-state actors in several cases.

3. In his testimony to the Bloody Sunday Inquiry, Sinn Féin’s Martin McGuinness admitted to being second-in-command of the IRA in Derry on the day but maintained that he left the IRA in the early 1970s and refused to disclose the names of other IRA members. While Unionist grievances about the Irish republican approach to truth recovery foreseeably centre on how leading republican Gerry Adams has been less than forthcoming about his own role during the conflict (see Lawther 2014), it should be noted that Irish republicans have constructively engaged with the Independent Commission for the Location of Victims’ Remains to help locate the remains of those disappeared and more informally with victims’ families to provide information and offer apology.

4. Qualitative data was generated through merging a targeted approach to veteran organisation social media accounts, blogs and websites with the analysis of a random sampling of media coverage sourced online through Google using search terms such as ‘Soldier F Northern Ireland’, ‘Soldier F Bloody Sunday’ and ‘Bloody Sunday prosecution’. This data was then thematically coded around emerging themes of the ‘meta-conflict’, ‘witch hunt’, ‘dealing with the past’, ‘imbalance’ and ‘public support’.

5. A 14th victim would subsequently die some weeks later.


7. In April 2024, the PPS NI announced that 15 former British soldiers would not be prosecuted for perjury in relation to their evidence to the Saville Inquiry.

8. The case against two former British soldiers charged with the killing of unarmed Official IRA member Joe McCann in 1972 collapsed in May 2021.

9. This argument deliberately overlooks the culture of impunity that led to few state actors being convicted for unlawful killing during the conflict (Sanders 2021), and the positive contribution many former politically motivated prisoners have made to post-GFA society upon release (Albert, 2024).

10. This display seems to have been somewhat divisive among Unionists; on the one hand, the organisers subsequently dropped the band in question from later events, yet on the other hand, loyalist bands and Unionist politicians expressed their support for the band at a solidarity parade (see ITV 2019).

11. In a social media post, Ulster Unionist Party leader Doug Beattie wrote of Soldier F t-shirts appearing at an Apprentice Boys event in Derry ‘There are some people who go out of their way to be hurtful and spiteful. There is simply no need to this’ (see Campbell (2022).


References


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