

THE TRUTH OF THE MATTER

Speech in Seanad Éireann
on the Second Stage Debate
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A Philosophy of Hatred

This Bill has laid bare a raw nerve. It has put its finger on an attitude that is covered up most of the time in civilised language and supposedly civilised attitudes. Its principal crime is to bring into the light of day certain things that are necessary if peace and reconciliation are to exist on this island, such as co-operation with Protestants and with the British Government.

There are people who protest their love of their fellow-countrymen in the North of Ireland, who want to unite with them and who yet refuse to take a course of action that would express that love and would give meaning to their desire for reconciliation. This Bill proposes such a course of action. The implications of section 2 make this clear.

The Bottom Line

If murder is committed by killing a soldier in Dundalk, then under this Bill it is also murder to kill a soldier in Newry. If murder is committed by killing a policeman in Dublin, then under this Bill it is also murder to kill a policeman in Belfast. The Bill no longer permits a distinction between certain crimes committed in one part of this island and the same crime committed in another part. That distinction is intolerable and it must be brought to an end. That is why the provisions of this Bill are, to some people, unforgivable and unacceptable.

For some, the real reason for opposing this Bill is that it wants this distinction brought to an end. Murder, wherever it is committed, for whatever reason, by whichever person, will be described as murder if this Bill is passed and those responsible for it will be apprehended in any part of the country, brought to trial and, if found guilty, punished. That is why it is being opposed.

It is around this principle that the argument revolves. When that principle is accepted the argument shifts to the area of how to translate that principle into law. That is the secondary aspect of the Bill, but its primary concern is to establish that not only do we reject violence committed in Northern Ireland, but we also reject the use of this State as a base for mounting violence within the North. We further reject the use of this State as a haven or sanctuary for those who have committed crimes in Northern Ireland so that they can escape the consequences of the law and go free.

We must admit that the Republic is a haven and a sanctuary at present for those who have committed certain acts of violence in the North. They can claim political immunity here. It leads to a situation where, for example, a person responsible for robbing £20 in a bank in Belfast, who flees to Dublin can be extradited on a warrant from the RUC, returned to that police force under our law, brought before a Northern court, tried, found guilty and sentenced to prison in Northern Ireland.

If that person robs £20,000 from a bank in Belfast and flees to Dublin he can avoid extradition if he claims his crime was politically motivated. The first person can be tried and punished if found guilty; the second person can go free and remain at large indefinitely in the Republic. This is an intolerable situation and one which I, in common with a lot of people, find obnoxious. I am appalled that there are some who believe that we should be coerced, forced, bribed or tricked into eliminating this gross anomaly in our system of law, and indeed of common justice and humanity.

Deliberate Obfuscation

As far as I am concerned, even if there had been no Sunningdale, there would still be an obligation on us to punish those guilty of murder, arson, kidnap, hijacking and burglary in the North. It is never untimely to deal with those who have committed serious and heinous crimes. I am astounded by the allegation that this Bill was untimely, and it reminds me of St. Augustine in his Confessions praying: "Lord make me pure, but not now."

We have among us those who pray, Lord, let us deal with those people, but not now. Lord, make us just, but not now. It is not timely.

Well, it is always timely to deal with those who take other people's lives, who injure and maim.

There are those who claim that the contents of this Bill are repressive. This vile slander seems a perfect example of a conscious exercise in

Orwellian language. I have seen posters on walls in Dublin of 16 men and beneath the picture there is a statement: "These men are killing peace." They are the 15 members of the Cabinet and the Attorney General. The Provisional IRA are responsible for putting those posters on walls.

Five of those men in that picture are my comrades in the Labour Party. Eleven of them are my friends in the Fine Gael Party. Is it not a strange irony that the dictum of Goebbels should be borne out in our country – if you want to tell a lie it is best to tell a big one.

Those who oppress say that the oppressed are the oppressors. Those who repress say that the repressed are the repressors. Those who murder put themselves forward as men of peace. Those who are elected by the people and who abide by the people's will are classified as murderers, as being engaged in a conspiracy to commit murder, as being responsible for crime and violence.

Those who engage in this type of language, who classify my five comrades in Cabinet as men of violence, are precisely the same type who would describe the contents of this Bill as repressive. There is the same use of language; meaning is stood on its head and language is given the contrary meaning to that which it has in normal everyday usage.

The argument that this Bill is repressive is contemptible. It is employed only by those who have an emotional sympathy with the Provisional IRA and by those who openly or privately share an attitude which says it is okay to kill a soldier so long as it is a British soldier; it is okay to kill a policeman so long as it is an RUC man; it is okay to kill a workman so long as it is a Protestant workman; it is okay to kill a judge so long as it is a Northern Ireland judge, like Martin McBirney, who was a comrade of mine in the Northern Ireland Labour Party.

It is never okay to kill anybody.

That is the message that must go out from this House and from the other House of the Oireachtas. Until we can get rid of the idea that

some kinds of murder are privileged, there will never be peace on this island.

Murder is Murder

To some, UDA violence and murder will be privileged. To others, IRA murder and violence will be privileged. To some others, British Army violence and murder will be privileged. Each faction protects itself with its own set of excuses. We all say: "We will not do anything with our murderers until you do something with your murderers."

The IRA are our murderers and we have got to do something about them. They commit murder in our name, in the name of the 32-county Irish Republic. The UDA does not commit murder in that name, and neither does the British Army when it commits murder, as it has done. But the IRA commits murder in our name.

Without being asked or bribed by anybody, without being coerced or tricked by anybody, we have got to do something about these murderers simply because it is right, simply because it is the only way towards reconciliation and simply because it is a Christian thing - if that is a permissible consideration in this debate. Perhaps it is no longer a permissible argument on this island.

For us in the Labour Party, this is something we must do because it is the socialist thing to do. Whoever heard of socialists condoning murder by one faction of the working class against members of another faction, whether classified as defence or retaliation or revenge? I do not care what the motives are. Murder is murder.

Socialists, when they are truly socialists, are pacifists. Socialists do not condone, engage in, or associate with violence, particularly political violence, of which they have so often, in the history of mankind, been the victims. They do not support those who use violence in an organised fashion for political ends.

Above all people, socialists should preach peace, unity and brotherhood in the face of the

most intransigent hatred and violence. That is the socialist creed. A great many crimes are committed in its name, which have as much connection with socialism as Hitler's national socialism.

The policy in this country in respect of fugitive offenders must be that as determined at a recent meeting of the British and Irish Council of Churches in Newcastle, County Down, and reported on April 28th, 1975, in *The Irish Times*. They state in a communiqué:

"Abhorring as we do, all acts of violence, and especially the continuing sectarian and other murders, we emphasise the urgency of bringing to justice those who commit crimes of violence, including murder, however motivated, irrespective of where they seek sanctuary or are apprehended. We recognise that this requires not only the efforts of the police but the co-operation of the public in spite of the personal danger that this may entail."

That is the right philosophy for this State and for the people of the country. It is the philosophy of my party, which is committed to peace and reconciliation. It abhors and detests violence no matter in whose name it is committed or in which cause. My party will support this Bill as it will support other Government Bills and measures. There is no difference between the Bill and other Government Bills in this respect and I want to make this clear without the slightest equivocation.

Action needed

Do we give sanctuary to those who have committed crimes in Northern Ireland, in some cases crimes of the most heinous type? If we refuse to give them sanctuary, do we extradite them to Northern Ireland or do we apprehend them here in our own jurisdiction and punish them if found guilty? That seems to be the kernel of this debate. One can either permit the fugitive offender to go free or else decide to take action. If one says, as Fianna Fáil through its Leader, Senator Lenihan, has said, that they do not want them to go free, then one has to take action.

The action can be either extradition or it can be a trial. Extradition for good and valid reasons has been ruled out, although Senator Robinson had a very interesting contribution to make on this point. If one is going to act, then one of the two alternatives is already ruled out – extradition. Therefore there has to be a trial. We know now that if it is going to be a trial it can be one of three types, before three different types of court.

It can be an all-Ireland court, a mixed court or a court with extra-territorial jurisdiction. If we agree without equivocation that we are not going to provide a sanctuary for fugitive offenders from Northern Ireland then at the end we are faced with the question of which type of court we require if we have ruled out extradition as an alternative. That in a nutshell is the issue before us in this Bill.

Fianna Fáil say that the Irish Republic cannot have resort to one of these three trial alternatives – the extra-territorial method – because they claim that under Article 3 of the Constitution, the Irish Republic has deprived itself of the capacity to grant itself extra-territorial jurisdiction. So we end in a situation where we cannot extradite and we cannot exercise extra-territorial jurisdiction whereby these people can be brought to justice under this Bill.

So we cannot do anything— except an all-Ireland court, which we all know is a political impossibility since the Loyalists will not cooperate in its establishment. Thus Fianna Fáil can say: “It is not our fault that we cannot do anything about fugitive offenders.” So they have the best of both worlds. They want to do something, but they cannot do it, on the one hand, because of the Constitution and, on the other because of the intransigence of the Loyalists. So the murderers go free in Dublin because of somebody else’s fault but not theirs.

The Fianna Fáil argument in respect of Article 3 is totally spurious. It is in effect saying that the Irish Republic under Article 3 of its Constitution is denied any extra-territorial effect in its own

laws. That view is not expressed in Article 3 and, as Senator Alexis FitzGerald has pointed out, Article 3 refers specifically to the extra-territorial effect of the State’s laws, which is an effect similar to that of Saorstát Éireann.

We all know that Article 3 of the present Constitution was simply employed to define the territorial jurisdiction of the State with the minimum amount of political damage to the Government party of the day, which did not want to admit explicitly that the territorial jurisdiction of the State was in fact laid down by section 12 of the Treaty and the Government of Ireland Act of 1920.

That was the purpose of its complicated wording and it did not profess to exclude the State from the internationally accepted capacity to have extra-territorial jurisdiction, which is a principle in international law.

I believe the Irish Republic and the Irish Free State had that capacity from the moment of their formation and I do not believe that the Republic has voluntarily deprived itself of that right by virtue of Article 3 of the Constitution. I think it is critically important that we nail this particular allegation so that Fianna Fáil in the last analysis are going to be left without any constitutional justification whatsoever for opposing this Bill.

Legal Precedent

To that end, on the question of extra-territorial jurisdiction, I intend to make reference to one of the standard works on the subject, “International Law” (Volume Two) by D.P. O’Connell, 1970, published by Stevens and Sons. I wish to refer to page 601, where reference is made to a decision of the International Court in a case between the French and the Turkish Governments. It reads:

“The form in which the issue was submitted required the International Court to state whether or not the principles of international law prevented Turkey from instituting criminal proceedings against the French officer.”

In other words, the Court was not asked to decide if there was an international law rule authorising Turkey to take these proceedings, but if there was any rule prohibiting it – the reversal of the usual format. The Court began with some observations on the territoriality of jurisdiction, saying:

“It cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention. It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law.”

The Court, then, arrived at the proposition that there is no general rule of international law prohibiting altogether the application of law and the jurisdiction of courts to persons, property and acts extra-territorial. There is, on the contrary, a wide discretion allowed States in this respect. The most that can be said is that there are limitations to this extension.

“Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all of these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.”

It is interesting that Senator Ryan and Senator Lenihan, engaging in the exercise of propagating the good reasons for opposing this Bill, made reference to Article 3 of the Constitution, and made the claim that it denied any extra-territoriality to the legislation of the Republic.

Senator FitzGerald, in his contribution, made reference to the Extradition Act when rebutting their arguments and in particular to section 38 (1), which in many ways is worded almost equivalently to section 2 (1) of this Bill.

Since section 38 (1) of the Extradition Act is constitutional, then I submit that section 2 (1) of this Bill is also constitutional; and if section 38 (1) of the Extradition Act is unconstitutional then so is section 2 (1) of the Bill.

The only interesting thing about this analogy is that the man who introduced not only section 38 (1), but the whole of the Extradition Act in 1965, was Senator Lenihan, as Minister for Justice. So, if Senator Lenihan’s section is constitutional, so is section 2 (1) of this Bill.

I think that Senator Robinson’s observations on the claim of Fianna Fáil that Article 3 of the Constitution is any way an obstacle to the passage of this Bill is one that should be listened to. I was particularly struck by the dismissive attitude that she took in dispatching their argument. It was almost as if she did not believe their case was one worthy of argument, and I agree with her.

As regards Article 38, which is also advanced as a good reason for opposing the Bill, then if that too makes this Bill repugnant to the Constitution, I suspect it is going to make many past Acts of this State illegal.

Article 38.3 states that Special Courts, which will operate under this Bill, “may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate” – here, I add my own emphasis – “to secure the effective administration of justice.”

I wholeheartedly support the analysis of Senator FitzGerald in respect of the claim of Fianna Fáil that Article 38 provides a constitutional barrier to this legislation. It expressly permits special courts when the effective administration of justice is otherwise in doubt.

I believe that Articles 3 and 38 of the Constitution have been thrown by Fianna Fáil into this debate merely as window dressing in an attempt to cover up an extremely bad case which, as I have suggested earlier, resides in quite a different area of politics than one of constitutional probity.

As I suggested, their opposition has arisen because they cannot come to grips with the sinister influences of our history and of some of our own worst national instincts, such as our hatred of the English and our suspicion of the Northern Protestant.

I do not believe Fianna Fáil's constitutional arguments hold the slightest merit or weight whatsoever and I believe they will be swiftly abandoned by them as the debate progresses.

Practicalities

On the other hand, I admit there can be arguments about the practicality and the workability of the method in respect of taking evidence that is laid down in this Bill. If one incorporates into a Bill the principle of extra-territoriality, then clearly the ability of a court to have witnesses from outside the jurisdiction is fundamental to its operation. In fact it is stated in the Law Enforcement Commission Report that the presence of witnesses at these trials is desirable and must be made possible in every conceivable way.

But, facing up to the realities of the situation as they exist on this island at this moment it may not be possible to get witnesses to cross the Border and attend a trial.

Therefore, the Commission proposed, and the Government have adopted their suggestion, that evidence be taken on commission. I think it important therefore in evaluating Fianna Fáil's amendment to have regard to paragraph 22 of the Law Enforcement Commission's Report, which states:

" ... we recognise that without compellable attendance of witnesses and compulsory production of documents and exhibits there may (all too frequently) be no effective trial. To meet the difficulty we have considered two possible courses:

(a) Empowering the court itself to request that the evidence of a witness or witnesses specified in the request be taken in the other jurisdiction by a commissioner;

(b) or empowering the court to request that the evidence of a witness or witnesses specified in the request be taken on commission in the presence of the members of the court by a High Court judge of the jurisdiction of the place where the offence was committed.

In paragraph 25 they state –

"We are therefore of the opinion that a more satisfactory and just method of taking evidence on commission is the one outlined in paragraph 22 (b)". (from which I have just quoted)

In the absence of a jury, this should not create any very great difficulty.

Furthermore, the method would have the advantage that members of the court could not only observe the demeanour of a witness but also be empowered to request the commissioner to direct questions towards any particular point.

Here again, it would be possible for an accused person to be represented by counsel or a solicitor and for the commissioner to adjourn the taking of evidence if the interests of justice so required to enable the accused to give instructions with a view to cross examination, but with the added advantage that the examination or cross examination would take place in the presence of the members of the court.

Questions as to the admissibility of particular evidence would be noted by the commissioner and later ruled upon by the resumed trial.

I believe that single paragraph meets many of the objections that have been raised by Senator Lenihan and particularly by Senator Ryan in respect of the commission procedure in the Bill. The argument has been put here in a most persuasive and compelling fashion by the Law Enforcement Commission, which included two men who are themselves members of our Supreme Court and by one other who, subsequent to the writing of this report, was raised to the bench. I believe their argument to be conclusive.

An all-Ireland Court?

We are then left with the question of an all-Ireland court. The procedure for an all-Ireland court, which has not yet been argued with any conviction or in any detail or with any force by the Fianna Fáil Party, would be extremely complicated and cumbersome. It would require, for example, as the Law Enforcement Commission Report states on page 12:

“ ... the creation of a special uniform code of substantive law and legal procedure to deal with politically motivated crimes of violence ... ”

Furthermore, it goes on to state that the setting up of such a court would require amendment of the Constitution of Ireland. I believe it would require amendment of Article 3 of the Constitution. I wonder whether Fianna Fáil are serious in coming in here and saying that they support a course of action which will require amendment of Article 3 of the Constitution when we all know that the All-Party Committee on the Constitution is deadlocked on precisely this issue because Fianna Fáil will not agree to a rewording of Article 3 of the Constitution.

If there is to be an all-Ireland court then the all-Ireland court will involve Northern Ireland judges. It will sit sometimes in Northern Ireland. It will require the involvement of the Northern legal administration. It will require the use of policemen wearing the uniform which will have been given to them by an authority in Belfast deriving its authority from London. It will be open to precisely the same type of criticism that Senator McGlinchey has spewed out for the last day and a half against the provisions of this Bill.

Are we going to have an all-Ireland court that is somehow magically confined only to the Twenty-six Counties? An all-Ireland court means precisely what it says – a court for all Ireland – and people will be tried in Belfast just as they would be tried in Dublin or in Cork or in Derry under that court. Let us not kid ourselves. If they are tried in Belfast or in Derry under an all-Ireland

court they are sitting in Northern Ireland, which is still going to be part of the United Kingdom. Or is it suggested, although I have not yet heard it suggested, that the all-Ireland court is in itself contingent upon the ending of Partition and on the happy day when Ireland is united? If it is not so contended, then let us have an end of the nonsense that an all-Ireland court is not going to sit in Northern Ireland, which is going to be no different constitutionally from the way it is now.

The Union Jack will still fly in Belfast when the all-Ireland court sits there, just as it flies there now. The ultimate authority for any police force from the North before that court will be the Parliament at Westminster and the ultimate authority of the Northern Ireland judges in that court will be the Parliament at Westminster and the ultimate authority for the prison officers who put people in prison in the North as a result of its judgment and who keep them there will be the Parliament at Westminster, just as it is now.

Transparency Required

Are Fianna Fáil serious about this? Have they some second thoughts about Article 3? If they have I think we should hear them. They are entitled to that, if the all-Ireland court is put down as a serious way of dealing with the problem of fugitive offenders.

If, as Senator Lenihan says, Fianna Fáil want to have fugitive offenders apprehended and if Fianna Fáil are putting forward the all-Ireland court as a feasible alternative to the principle of extra-territorial jurisdiction, then we had better hear it spelled out as to whether they are prepared to amend Article 3 of the Constitution and whether they are prepared to use Northern judges, the RUC and Northern prisons in the working of that court.

According to Senator McGlinchey, they are not. If Senator McGlinchey is speaking with the real voice of Fianna Fáil, then what Senator Lenihan is saying is no more than a fraud. We should not be subjected to it any further. We

should be told openly what the real reason is for opposing the Bill.

The real person speaking for Fianna Fáil was Senator McGlinchey. I heard Senator Dolan and Senator Killilea say "go on, good man" and when he sat down "Well done". I did not hear too much of that when Senator Lenihan was speaking. If Senator McGlinchey is the real legal voice of Fianna Fáil then let us know that this is the case. We can deal with that and we will not deal with this legal clap-trap in respect of an all-Ireland court.

It will be recalled that this piece of proposed legislation is consequent, firstly, upon the Sunningdale Agreement and, secondly, upon the Law Enforcement Commission Report. It is confined, as the Commission Report itself says on page 9, and I quote, to:

"... some special and limited provisions to deal with a special problem."

That special problem, we all know, is the apprehension of fugitive offenders inside our jurisdiction. There have been gross and grievous misrepresentations of the purpose of this Bill, and we heard the most outlandish allegations from Senator McGlinchey in respect of its intentions.

He knows, as well as I do, that this Bill is not designed to deal with those who flee from any form of intimidation, terror or violence from any quarter in Northern Ireland. It is designed to deal with those who are inflicting it, not to those who are running away from it. It is to deal with those who have bombed the Derry people, Catholic and Protestant, and who then used Donegal as a sanctuary. If that activity is what Senator McGlinchey stands for, then it had better be spelt out quite clearly so that the people of Donegal and Derry will know exactly what he means.

I want the Fianna Fáil Party, particularly the Dublin members, to state whether they oppose action being taken which would mean that those who were responsible for the bombs in the streets of Dublin can be apprehended and brought to trial and punished, or whether they want the

bombings to continue and the bombers to go free. I know what sort of answer they will get on the doorsteps of Dublin streets if that is their attitude.

The Truth of the Matter

A bomb went off not more than 200 yards from this building. Two bombs went off not more than 300 yards from my party head office, blowing twenty-six people to their deaths and injuring hundreds of others. This Bill and the one going through the Westminster Parliament are designed to deal with that problem, not the people who are running away from the RUC batons in Derry.

Senator McGlinchey knows this and it is an abomination that he should have been permitted to twist the humane propositions in the Bill. If he does not want to deal with the bombers, I do - as do many of the people of the country and in the Labour Party and the trade union movement.

I want to deal with the man and the organisation responsible for the murder of Martin McBirney. I do not want the Dublin streets to be the place where the man responsible can have free passage and plan murders and bombings in the North. That is the purpose of this Bill and we all know it.

We are dealing with the IRA, the UDA and all those who engage in political violence for whatever end in any part of this island. We want to make the whole island safe from those people so that no part can be used as a haven or sanctuary for the assassin or bomber.

I do not believe the Northern problem will disappear and that the Bill, therefore, is untimely. I do not believe it is the "fag end" of Sunningdale, as Senator Lenihan has described it, although it is a new description of murder that it should be the "fag end" of anything. I thought human life was more valuable than being described as the fag end of anything.

We face a future which is no less terrifying, terrible and frightening than that which the members of our Cabinet faced when they went to Sunningdale and negotiated the agreement that

gave rise to this legislation. Today a Convention is being elected in the North. Many see this as a possible last chance and many feel it may literally be the last chance, and will fail. If it fails, then God knows what will happen in the North or here.

We can only pray that the people in the North will exercise great wisdom and great moderation in their choice of representatives to that assembly. In the meantime we must do all in our power to prevent this State being used as a base for terrorist operations in the North so that peace and reconciliation may be given some opportunity while that Convention sit. We do not want murder to walk in our streets under any guise.

The central core of this Bill, as set down in section 2 (1) and the Schedule, can achieve that. I cannot see how anyone reading the crimes listed in the Schedule - murder, manslaughter, arson, kidnapping, false imprisonment, explosives, robbery, firearms, hijacking - can decide that the Bill is anything other than an attempt to contain violence and to give peace the slim chance it desperately needs to live and to exist and to fructify into some kind of reconciliation; to bring some sort of comprehension where there is nothing at the moment but ignorance; to bring some sort of reconciliation where there is nothing at the moment but hatred; and to bring some sort of patience and humility where at the moment there is nothing but anger and pride.

I have no regrets about this legislation. I would only regret if I were not in public life at this time to make some small contribution towards its passage and towards other necessary steps to bring about reconciliation in this island.

I would deeply regret if through moral or political cowardice we failed to act against those who murder our fellow Irishmen, Protestant as well as Catholic, and also those who murder British soldiers, to act against those who usurp the authority of this State and purport to act on our behalf - but who do no more than bring shame on all who describe themselves as Irishmen.

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