

Legacy Matters

PART II





Padraig Yeates



Andy Pollak

Editorial

Legacy Matters attempts to address one of the most pressing challenges posed by the Troubles for our society, and particularly for individuals and families directly affected by the conflict over 25 years after the Belfast Good Friday Agreement was made. This is the question of how to obtain some meaningful degree of truth and justice for victims/survivors, and some form of reconciliation with former combatants outside a criminal justice system that has signally failed so many in the past.

This question has assumed a new urgency in the wake of the controversial proposals in the Northern Ireland Troubles (Legacy and Reconciliation) Bill for a blanket amnesty covering all those involved in the conflict, as well as an end to Troubles related inquests and civil actions. There has been almost universal condemnation of the proposals from critics, including the Irish government, political parties and organisations representing victims and survivors in Britain and the Republic, as well as Northern Ireland.

The TRUTH RECOVERY PROCESS advocates an alternative to both the British Government's new proposals and existing pathways to truth and justice through criminal prosecutions in the courts. It seeks to do so in ways that protect the rights of victims and their families, while addressing the patent failure of existing mechanisms. Our hope is that *Legacy Matters* can provide a medium for dialogue between people, especially those for whom other formats may prove difficult, impractical or impossible to access.

Different experiences of the same events can affect our mutual understanding of what happened and the consequences of our actions for others. Incomprehension and intolerance of other people's experiences can easily degenerate into a blame game. *Legacy Matters* will seek to give people space to reflect on what happened in ways that are not always possible in live debate or private conversations, let alone social media.

Writing in itself can provide us with means of reflecting on what happened and why. Like the Truth Recovery Process itself (www.truth-recoveryprocess.ie) it can create space to examine events and our own motives forensically, in a mutually honest way. It can also help us understand how acts of extreme violence have affected other people's lives and provide a space where we might at least agree on the facts, reasons and consequences of the events concerned.

Without reconciliation on the facts, deeper and wider forms of reconciliation may remain superficial and vulnerable to the communal tensions that have proven so resistant to change and have repeatedly undermined the peace process in the past.

This issue of *Legacy Matters* contains articles varying greatly in scope, content and length, reflecting the wide range of contributors. Readers may find some of the content challenging but all of these articles are offered in good faith and raise issues we need to discuss.

We would like to thank everyone who has contributed.

Padraig Yeates & Andy Pollak

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Equity, Mercy, Forgiveness: Interpreting Amnesty within the South African Truth and Reconciliation Commission

by Wilhelm Verwoer

I vividly remember sitting through the amnesty hearing of Mongesi Christopher Manqina, Vuzumzi Samual Ntamo, Easy Mzikhona Nofemela and Ntobeko Ambrose Penni. In August 1993, these four young men from Guguletu township were part of a group returning from a political rally in a time of intense political unrest, when they were encouraged to see all whites as 'settlers' who took away their land and deserved to be killed. Amy Biehl, an American exchange student who was deeply committed to the struggle against apartheid, was dropping off a friend in the township that day. She was wrongfully identified as a 'settler' and became the tragic victim of a brutal mob attack.

During 1994 all four applicants were convicted and sentenced to 18 years' imprisonment each.

In July 1997, during the first day of their amnesty hearing, my initial anger at seeing the applicants in person unexpectedly gave way to more mixed feelings of empathy and deep sadness. My intuitive opposition to their receiving amnesty for this gruesome, racist killing of a young white "comrade" gradually began to mellow. By the end of the day I had a clear sense that amnesty would be right, or at least would be better than them serving the rest of their prison sentences. My feelings about the hotly criticized amnesty process were never the same after this experience. It felt as if a heavy burden had been lightened.

To understand why I felt morally unburdened by the amnesty hearing for "Amy's killers", it is important to take a closer look at the dominant public perception and criticism of the amnesty process as a "sacrifice of justice", which I, amongst others, tended to accept before the Biehl hearing. This hearing and subsequent events involving Amy Biehl's parents and at least two of the successful applicants, drew my attention to the oft neglected possibilities of making moral sense of the amnesty process.

2. AMNESTY AS A SACRIFICE OF JUSTICE

Before that unsettling, though liberating "meeting" with some of those who killed Amy Biehl, my vision of the amnesty process was clouded by the anger of Mpho Tsedu. "The truth about the TRC is that it shuns true justice", proclaimed *The Sowetan* (2 October 1996) above a letter by Mr Tsedu. "Unaware of the intentions of the commission, but informed of common knowledge and sense," he wrote, "some victims expect justice to be done or just shut up because they will never, ever forgive the Boers... we will be more than happy to see the killers of Steve Biko, Abraham Tiro, Mapetla Mohapi and Mthuli ka Shezi appearing before a court of law to answer for their actions...".

I was also acutely aware of the many popular and academic commentators who echoed Tsedu's sentiments: "No amnesia, no amnesty, just justice" demanded another letter writer (*Cape Times*, 17 April 1996). "*The Commission that seeks to come to terms with the legacy of apartheid describes its concern as Truth and Reconciliation, and not Justice and Reconciliation. If truth has replaced justice has reconciliation turned into an embrace of evil?*" asked Mamdani (1996:3).

I knew that the South African TRC was not unique in facing this kind of challenge to its moral legitimacy, but the burden appeared exceptionally heavy. It was also the first truth commission saddled with the implementation of a negotiated amnesty deal, as well as the more typical tasks of truth-seeking, official acknowledgement of victims, and making recommendations on reparation and rehabilitation.

Working within this Commission one often felt torn apart. The right hand of its Human Rights Violations hearings with its recommendations, committed to healing

of survivors' wounds, with the left hand of amnesty appearing to rub salt into those wounds. It was deeply troubling to hear the tearful public testimonies of those who had been tortured, or lost loved ones and then next morning be confronted with this kind of picture in the newspaper: As Tutu and co. scaled the mountain of victims' skulls, many wanted to know: why the guilty were not being prosecuted and punished? Why "retributive justice" was left out of the TRC expedition?

This expression of popular criticism of the TRC amnesty process helped me understand the sense of injustice that many felt about amnesty. The cartoon served as a warning that amnesties could turned "retributive justice" into a farce or at best an indifferent bystander.

There were others adorning the offices of people working in the TRC, which painfully captured different angles on the sacrifice of justice criticism.

The evil perpetrators in one cartoon are Brigadier Jack Cronje, Captains Jaques Hecther and Roelf Venter, Warrant Officer Wouter Mentz and Sergeant Paul van Vuuren. When their highly publicised amnesty hearings took place in 1996, the public was exposed for week after week to detailed disclosures of the 47 killings (amongst other violations) for which these five men from the former Northern Province Security Police Branch claimed responsibility. They were granted amnesty in early February 1999.

In response, the cartoonist vividly articulated the widespread criticism of amnesty as the deeply problematic protection of perpetrators from punishment. This time the figure of retributive justice is not an unmoved bystander. Given confidence in her judgement of the guilty, the blindfold is taken off. With righteous indignation written all over her face, Tutu can barely prevent her from implementing the harsh punishment Cronje and co. deserve.

These pictures helped me to understand why I often felt morally burdened by being part of a body implementing amnesty. For the withholding and/or prevention of prosecution and punishment suggests that what happened to the victims was perhaps unfortunate, but not really wrong, not really a gross violation of their human dignity. In short, for many not allowing conventional criminal justice to take its course conveyed a message of condonation instead of vindication. For why do we punish? Why should retributive justice have been included in the TRC expedition?

Today punishment for serious crimes typically takes the form of long term imprisonment. More generally, "punishment" involves the infliction of something painful on the wrongdoer, by someone claiming to act disinterestedly on behalf of society. It is a tangible token of our commitment to what is right and concern for those who have been wronged. Through prosecution and punishment of the wrongdoer we signal our repudiation of the wrongdoing and express the value we attach to those who have been violated. Putting someone behind bars is primarily a symbolic action, which sends a moral message to a range of parties.

A "perpetrator friendly" amnesty process appears to do the opposite: it privileges perpetrators, it condones their violations, it releases wrongdoers from prison, it gives "victory" where defeat is demanded, it confirms a false message of superiority instead of proclaiming the moral truth of human dignity.

Amnesty also confirms its troubling relationship to "amnesia". Both the message of condonation conveyed by amnesty and the expression of indifference through forgetting, inflict further damage on those who have been wronged. Of even, to use the dramatic image used by Archbishop Tutu to describe our unjust actions towards others, "spitting in the face of God".

There were also other disturbing pictures of amnesty. Before attending the amnesty hearing of Manqina, Ntamo, Nofemela and Penni, I tended to associate the amnesty process with high profile cases such as the application by Jeff Benzien, a former captain in the Western Cape security police who became notorious for his "wet bag" technique on anti-apartheid activists. This involved sitting on top of a prisoner, whose

hands were tied behind his back, placing a wet bag over his head and smothering him until he “breaks”. Like all amnesty applicants Benzien was required to make a “full disclosure” and convince the members of the amnesty committee that his actions had a “political objective”. At the hearing some of Benzien’s victims insisted that he demonstrate - in the full glare of the media - this “wet bag” torture technique (Krog 1998:70-78). Shortly afterwards a cartoon appeared portraying Amnesty as involved in acts of commission, strangling justice, violating a victim’s right to seek legal redress. It shocks onlookers by giving centre stage to prominent torturers.

Faced with this violent image I remembered Chief Justice Mahomed DP’s recognition of the legitimacy of the moral intuition underlying the Benzien cartoon: *“Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty from constitutional attack...”*

He also characterised the focus of moral concern about amnesty as the “effective obliteration” of the fundamental human rights of individuals to protection by the State and to seek redress for harms suffered: *“The effect of an amnesty undoubtedly impacts upon very fundamental rights. All persons are entitled to the protection of the law against unlawful invasions of their right to life, their right to respect for and protection of dignity and their right not to be subject to torture of any kind. When those rights are invaded those aggrieved by such invasions have the right to obtain redress in the ordinary courts of law and those guilty of perpetrating such violations are answerable before such courts, both civilly and criminally. An amnesty to the wrongdoer effectively obliterates such rights.”*

He sought to justify this “obliteration” of the rights of the aggrieved, through the exchange of “truth” for “full disclosure” and reconciliation built into the South African amnesty process: *“The families of those unlawfully tortured, maimed or traumatised become more empowered to discover the truth. The perpetrators become exposed to opportunities to obtain relief from the burden of a guilt or anxiety that they might be living with for many long years. The country begins the long and necessary process of healing the wounds of the past, transforming anger into a mature understanding and creating the emotional and structural climate essential for ‘reconciliation and reconstruction’...”*

During the early stages of my attempt to make sense of the TRC amnesty I was conscious of critics who found Mohamed’s line of moral reasoning unconvincing, such as Darrel Moellendorf, who argued that neither the empirical nor the normative claims stood up to scrutiny. Empirically, he cited the case of the Chilean truth commission which recommended judicial proceedings against perpetrators “even though the [former] military government had earlier passed an amnesty law”, and the example of Argentina, where trials were undertaken against military leaders responsible for human rights violations. He thus suggested, implicitly, that it was false to claim that amnesties were a necessary means for truth, because other countries had used other means, namely trials, to do so.

Moellendorf also questioned Mahomed DP’s second empirical claim, that amnesties brought about reconciliation”. He cited the testimony of a Charity Kondile – who expressed no desire to forgive Dirk Coetzee, the security police captain who testified at an amnesty hearing about his killing of her son. Moellendorf found the alleged causal connection between truth and reconciliation to be doubtful. Mrs Kondile’s struggle to forgive – in contrast to people like Mandela and Tutu – was suggestive of a general tendency in which “forgiveness and reconciliation without justice may be far easier for political elites than for ordinary citizens” (286). In a number of cases truth (via amnesty) produced psychological states such as anger and resentment, guilt and fear, as opposed to forgiveness and reconciliation. Yet, for the sake of argument Moellendorf was willing to concede that “truth even without justice will result in great psychological goods for victims and perpetrators alike” (286).

Even allowing for this Mahomed DP insists that “strong right... limits how social goals might be achieved”. The rights of individuals to protection and redress for harms suffered qualify as “strong rights” because they are “fundamental to the just functioning of a legal system”. Therefore these rights “limit what may be done in the pursuit of improving the well-being of victims and perpetrators of human rights abuses”. (287).

While I accept that Moellendorf’s emphasis on the weightiness of “strong rights” should be taken seriously, it was always clear that there were justice-based responses available to those concerned about the TRC’s moral legitimacy. Moellendorf’s interpretation of Mahomed DP’s moral reasoning, underscored at least two problems with the claim that amnesty – within the SA TRC – amounts to a sacrifice of rights that are central to achieving individual justice. Firstly, he underestimated the constraints on the conventional criminal justice system in post-apartheid SA; secondly, he failed to address the issues that arise between “amnesty” and “pardoning” in the TRC context.

A third justice-based response, which I heavily relied on before those unexpected emotional and moral shifts at the Biehl amnesty hearing, is to emphasize the room for justice in the other parts of the TRC process.

1. JUSTICE AND AMNESTY WITHIN THE TRC

1.1. CONSTRAINTS ON JUSTICE OUTSIDE THE TRC

Critics of the TRC amnesty tend to assume that justice has not only been a theoretical possibility, but also a practical possibility. They appear to believe that, in the absence of amnesty, trials have been a real option. There are, however, many obstacles to the prosecution and punishment of political crimes in transitional contexts such as post-apartheid South Africa. By challenging the empirical claim at stake in the sacrifice of justice criticism, these obstacles to justice place a question mark behind the moral claim that, through the mechanism of amnesty, “strong rights” are traded for truth and reconciliation.

The moral significance of my concern about the possibility of justice is clearly illustrated by the following statements about human rights in general and amnesty in particular.

In his book on **BASIC RIGHTS**, Henry Shue argues that a “moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats” (1980:13). He defends each part of this definition, but for my purposes his emphasis on “actual enjoyment” is especially significant. He sees this second element as the “most neglected element of many rights” and goes on to say: *“A proclamation of a right is not the fulfilment of a right, any more than an airplane schedule is a flight. A proclamation may or may not be an initial step toward the fulfilment of the rights listed. It is frequently the substitute of the promise in the place of the fulfilment”* (1980:15).

José Zalaquett, a central figure in the Chilean TRC and a leading contributor to the debates on “transitional justice”, makes this sobering point while discussing various measures of clemency or leniency: *“In some cases, the policy adopted is ambivalent. There is a theoretical possibility of prosecution and punishment, but given the actual avenues for pursuing such possibilities, they are rendered illusory in practice”* (in Kritz 1995:13-14).

With Shue’s concern about the actual enjoyment of rights and Zalaquett’s warning against “ambivalent” policies in mind let us now turn to the range of obstacles that typically apply to the prosecution and punishment of politically motivated human rights abuses in transitional contexts.

As far as obstacles to prosecution is concerned, the following aspects of the transitional context should be noted:

Constraints on political power

While acknowledging the strength of the case for a moral obligation on the state/

society to punish criminals, one cannot assume, when dealing with human rights violations in transitions to democracy, that the new government has the power to comply fully with its positive duty to dispense justice for the past crimes of the previous regime.

Underlying this assumption is what can be described as a post-Nuremberg way of thinking. It rests on the necessary material condition that the war criminals who were brought to trial did not lose power through political means but through a complete military defeat. When this condition is absent, when successor governments must wrestle with questions of the correlation of forces, such as was/is the case in post-apartheid South Africa, this post-Second World War model is unsuitable.

It is, of course, tempting to forget how likely civil war seemed prior to the 1994 election. The threat of a military takeover by the SADF was also probably less serious than in many Latin American countries, who for that reason chose not to have large scale prosecutions of war criminals from the previous regime. However, significant limits to an ANC dominated government's political power, given the negotiated nature of the transition, remained an obstacle to justice in a deceptively stable newly democratic South Africa. As Archbishop Tutu put it in his Foreword to the TRC Report, under the heading "Transitional Options": "*In South Africa, where we had a military stalemate, putting those guilty of gross violations on trial as the allies did at Nuremberg was clearly an impossible option*" (1:5).

Constraints on the criminal justice/judicial system

A further practical difficulty facing a newly established democratic government intent on prosecuting human rights violators under a previous repressive regime arises from the imperfections typically characterising the inherited criminal justice system. In some countries, such as apartheid South Africa, most law enforcement personnel needed to be retrained before they are able to employ methods of evidence-gathering, prosecuting and adjudicating that are permissible in a constitutional democracy; some (many?) of those who are tasked to investigate political crimes may be untrustworthy because they themselves have been involved in, or complicit with, the commission of such crimes, and/or they have retained an institutional loyalty to the previous regime.

Even without these imperfections resulting from the past, successor regimes are often unable to cope with the dramatic increase in current crime that tends to accompany the disruptive social, economic and political changes involved in transitions from repressive rule to constitutional democracy (Van Zyl 2000:44). In the words of the Report: "*The current South African criminal justice system is already under severe pressure. Police have very limited capacity to investigate and arrest. Attorneys-general have limited capacity to prosecute. The courts and judges have limited capacity to convict and correctional services are limited in their capacity to accommodate prisoners*" (1:122).

The tough question is: how much of this "limited capacity" is realistically available to solve political crimes from past conflicts?

Socio-economic constraints

Most post-transition societies not only have to face the unwelcome question about the allocation of limited resources within the criminal justice system. They also have to make agonisingly difficult choices about resource distribution between the criminal justice system and departments of health, education, housing etc. When millions and millions of citizens are unemployed, live in shacks, don't have access to basic services such as water, electricity, sanitation, and demand (some) education, it may indeed often be "impossible for a government to justify a sufficient allocation of resources to the criminal justice system to make prosecutions a viable prospect" (Van Zyl 2000:45).



VILLAGE GRAVE
(REPUBLICAN), 1999
Brian Maguire
Acrylic on canvas:
52 7/8 x 80 3/4 inches
(109 x 205 cm)

The scale and nature of political crime further contributes to the elusiveness of successful prosecution and punishment in practice:

Scale of political crimes

The criminal justice system clearly works at its best when a single individual, or a small group of conspirators, can be proven guilty on the basis of clear causality between the crime, say murder, and the agent's action(s), as well as criminal intent on the part of the agent. When these rather stringent conditions cannot be met "beyond reasonable doubt" and within the constraints of "due process", the murder suspect is declared legally "not guilty" (Levinson 1973; Massey, in Kritz 1995).

These conditions imply that the scale of crime - the numbers of victims and perpetrators involved - is a significant factor in determining the possibility of using the criminal justice system to respect victims' rights to seek legal redress. The hard reality confronting sacrifice of justice critics (in a transitional context such as post-apartheid South Africa) is that "criminal justice systems are designed to maintain order in societies where violation of law is the exception. These systems simply cannot cope when, either as a result of state-sanctioned human rights abuses or internal conflict or war, violations of law become the rule" (Van Zyl 2000:46).

This hard reality is convincingly demonstrated by the case of post Second World War Germany - the most comprehensive attempt so far to prosecute and punish a large number of perpetrators responsible for mass crimes. Despite being less constrained than the post-apartheid criminal justice system - given minimal political resistance in Germany to prosecution and having inherited a relatively efficient and functional criminal justice system - postwar Germany "*only managed to secure fewer than 7,000 convictions from a total of 85,882 cases brought to trial [and] a majority of those convicted received relatively mild punishment and served only a small percentage of their sentences*" (Van Zyl 2000:46).

Nature of political crime

The problem of elusive politically motivated offenders is highly relevant to the sacrifice of justice criticism. The nature of political crime - at least when security force operatives are involved - makes successful prosecution and punishment extremely difficult. The TRC Report states that "*political crimes are committed by highly skilled operatives, trained in the art of concealing their crimes and destroying evidence*" (1:123). This is a huge obstacle to finding out more or less what happened

in large numbers of gross human rights violations, let alone producing sufficient evidence to find specific individuals guilty beyond reasonable doubt, as Mahomed DP has shown: *“Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible; witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law.”*

The reality of this obstacle is demonstrated by the “De Kock” and “Malan” trials that took place during the TRC’s lifetime. To quote again from the Report: “It took over eighteen months to secure a single conviction in the S v De Kock (the ‘De Kock trial’). A specialised investigative unit, consisting of over thirty detectives and six civilian analysts, spent more than nine months investigating and preparing the indictment in the trial of S v Msane and 19 others (the ‘Malan trial’). The trial itself lasted a further nine months. Furthermore, since the accused in many of these trials are former state employees, the state was obliged to pay for the costs of their legal defence. In the Malan trial these costs exceeded R12 million, and in the De Kock trial the taxpayer had to pay more than R5 million. These figures do not include the costs of the teams of investigators and prosecutors, nor do they reveal the costs of supporting large numbers of witnesses, some of them placed in expensive witness protection programmes. Despite this massive expenditure of time and money, former General Malan was found not guilty, although numerous allegations continue to be made against him” (1:123).

Political crimes and punishment

The fact that one is dealing with politically motivated perpetrators poses a further obstacle in terms of the rehabilitative and preventative purposes of punishment.

According to Jorge Correa, who served as executive secretary of the Chilean TRC, it is generally accepted that sending human rights violators to jail is not a very effective device, because the political motivation (“ideological fanaticism”) leading to the crimes cannot be rehabilitated through special treatments. He believes that most of these people, once they have recovered political power, are likely to violate human rights again (Correa, in Kritz 1995:487).

In its important chapter on the causes of human rights violations, the TRC Report states that the best way to prevent politically motivated violations is through democratic political and institutional transformation, and not by becoming fixated on the punishment of individual perpetrators (v:302-303).

Each one of these constraints can of course be discussed in more detail and their relevance to the particular post-apartheid South African context further debated. However, their cumulative effect is to place a question mark behind the claim that amnesty sacrifices justice; that it “effectively obliterates” (Mahomed DP) certain individual rights. (Zalaquett, in Kritz 1995:13-14).

Thus the empirical record complicates the depiction of the TRC sacrificing justice for amnesty. The range of obstacles to prosecution and punishment make the impossibility of justice a real possibility that must be contended with. The greater this possibility, the more one has to face the following uncomfortable question: what is in fact sacrificed through the mechanism of amnesty - a proclamation, a promise of rights, or the actual enjoyment of rights; an airplane schedule or a flight; true justice or illusory justice?

Mahomed’s empirical claim that amnesty was necessary for truth should therefore be seen in the light of the range of obstacles to standard trials mentioned above.

Moellendorf concentrated on the rights of individuals to protection and redress for harms suffered and assumed that “the ordinary courts of law” were available to give effect to these rights, by ensuring that perpetrators are “answerable”. We have seen that this availability assumption is questionable. In the light of the obstacles to

justice and Moellendorf’s problematic empirical claims a more accurate formulation would be that it was some trials and some victims’ rights that were traded for truth.

1.2. COMPLEMENTARITY BETWEEN TRC AMNESTY AND JUSTICE

The TRC followed the example of the Chilean TRC and recommended the prosecution and punishment of a number of key alleged perpetrators exposed through the TRC process. The TRC amnesty offer was for a limited period and specific further requirements had to be met. Those who did not apply were still open to prosecution and punishment, as well as those who failed in their applications.

The use of both trials and amnesty in South Africa as a means to respond to past human rights violations was no accident. The threat of prosecution and punishment was seen as a vital encouragement for reluctant perpetrators to accept the limited but relatively attractive offer of amnesty (De Lange in Villa-Vicencio & Verwoerd, 2000).

This interaction between trials and the TRC amnesty is most clearly illustrated by the De Kock trial. The successful prosecution of such a high ranking security policeman and his naming of other perpetrators created enough uncertainty about the possibility of prosecution to convince a number of security police that applying for amnesty was the safest route.

The tensions between the TRC and the justice system - highlighted by the sacrifice of justice criticism - was only one side of the coin. The other side was the complementary relationship between the trials and the TRC. Without the threat of trials many amnesty applications would not have been forthcoming and much truth would thus have remained obscured. On the other hand, by processing these applications the TRC actually assisted a highly constrained justice system, thereby ensuring that at least some accountability and truth were achieved in many cases where no trials or unsuccessful prosecution was a real possibility. Presenting the problem as “truth vs. justice” thus sets up a dichotomy which is false in important respects.

Given the combination of trials and amnesty in South Africa, Mahomed’s empirical claim that amnesty was necessary for truth should not be interpreted as a claim that amnesty was the only means in all cases.

While some trials were sacrificed, accountability - a key principle of justice - was not sacrificed. Section 20 of the Act stipulated that amnesty could only be granted on the following conditions:

- *applicants were required to apply for amnesty for each offence committed;*
- *applications had to be made within the timeframe laid down in the legislation;*
- *perpetrators were required to make full disclosure of their crimes in order to qualify for amnesty;*
- *amnesty hearings involving gross violations of human rights were to take place in public, save in exceptional circumstances;*
- *amnesty had to be granted on the basis of a set of objective criteria;*
- *amnesty could not be automatic: it would not be granted for certain heinous crimes;*
- *the name of the person to whom amnesty had been granted, together with information relating to the crime(s) for which they were granted amnesty, would be published in the Government Gazette and in the final report.*

The application of these criteria by the Amnesty Committee resulted in a very large percentage of amnesty applicants being unsuccessful. The peculiar nature of the amnesty part of the TRC process must therefore constantly be kept in mind. There is a vital moral distinction between “amnesty” and “pardon”, between the foreclosure of prosecution that “consigns past crimes to oblivion” and the sparing of a “convicted human rights offender from serving his sentence or from completing the full term” (Orentlicher 1995:410).

Blanket amnesty condones past wrongs. Amnesty within the TRC process pardoned past wrongs.

A large number of cases before the TRC amnesty committee were in fact from people in prison. In these cases “amnesty” clearly amounts to “pardoning” and there-

fore stands on firmer moral ground than suggested by the sacrifice of justice criticism. Though amnesty prevents human courts from imposing appropriate sentences on those perpetrators who qualify, a formal judgment of guilt is made, injustices are at least named out loud (in the Report and through the publication of the names and offences of those who receive amnesty). In other words, those receiving amnesty are “held responsible” and thus, to some extent, “brought to justice”.

Mahomed’s statement is therefore misleading when he implies that as a consequence of (TRC) amnesty “perpetrators of evil acts” might be allowed “to walk the streets of this land with impunity”. Immunity as a result of (TRC) amnesty does not equal impunity.

The naming of perpetrators of gross human rights violations by the TRC can even be seen as some punishment in the form of public shaming (Ntzebeza in Villa-Vicencio & Verwoerd, 2000), though it typically is not a punishment which is in proportion to the gravity of the gross human rights violations being pardoned. The need for general deterrence, furthermore, remains a problem. Even conditional amnesty or rather pardoning might send out the wrong signals to criminals and future politically motivated human rights violations.

However, this potential negative impact is softened by the contrast between blanket amnesty and the TRC model of amnesty with accountability, between impunity and individualized pardoning coupled with the public naming of wrongs/injustices. Given the obstacles along the alternative route of criminal (and civil) trials, one must also remember that the real choice was not between the extremes of blanket amnesty and full prosecution and punishment, but between blanket amnesty and accountable amnesty.

Thus, given the aspects of justice involved in this kind of amnesty, the following interpretation of Mahomed’s moral reasoning makes more sense than Moellendorf’s: “Victims have to choose between the silence of the perpetrators without justice being done and learning the truth without perfect justice having been done” (*Bizos in Sunday Independent, 21 February 1999*).

1.3. JUSTICE WITHIN THE TRC

One must be careful in accepting the criticism implied by the question “why has Justice been left out of the [Mount Evidence] expedition?” There are a number of reasons why retributive justice was not readily available for this expedition. Given these problems, it is commendable that a creative mechanism was found for including her scales of accountability, while, mostly, leaving the sword of punishment behind. Furthermore, the Mount Evidence TRC expedition did not prevent “her” from going on other retributive expeditions.

However, even if it was true that retributive justice has been completely sacrificed within the amnesty process, it does not follow that there were no significant gains for survivors in terms of justice.

Recognition as Justice

Some of the tension between amnesty and the rest of the TRC process resulted from the simplistic picture of the TRC as a trade-off between justice, on the one hand, and truth and reconciliation on the other. Without denying the sacrifice of certain rights of some victims, it can be argued that this trade-off interpretation tends to underestimate the gains of victims within the TRC process. The TRC’s most obvious contribution in this regard has been the unprecedented moral recognition of many survivors within the so-called “victim hearings”. At more than 70 hearings across the length and breath of SA, over an 18 month period, around 2,000 people gave testimony of the violations they or their loved ones experienced. They were not faced with hostile cross-examination, but by official representatives of the South African State and community, who respectfully listened to their pain and acknowledged their suffering.

I agree with those who have argued that this kind of acknowledgement – as a

form of moral reparation – is not only an important step towards the restoration of civil and human dignity. Moral recognition of the violated should also be central to justice. In fact, the direct vindication by the TRC of many of those violated by the TRC presents a contrast to the typical neglect of victims within the conventional criminal justice process.

Amnesty vs. (Material) Reparation or Individual vs. Social Justice?

One can also argue that acknowledgement of victims went beyond the symbolic level mentioned above. There was some respect for the idea of justice as compensation outside the amnesty process, although this respect tends to be overshadowed by the contrast between delayed reparation for victims, and immediate freedom/immunity for successful amnesty applicants.

Nevertheless, the Reparation and Rehabilitation Committee did carry out their limited mandate to come up with a range of recommendations, including individualized monetary payments to those who have been found to be victims via the TRC process (TRC Report v:184-187). Although belated, and very limited there have been payments of “Urgent Interim Relief” to many victims (TRC Report v:181-183). With the amnesty process at last completed in 2002 and the two volume codicil to the Report published in April 2003, the Government announced that a further R30 000 per victim by the TRC would be paid out as soon as possible. Though this figure is only about a quarter of the payment recommended by the TRC, it can still be argued that there has been at least some further tangible recognition of victims’ suffering.

When considering the quality of justice as reparation within the TRC process, it is very important to resist using a simplistic victim-perpetrator dichotomy as the point of departure. The understandable focus of many critics on the unfair gains of some and the painful sacrifices of others from the amnesty, typically portrays the TRC process as a trade-off between individual perpetrators and individual victims. This focus tends to dominate the debate on reparations, thereby obscuring the place of other past victims.

The language of retributive justice tends to obscure important victim-centred reasons for the limited gains of survivors falling within the TRC mandate. Given the overwhelming need for individual, communal and national reparation as a result of apartheid, resources are always going to be severely constrained to help those victims who went through the TRC process. In fact, some critics from the left have argued that the costly TRC process has unfairly privileged a relatively small number of past victims given the needs of millions and millions of victims of forced removals, pass laws, inferior education etc. under the system of apartheid.

An adequate response to the painful tensions between victims and perpetrators within the TRC process must therefore take into consideration the broader, underlying tension between individual and societal justice in post-apartheid South Africa. Indeed, the difficult challenge is to find a place for some reparation for all past victims.

Much more can be said about these types of responses to the criticism that the TRC sacrificed justice. However, my focus is on three underexplored possibilities for lightening the TRC’s “heavy moral burden”.

2.1 EQUITY, MERCY, FORGIVENESS AND TRC AMNESTY

2.2. AMNESTY AND EQUITY

“Desmond, the people are asking why [retributive justice] has been left out of this expedition,” says Alex Boraine in Zapiro’s Mount Evidence cartoon. Who are the perpetrators against whom the popular call for retribution is directed? Spyker van Wyk, Barnard, Malan, Niewoudt, P.W. Botha, Vlakplaas, Koevoet, and Sharpsville are the most prominent names attached to the mountain of victims’ skulls. Who suffocates the figure of Justice with a wet bag? Former security police captain Jeffrey Benzien. Who are the five “devils” walking free, enraging Justice? Former Security

Policemen, Brigadier Jack Cronje, Captains Jaques Hecther and Roelf Venter, Warrant Officer Wouter Mentz and Sergeant Paul van Vuuren. In many, many other political cartoons on the TRC process, former Vlakplaas commander, Colonel Eugene De Kock, was portrayed as perhaps the most visible apartheid era “perpetrator”.

Take also Mpho Tsedu’s claim that “the truth about the TRC is that it shuns true justice”. His criticism formed part of a letter in support of AZAPO, Nontsikelelo Biko, Churchill Mxenge and Chris Ribeiro in their constitutional court challenge against the amnesty part of the TRC process. When Mr Tsedu wrote his letter in October 1996 the TRC “victim hearings” were in full swing, with the majority of survivors giving heart-rending testimony of police brutality. This was also the month that saw the first group of non-convicted former security policemen applying for amnesty. The murders of Dr Fabian Ribeiro and his wife Florence – gunned down in front of their son Chris – were among the 47 killings for which Cronje, Hecther, Venter, Mentz and Van Vuuren claimed responsibility.

And, on a more academic level, Moellendorf’s critique of the Mahomed judgement is introduced by noting “international press coverage over the applications for amnesty by Gideon Nieuwoudt, Harold Snyman, Daantjie Siebert, Ruben Marx and Johan Beneke, all of whom admit involvement in the death of Steve Biko” (1997:283), and he uses the Coetzee-Kondile case as a counter example.

Why is the lure of (retributive) justice so strong in Benzien’s, Cronje’s, and De Kock’s amnesty process?

These perpetrators are all white, male, (mostly) middle-aged, Afrikaner security policemen. They represent the most hated section of the former South African Police Force - the most visible enforcement agency, the previously feared iron fist of an oppressive apartheid state. They are archetypal “Boers”. Most of them, apart from Eugene de Kock, have not been prosecuted and sentenced.

Who are the victims/survivors? They are prominent black anti-apartheid activists and their family members – the most visible face of those who paid such a high price for legitimate past resistance to an immoral regime. It is these people who now have to pay again, with their rights to seek redress “obliterated” through amnesty. Sometimes this painful further sacrifice is even justified by referring to possible psychological benefits to perpetrators, with amnesty providing an opportunity for perpetrators “to obtain relief from the burden of guilt and anxiety they might be living with for many long years” (AZAPO). So survivors must give up their dearly won rights so that these



PEGGY DEATH BED, 1992/93
 Brian Maguire
 Acrylic on paper on board:
 22 x 30 inches
 (56 x 76 cm)

perpetrators, these “Boers”, can feel better?

In the run-up to the Biehl amnesty hearing I more or less shared this media-induced, black-and-white picture of the amnesty part of the TRC process.

Enter Mongesi Christopher Manqina, Vuzumzi Samuel Ntamo, Easy Mzikhona Nofemela and Ntobeko Ambrose Penni. Suddenly I was faced with young men who gave testimony about the dehumanizing conditions of apartheid that bred their anger against “white settlers”; I was confronted with black perpetrators who were clearly also, and perhaps above all, victims. I could therefore no longer hold on to the dominant picture of “Boer” perpetrators. “Amy’s killers” dehomogenized the amnesty process for me.

It thus became clear to me that the prominence of a certain category of perpetrators tended to colour my own and many commentators’ justice-based criticisms of the TRC amnesty process. If Eugene de Kock, better known these days as “Prime Evil”, becomes the dominant representation of amnesty applicants then it is not surprising that many are filled with revulsion about a “perpetrator-friendly” amnesty process, nor that the implementing body appears to be morally tainted.

However, as “Amy’s killers” reminded me, this perception of perpetrator friendliness stands on shaky logical ground. Homogenisation of amnesty applicants in the context of the South African TRC amounts to committing the Fallacy of Composition if, on the basis of the most visible and most problematic cases, “blanket” judgements are made about the injustice of the amnesty process as such, or when, on the basis of amnesty, the TRC process as a whole is interpreted as a “sacrifice of justice”. I suspect that the Fallacy of Hasty Generalization is fairly widespread. Not all perpetrators are like Prime Evil, nor should the sense of horror elicited by some perpetrators’ actions seduce one into making generalisations about the need for heavy punishment of those responsible for gross human rights violations.

The Biehl amnesty hearing furthermore highlighted for me crucial moral differences that are at stake in the TRC amnesty process. Firstly, there is the moral divide between those who became perpetrators in opposition to apartheid, and those who killed and tortured in the service of this evil system, between security police “Boers” and anti-apartheid, black activists. Secondly, I became convinced that Manqina, Ntamo, Nofemela and Penni should indeed be seen as political activists, and not as criminals, even though their political beliefs were misguided and all their actions cannot be justified. Apart from the broader political context of apartheid oppression, their testimonies at the hearing brought the politicised nature of the Biehl killing strongly to the fore. For example, before the attack on Amy Biehl they had stoned police vehicles and were shot at by the police; they were in “high spirits” after an inciting political meeting, singing and chanting political slogans, such as “One Settler, One Bullet”.

Neglecting these morally significant differences as a result of homogenisation amounts to a sacrifice of equity. Broadly speaking equity is about the ideal that people who are relevantly similar ought, other things being equal, to be treated similarly, and that those who differ significantly should not be treated similarly (Moore 1989:93, 109). I accept that the TRC Act did not allow amnesty panels to make broad political distinctions between the political objectives of those who fought for or against apartheid in deciding who should be granted amnesty or not. There are good reasons, such as the fragile transitional context and the demands of non-bias at the individual level, why a morally neutral legislative definition was adopted. But “Amy’s killers” kick-started a process of reflection which enabled me to see that the implementation of this definition, coupled with a selective media focus, helped to hide legitimate moral distinctions between amnesty applicants.

These distinctions between defending and opposing apartheid, and between the political and the criminal, are highly relevant for an assessment of the burdensome claim that amnesty amounted to a sacrifice of retributive justice. Moore argues

that in the context of punishment or pardoning, and from a retributive point of departure, equity “amounts to the claim that people ought to get the punishment they deserve” (Moore 1989:93-4). The other side of the coin of retributive equity is that those who do not deserve to be punished should be pardoned.

Amy Biehl’s father, Peter, believes that those who killed his daughter do not deserve to be held responsible as murderers. “When the information came first to me it was that Amy was murdered by a mob”, he said in a recent interview. He relates how in October 1993, upon first visiting Cape Town, the sense of a “revolution” going on was “electric” and “palpable”. *“As we started to meet Amy’s comrades we began to get a sense of the enormity of that struggle. People get killed in struggles... Any notion of murder and of culpability on a personal level for me died in October 1993 when I felt for the first time in my life a revolution going on around me”*.

My sense is that Peter Biehl went too far in absolving those who killed his daughter from all responsibility, that it was more appropriate for them to be held accountable, while being pardoned within a process such as TRC amnesty. But his statement powerfully brings home the retributive significance of the political nature of his daughter’s death. And the case of “Amy’s killers” underlined for me other extenuating factors, such as the youthfulness of those directly responsible, the fact that those young men’s actions were significantly influenced by being part of a crowd/mob and that they seemed to express genuine remorse. These mitigating considerations further explain my unexpected intuition that they deserved to be pardoned.

Another crucial unburdening factor was the fact that Peter and Linda Biehl did not oppose amnesty being granted. An important reason for their position on amnesty was support for the reconciliation process in SA, but they also did not see Amy as a victim - she was a tragic casualty of a political revolution. And as Peter Biehl said, “if Amy wasn’t a victim, then we sure aren’t”. The Biehls therefore did not feel that amnesty “obliterated” their right to seek redress through the courts. Perhaps the fact that Manqina and co. were already serving long term prison sentences made it easier for them to support the amnesty process, but even if this was not the case I suspect that the Biehls voluntarily would have given up the right to seek legal redress. In other words, at least in this case, amnesty did not in practice amount to a sacrifice of fundamental rights of victims.

While I was digesting the intuitive shift from punishment to pardoning with regard to “Amy’s killers”, I came upon this newspaper report, tucked away in the corner of a middle page: “A white South African who was convicted of a criminal offence for refusing to be conscripted into the old South African Defence Force, has been granted amnesty by the TRC. Tom Robbins who at the time was fined R600 was one of a number of conscientious objectors to be granted amnesty by the Commission’s Amnesty Committee.” The newspaper went on to state that as a result of this amnesty “their names would be removed from criminal records” (*Sunday Times*).

Here was a case where the granting of amnesty certainly did not represent a “heavy burden”, where pardoning felt even more right than in the case of Manqina, Ntamo, Nofemela and Penni. In fact, clearing the criminal record of someone who was unjustly criminalised for refusing to be conscripted into an army that, ultimately, defended an immoral system, was a correction of an historical injustice.

The sense of being morally unburdened by the Biehl amnesty hearing, and by the case of Tom Robbins, highlighted the possibility that those who criticise TRC amnesty as a “sacrifice of justice” might themselves be guilty of sacrificing equity - that “superior” kind of justice, which “corrects legal justice” by preventing a blind adherence to the letter of the law. Instead, equity, “like the leaden rule”, allows judgement to adapt to the individuating features of a case (Aristotle, NE, 1137b8-34). The problem is that these specific features are often hidden from view and therefore require insight, understanding, perception, self-control and determination to be brought into the open (Brien 1998:90-91).

2.2. AMNESTY AND MERCY

The hearing of Mongesi Christopher Manqina, Vuzumzi Samuel Ntamo, Easy Mzikhona Nofemela and Ntobeko Ambrose Penni also showed me that there was room for more than justice within the TRC amnesty process. “Amy’s racist murderers” came alive as youthful human beings with names and faces and histories and families. Above all, I was humbled and inspired by what a newspaper heading described as the “amazing grace of Amy’s parents” (*Sunday Independent*, 30 August 1998). Another newspaper report described how at the amnesty hearing the Biehls listened quietly to the details of how their beloved daughter died. “She was running across the street, blood streaming from her face”, Nofemela, 26, told the amnesty committee. “Stones were thrown and then Manqina tripped her. I had a knife and with seven or eight others we stabbed at Amy”. When Robin Brink, leading evidence for the TRC asked if the murder had been no more than “wanton brutality, carried out like a pack of sharks smelling blood”, Penni, 21, insisted, “whites were our oppressors. We had no mercy for a white person” (*Cape Times*, 9 July 1997).

At the hearing Peter and Linda Biehl celebrated the life of their daughter, but then displayed remarkable understanding and generosity of spirit by not opposing the granting of amnesty to those who killed their daughter; they showed mercy to those who, a few years earlier, had “no mercy for a white person”.

The Biehls’ response drew my attention to the potential connections between the amnesty process and mercy. In one of the earliest analyses of mercy and its place in public life, Seneca defined mercy as “restraining the mind from vengeance when it has the power to take it, or the leniency of a superior to an inferior when fixing punishment.” He claimed that “mercy may also be termed the inclination of the mind towards leniency in exacting punishment,” and it involves “stopping short of what have been deservedly imposed” (quoted in Brien, 1998:84).

Perhaps because of the tension between mercy and legal justice, there has been very little serious discussion of the place of mercy within the TRC process. The deeply troubling criticism that the TRC process is already too “perpetrator friendly” made it (emotionally and politically) very difficult to explore the meaning and legitimacy of amnesty “out of pity and compassion for the wrongdoer”.

Whatever the reasons for the unfortunate, relative neglect of mercy within the TRC process, my exposure to a concrete example of mercy within the amnesty process made me realize that an exploration of the connections between amnesty and mercy has a lot to offer.

2.3. AMNESTY AND FORGIVENESS

On June 11, 1998, those who were convicted for murdering Amy Biehl were pardoned by the TRC’s Amnesty Committee. On talk shows and in news papers one heard and saw many South Africans questioning the wisdom of the amnesty process. However, my clear sense that this pardon was a good decision was strengthened when I saw the response of Ms Sophia Benghe, who runs an after-school skills centre for Gugulethu children supported by the Biehl trust. Under the heading “Pardon: a murderer’s legacy of hope and tolerance”, she is reported to have said: “If they hadn’t been released, we would have faced problems. But now with this sacrifice, there will only be gain. Support for Amy Biehl is everywhere” (*International Herald Tribune*, 31 July 1998).

The legacy of Amy’s tragic murder has recently taken a dramatic reconciliatory turn. Even before amnesty was granted the Biehls managed to transform their sadness and deep loss into a whole range of grass roots projects, run by the Amy Biehl Foundation Trust, to promote non-violence in Gugulethu and other townships. But in 1999 Ntobeko Penni and Easy Nofemela contacted Amy’s parents, with the help of a trusted intermediary, and with their support set up an Amy Biehl Social Club in Gugulethu. Later the two young men joined a training programme in making bricks and construction, run by the Amy Biehl Foundation. They then became deeply involved in the bakery started by the Biehl Foundation. Peter Biehl recently related

how “these two guys are up between two or two thirty. They are on the bread truck by three in the morning. We see them coming in here to cash out as late as four and five o’clock in the evening”. Peter Biehl emphasizes that it is the working together, the “sharing of Gugulethu” that made it possible for a “mutually nurturing relationship” to develop.

The remarkable process of reconciliation between the Biehls and some of those who killed their daughter demonstrates that there was indeed reconciliatory potential within the TRC amnesty process. However, the Biehls also expressed their unease with understanding the connection between reconciliation and amnesty in terms of forgiveness, as has often been the case within the TRC process. A number of people commended them for their willingness to forgive, but, according to Peter, “*we have never felt comfortable with the notion of forgiveness. We are not God. We don’t go around dispensing forgiveness. We are just two people. So I’ve always felt uncomfortable when people would say ‘you have forgiven’, because to me that is something reserved for a higher order.*”

By implication the Biehls would also have been uncomfortable with the idea that the granting of amnesty to Manqina and co. actually meant that the TRC or Tutu has forgiven them. Even though Tutu is a former Archbishop, he has no right to forgive on God’s behalf, one would expect Peter Biehl to say.



THE BIG HOUSE, 1990
 Brian Maguire
 Acrylic on canvas:
 81½ x 65¾ inches
 (206 x 166 cm)

In reality, requests for amnesty were heard by the Amnesty Committee. This committee was run by judges and lawyers and their decisions could not be overturned by the rest of the TRC. Still, the fact that Tutu became the public face of the TRC helps to explain the connection between amnesty and forgiveness. Given Tutu’s strong association with a Christian notion of reconciliation, in which forgiveness plays a large role, and given the equation of the head of the TRC with the work of one of its committees, many people came to think that by granting amnesty, the TRC was actually forgiving these perpetrators.

Most of these people did not express discomfort with forgiveness in the terms used by Pieter Biehl. Instead of the idea that forgiveness should be left in God’s hands, they appealed to the opposite, widespread intuition that only the victims have the right to forgive, and that victims should not be pressured into exercising this right to forgive or not to forgive.

In other words, the troubling perception was created that amnesty not only “obliterated” victims’ rights to seek legal redress (Mahomed), it also robbed victims of their moral right to forgive or to withhold forgiveness. Or if amnesty did not actually usurp victims’ right to forgive, the framing of amnesty by the need to “advance reconciliation”, coupled with Tutu’s zeal for forgiveness, was perceived as at least putting undue moral pressure on victims to forgive. As Kalukwe Mawila, a young black South African, put it to me: “*What really makes me angry about the TRC and Tutu is that they are putting pressure on us to forgive. For most black South Africans the TRC is about us having to forgive. People I know don’t make subtle distinctions between reconciliation and forgiveness. I don’t know if I will ever be ready to forgive. I carry this ball of anger inside me and I don’t even know where to begin dealing with it. The oppression was bad, but what is much worse, what makes me even more angry is that they are trying to dictate my forgiveness*” (quoted in *Sunday Independent*, 6 December 1998).

Moral discomfort was expressed about the apparent connection between amnesty and forgiveness within the TRC process. It is true that there was no legal requirement for perpetrators to show remorse in order to qualify for amnesty. And the absence of this requirement can easily be defended: like forgiveness, genuine remorse cannot be enforced; compulsory “crying” would have made it very difficult to distinguish between applicants saying sorry, sincerely, and those who merely shed a few crocodile tears to meet a requirement for amnesty.

While critics of the TRC amnesty process might concede that repentance cannot be legislated, they may well argue that this kind of forgiveness tends to minimize the wrong, disrespect the wronged, and endanger those who have not yet been wronged. Forgiveness of the unrepentant is too soft on the perpetrators, it lets them get away with murder, it is cheap forgiveness.

Thus, we are confronted with a further, forgiveness-based layer of the moral burden carried by the SA TRC process. I found the Biehl example again useful in thinking about a response to this kind of criticism. Their discomfort with the language of forgiveness, in a case where there is little doubt about genuine interpersonal reconciliation, usefully serves to complicate the often too intimate connections between reconciliation and forgiveness. Not allowing breathing space between forgiveness and reconciliation contributed to conceptual and moral confusions between forgiveness and an amnesty process framed by the language of “promoting national reconciliation”.

It is important to note the widespread assumption that the reconciliation between the Biehls and some of those who killed their daughter involved forgiveness. Many people uncritically accepted that Amy’s parents had a right to forgive, even though they were not the direct victim.

There can also be a multiplicity of victims arising from a particular wrong, with an associated multiplicity of entitlements to forgive. I would argue that Tutu, as chairperson of the TRC, had at least the right to encourage forgiveness on behalf of

the rest of society (“tertiary victims”) who were indirectly wronged by, for example, the killing of Amy Biehl.

In response to concerns about “cheap forgiveness” and “amnesty without amends”, I draw attention to an understanding of forgiveness that is not dependent on remorse. The conception of “unilateral forgiveness” helps to make moral sense of the TRC amnesty’s contribution to the promotion of “national forgiveness”, while pointing out that the moral credibility of unilateral forgiveness is enhanced by its potential to encourage remorse or at least acknowledgement from perpetrators.

3. SEARCHING FOR MORAL MEANING IN TRC AMNESTY

I began with a vivid memory of the amnesty hearing for “Amy’s killers”. And I kept returning to this experience and subsequent events involving the Biehls, because there was something about these events that would not leave me alone. But the Biehl example was not the only one from the TRC process that addressed me in such an almost irresistible fashion, deeply challenging my thinking and feeling about the TRC amnesty process. One could describe attendance at the Biehl amnesty hearing, as well as many close encounters with a range of real-life examples from the TRC process, as classic “negative experiences”, i.e., experiences where the usual, or expected, or self-evident was broken through (Van Tongeren, 1994:203).

This notion of “negative experience” can be usefully applied to many people’s experience of the TRC amnesty as a whole, for it is clear that I was not alone in being “unsettled” by this process. Most people expected those guilty of gross human rights violations to be prosecuted and punished, “the people” wanted to know why “retributive justice” has been left out of the TRC expedition. The TRC amnesty broke through this expectation.

The crucial point is that this kind of “negative experience” “does not come to us open and exposed”, it has to be interpreted. The TRC process was certainly a “real-life event”, or rather a large web of “happenings” that appeared “to be full of meaning, but without that meaning being fully clear”. That is why this web of happenings or events requires “interpretation”, for “through interpretation we try to understand more fully what is already, but insufficiently, understood in experience” (Van Tongeren 1994:199).

This need for interpretation had been powerfully brought home to me while working on the “Concepts and Principles” and “Reconciliation” chapters of the Report (I, ch.5; V, ch.9). Despite hours and hours of discussion, workshops with Commissioners and some staff, draft upon draft – one was still left with a sense that we have not sufficiently captured and understood what we were experiencing within the TRC process.

I furthermore sensed a difference between the search for meaning undertaken while working on these sections of the Report, and the interpretation that informed the clarification of key concepts in the “Mandate chapter”, such as “severe ill-treatment” (I: chapter 4), or the interpretation that was required in formulating the “Historical Context” (I: chapter 2), or identifying the socio-psychological causes of gross human rights violations (V, chapter 7). Within the Concepts chapter an attempt was made to clarify where the TRC process fitted into the transition towards a democratic, peaceful South Africa. In briefly clarifying the meanings of “truth”, “reconciliation”, “forgiveness” the Commission also explicitly called upon South Africans to accept their shared responsibility for addressing the challenges identified by the TRC. In similar fashion, the Reconciliation chapter was more than just a summary of a few examples from the TRC process; in this chapter individuals, communities and “the South African nation” itself was explicitly summoned to participate in “promoting national unity and reconciliation”.

Many of us working in the TRC, as well as many observers, experienced the process as much more than “just” a search for as complete a historical picture as possible of the mandate period. Neither did we see the TRC as mainly a quasi-legal exercise in holding (some) people accountable for past crimes. A crucial reason why I became

involved as a staff member was because the idea of the TRC strongly presented itself as “full of moral meaning”. Though its actual practice had a sobering impact, I, amongst many others, continued to experience the TRC process as a promising “answer” to the urgent question of how we as a young democracy should respond to some of the evils of the recent past, how we could nurture the compassionate, civilized, humane, post-apartheid society to which we made a commitment in our new Constitution.

In terms of the Truth and Reconciliation Commission the issue of amnesties was an important but initially dimly perceived part of the answer barely woven into the TRC process. It did not present itself as full of moral meaning, or rather of positive moral meaning. It was tempting to make the judgement that amnesty told us how a good, just society should not be built, or, at best, that amnesty was a rather tainted part of the “answer to what makes life good”, which had emerged from the unavoidable constraints of negotiating in a transitional context, between war and peace.

I tended more or less to share this rather dim view of amnesty, until that day at the hearing for “Amy’s killers”. This “negative experience” altered my sense of amnesty’s positive moral meaning. However, I was unable to incorporate this experience and its implications for TRC amnesty into drafts of the relevant sections of the Report. I could not come to terms with this powerful “negative experience” because, to begin with, I had not yet, literally, “come to the terms” satisfactorily with the experience. I could not communicate that moral experience, because “[p]utting something into words is the first level of interpretation; experience begins to present itself through its interpretation” (Van Tongeren, 1994:207).

However, I found that it was a close reading of the use of “mercy” in the real-life context of the TRC process, that really gave me a feel, a clearer picture of the moral meaning of mercy. Similarly, a careful poring over a number of concrete, interpersonal examples put flesh on the bones of my understanding of “forgiveness” and “equity” – scrutinising the language used by those who offered forgiveness or showed mercy.

Finding words such as “mercy” or “unilateral forgiveness” and bringing them to life with the help of personal experience and specific examples, proved to be enlightening pointers towards the moral meaning(s) of amnesty within the TRC process. Faced with the often overwhelming complexity and scale of “negative experience” when faced with TRC amnesty, I found that a good starting point was to gather a few fragments and then carefully, respectfully to blow away the dust. Instead of looking at TRC amnesty as a whole, I employed a magnifying glass on a number of real-life events, which enabled me to softly catch a few reliable glimpses of the vast web of happenings that made up this process.

In other words, my interest in heavily relying on a range of concrete examples to clarify the moral meaning of the TRC amnesty in terms of equity, mercy, and forgiveness is interpretative, not inductive. I am not suggesting that these examples could be used to make nonchalant, inductive generalisations about the TRC amnesty, but real-life examples from this process can be vital signposts in an ongoing search for moral meaning.

To further clarify my use of individual examples to aid the development of a moral interpretation of TRC amnesty, one might refer to the logic which underlies the deeply embedded use of the so-called “domestic analogy” in moral discourse about the ethics of war and peace. This likens the behaviour of states toward each other – committing crimes, having intentions, facing choices, showing mercy, making peace, reconciling etc. – as similar to the behaviour of individuals. While discussing Michael Walzer’s reliance on the domestic analogy, Brian Orend stresses that its use does not “involve any kind of mystical conception of the state”, for this analogy draws its strength from the “sheer difficulty of speaking about the behaviour of complex entities like states without employing simplifying assumptions” (2000:95). Orend usefully goes on to emphasize that the domestic analogy is “only generally persuasive and neither precludes the existence of important disanalogies nor commits us to a

monolithic and homogenous conception of the state” (2000:96).

While engaging in an interpretation of TRC amnesty in terms of equity, mercy and forgiveness I was again reminded of the “sheer difficulty” of speaking about this “complex entity” we experienced while working on the TRC Report. I attempt to make this difficulty more bearable by likening amnesty at a collective, institutional level with mercy and forgiveness at the interpersonal level. While thus clarifying the moral role(s) of amnesty within the TRC’s overall task of “promoting national unity and reconciliation”, I remain aware of the differences between the inter-personal and the large group or institutional levels. And thereby care can be taken to avoid cavalier conclusions about the process of TRC amnesty on the basis of a few inter-personal examples.

Given the popularity of the call for perpetrators to be prosecuted and punished, entering into dialogue with the prevailing opinion of amnesty as a “sacrifice of justice” is bound to be a swimming against the tide. The dominance of the prevailing expectations surrounding criminal justice illustrates Van Tongeren’s warning that “[p]recisely because experience is a breaking-through of expectations, it can be covered up, pushed away”. In other words, an experience must “possess considerable power” to break through the “characteristic ways in which our openness is shaped, by our theoretical biases, our social situation, our current needs, and so forth” (1994:208).

In addition to the break-through potential of striking examples, one should note again the inherent normative power of moral meaning and the way in which this power opens up room for practical reason to prevail. The willingness of Peter and Linda Biehl not to oppose amnesty being granted to the killers of their daughter was a different, more powerful “negative experience” to the norm. Once this behaviour was articulated as the showing of mercy, I was called to a moral response – I was challenged to reflect on how I would have behaved in a similar situation, on how one should respond in that context.

It was of course possible to ignore this call by describing their mercy as eccentric behaviour, but this pushing away would not have silenced the call of mercy. Instead, a question mark would have appeared behind my moral sensitivity. Or I could have repressed the call to a moral response by labelling their compassion as “an American thing”, with no relevance to me as a South African. But again, such a manipulative attempt to “get off the hook” would place me in a bad moral light rather than question the role of mercy as an admirably humane response in that context.

This emphasis on the non-arbitrary character of moral meaning should neither be seen as contextual insensitivity, nor as a denial that moral meaning may change over time. Although moral meaning is not immutable, it nevertheless does have a certain immunity to manipulation, a normative power or authority that transcends the limitations of individual moods or group preferences.

This appreciation of the normative power of the moral brings me to an important further feature of my “dialogue” with those who branded the TRC amnesty a “sacrifice of justice”. For I do not rely only on the potential of a range of real-life examples to assist the moral experience of TRC amnesty in breaking through the conventional expectations regarding justice. These examples are embedded in arguments, which are aimed at clarifying and defending the moral meaning of TRC amnesty. For, I am not only interested in employing striking, authentic examples to uncover moral nuances of the TRC amnesty process that are typically missed, I also wanted to give good reasons why these nuances should not be prematurely dismissed.

In developing these reasons I do not engage in a futile search for a set of indisputable criteria that would “prove” that, say, amnesty-as-mercy is “right” and amnesty-as-a-sacrifice-of-justice is “wrong”. Instead, I employ what Charles Taylor termed an “ad hominem” mode of practical reason, by, firstly, appealing to what my “opponent” is already explicitly committed to. I argue that a retributive conception of pardoning can and should be applied to TRC amnesty. Someone who claims that the

perpetrators should be punished because they morally deserve to be punished cannot lucidly maintain this position and completely or easily reject TRC amnesty.

Secondly, I try to articulate some of what is implicit in my opponent’s position, to show that in important respects the critic of amnesty is actually committed to the meanings of amnesty I am highlighting, or at least that his deep commitments to a good society makes it more difficult to simply reject TRC amnesty as an indefensible political and moral compromise. Former anti-apartheid activists who opposed amnesty in the name of justice, will have to think twice once they see amnesty as mercy – for the ubuntu, the humanness, the caring society they have fought for all these years might well be promoted by amnesty-as-mercy. By locating the question of justice within the larger question about the kind of society we want to be after apartheid, it becomes more difficult to live with a narrow conception of justice-as-punishment, which tend to become an end in itself.

By understanding conventional criminal justice as a means – and arguably, at least in a transitional context, not as the best means – towards the larger end of a decent, humane society, it may become easier to live with the idea of amnesty-as-mercy, as a potentially constructive contribution towards the post-apartheid society envisioned by the new Constitution.

I thus try to make room for equity, mercy and forgiveness within the TRC amnesty via “self-clarification”, not only in the sense of trying to come to terms with my own “negative experience”, but also showing that these less visible meanings can be found within the moral experience of someone whose initial openness to TRC amnesty is shaped by a “sacrifice of justice” interpretation. And because equity, mercy and forgiveness are moral meanings it becomes more difficult for them to be simply, short-sightedly “sacrificed” in the name of “justice”.

However, I hasten to add that this clarification of often hidden moral meanings of TRC amnesty should not be seen as an attempt to turn the tables. The search for moral meaning in this thesis uncovers a range of tensions. Coming more fully to terms with the moral experience of TRC amnesty implies there must be a coming to terms with these often unavoidable tensions. These tensions between moral meanings of the same experience imply that one must be careful to dismiss other’s discomfort at amnesty-as-mercy as a sign of problematic moral insensitivity. In fact, we might be dealing with a healthy sense of the multiplicity of moral meanings and the tensions between them. If this discomfort with mercy turns out to be a blinkered intolerance, a reduction of the TRC amnesty process to a “sacrifice of justice”, then that person might be rightly suspected of being seduced by a “false reconciliation” with the “negative experience” of TRC amnesty. A more truthful articulation of moral tensions surrounding TRC amnesty was wisely alluded to by Mohamed DP:

“[T]he granting of amnesty is a difficult, sensitive, perhaps even agonising, balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and the need for reparations for the victims of that truth; between a correction in the old and the creation of the new. It is an exercise of immense difficulty interacting in a vast network of political, emotional, ethical and logistical considerations” (AZAPO at 1029F).

I am drawn to this image of amnesty as a “difficult, sensitive, perhaps even agonising, balancing act”, though I am concerned that even in Mahomed’s careful formulation there is a hint of an inequitable, dichotomous generalization regarding “victims” and “wrongdoers”. As the example of my experience at the Biehl hearing brought to light, there are amnesty applicants who themselves are victims of wrongdoing. Often there is a need to find a balance between the needs and entitlements of different groups of victims, not just between “wrongdoers” and “victims”.

What emerges out of my attempt to make moral sense of amnesty within the TRC process is a complex picture of a range of difficult balancing acts: between moral

accountability and equitable amnesty, between the rights of victims and the well-being of perpetrators, between the prerogatives to forgive of directly and indirectly harmed persons, between respect for past victims and the protection of future victims.

Faced with this daunting picture I understand better why my “negative experience” of the Biehl amnesty hearing, and more broadly the process of the TRC amnesty, were such humbling and confusing experiences. While searching for the moral meaning(s) of these experiences, and thus engaging in an intense dialogue with a dominant justice-based interpretation and a forgiveness-centred criticism of TRC amnesty, I have been comforted by Martha Minow’s sobering warning to anyone engaged in a process of responding to large scale violence: “[N]o response can ever be adequate when your son has been killed by police ordered to shoot at a crowd of children; when you have been dragged out of your home, interrogated and raped...; or when your brother who has struggled against a repressive government has disappeared and left only a secret police file, bearing no clue to his final resting place. Closure is not possible. Even if it were, any closure would insult those whose lives are forever ruptured” (1998:5).

This warning to expect limited success, no matter which institutional response one chooses, is highly relevant to any interpretation of the TRC process. The idea of inherent constraints on “wrapping up issues with analysis”, the futility of hankering after conceptual and moral tidiness, is even more applicable when one is faced with that part of the TRC process that brings under the same umbrella some of those policemen who were ordered to shoot, the family of the brothers who disappeared, and the sons who fought a repressive regime, but who in the process brutally killed someone else’s loved ones.

Pardoning some political perpetrators after apartheid was certainly a heavy, often agonising responsibility for the TRC to bear. I do not want to deny some of the trouble with the tensions between amnesty and the other tasks of the TRC. However, I resist the temptation to jump too quickly to misleading conclusions about a complex process. It is indeed difficult to see clearly through the dirty water that surrounds a politicised, faulty process. But by searching for moral meaning in the TRC amnesty in terms of equity, mercy and forgiveness, I hope to show that it would be premature to pull the plug on a “perpetrator friendly” TRC; that there is a fragile goodness that must be saved from drowning.

If we are truly concerned about overcoming the legacy of political oppression, then we are also called on to resist the repression of moral meaning. Fundamentally it is this concern and this kind of resistance that continues to inspire my search for moral meaning in responses to evil.

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PAWN SHOP GUNS, 1995
Brian Maguire
Mixed media on paper:
59 7/8 × 30 inches
(152 × 76 cm)



Wilhelm Verwoerd, past crimes and amnesties by Brice Dickenson

Wilhelm Verwoerd’s article on why he approved of the amnesty provisions in South Africa’s Truth and Reconciliation Commission’s process is fascinating. Amongst the reasons for his endorsement are that anyone applying for an amnesty was required to do so for each offence they claimed to have committed; they had to make full disclosure of exactly what part they played in the crimes and their disclosure had to be made within a certain time-frame. He sees the ‘amnesty’ as in effect a pardon in that it granted the applicant immunity from prosecution but not total impunity.

Partly because the disclosure had to be given in public, he considers the applicant was therefore being held accountable for what they had done, and the fact that victims of crimes were to that extent being granted some recognition by the process constitutes, in his view, an element of justice. That they were also paid compensation promoted the notion of social justice. In addition, Verwoerd sees the amnesty provisions as promoting the moral values of equity, mercy and forgiveness.

Not having lived through the South African conflict myself, I am in no position to say how I would have felt if, after its termination, I too had been confronted by the Truth Recovery Process (TRC). Maybe if, like Wilhelm, I had attended the hearing connected with the murder of Amy Biehl, a young American woman who was lynched by a mob of crazed young men because they saw her as representative of the oppressive white minority in South Africa, I too might have accepted that the young men in question deserved the pardon they received from the Commission, particularly as Amy’s parents strongly supported it.

But I do not think the kind of amnesty provided by the TRC would be appropriate in relation to the Northern Ireland conflict. My primary reservation is that, for me, the grievances which are cited as the justification for republican violence in Northern Ireland, and even more so the specious excuses tendered for loyalist violence (i.e. that it was reactive and defensive), are not at all of the same order of magnitude as those that obtained in South Africa.

For one thing, to equate discrimination against Catholics and nationalists in Northern Ireland with the degree of segregation, degradation and disenfranchisement inflicted on blacks in South Africa is inappropriate. For another, the undoubted civil disadvantages suffered by nationalists had largely been addressed by the early 1970s and a viable peace settlement had been reached at Sunningdale in 1973, but was overturned through acts of loyalist violence that were not properly countered by the state. In addition, it is not irrelevant that the conflict in South Africa was focused on how the united territory in question should be democratically governed by all who live there. The conflict in Northern Ireland was over whether one piece of territory should ultimately be governed by the British government or the Irish government.

A further important difference is that the conflict in Northern Ireland is not over. Of course, the politically motivated violence is very much reduced from the level it attained in the decades prior to the Belfast (Good Friday) Agreement in 1998, but there are still dissident republicans planting explosive devices and shooting at police officers, and loyalist violence is constantly simmering. There also continues to be significant political contestation between unionists and nationalists, so much so that it has led to the suspension of the Northern Ireland Executive for four of the last six years. Issues are still discussed in orange and green terms in a way they are not discussed in black and white terms in South Africa. Hanging over the future, moreover, is a potential referendum on the transfer of sovereignty over Northern Ireland.

There is no doubt, as the twenty-fifth anniversary of the 1998 settlement comes upon us, that dealing with the past in Northern Ireland is subject more than ever to the law of diminishing returns. Fewer and fewer investigations of past killings lead

to enough evidence being produced to justify a prosecution. Many people against whom some evidence of past wrongdoing emerges are now dead. Obtaining a conviction even when someone is prosecuted is increasingly difficult, given the high standard of proof required and the paucity of forensic, never mind testamentary, evidence. The Belfast/Good Friday Agreement itself provides that anyone convicted of a troubles-related crime must spend no longer than two years in prison as a result. The combination of these phenomena does not mean that we need to throw our hands up and dump the pursuit of justice altogether. To do so is not just offensive to those who have not yet seen anyone held to account in any way for the death of their love ones, it is also dismissive of the gravity of the crimes committed and a message to society that the state no longer cares about the hurt inflicted on so many.

That is why, in my opinion, the NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL, which at the time of writing is about to be enacted by the Westminster Parliament, is deeply flawed. It was of course developed primarily to protect British army veterans from being held to account for their past misdeeds and it is a measure of how little the British government cares about the victims of terrorists in Northern Ireland (or in Great Britain) that it is prepared to grant immunity to prosecution to those terrorists in order to be able to grant it to their own soldiers.

But in addition the Bill vastly overreaches. It does not just offer conditional immunity from prosecution in return for information, it actually bans all future inquests, civil suits and applications for judicial review relating to any incident during the troubles. A late amendment has preserved the possibility that investigations of killings may still occur if the proposed new Independent Commission for Reconciliation and Information Recovery deems it 'appropriate', but the legislation leaves unclear what criteria will be used to make that decision.

Suddenly drawing a line in the sand in the way that the Bill proposes will mean that victims whose cases have not yet been subjected to any of the existing accountability mechanisms will never see them come into play, thereby distinguishing those victims from their more fortunate co-sufferers whose cases have already been dealt with. In January 2023 we learned that substantial compensation would be paid to victims of the so-called Ballymurphy Massacre in 1971, after an inquest 50 years later found that nine people had been unlawfully killed by British soldiers. Families involved in the dozens of legacy inquests still scheduled to take place, but which will be discontinued when the Legacy and Reconciliation Bill becomes law, will not be so lucky.

Quite how the UK government can square this discrimination with its obligations under the European Convention on Human Rights remains to be seen. It will also have to explain why victims of historic sexual offences committed many decades ago – whether or not they are troubles-related – will still be able to see their attackers prosecuted and imprisoned, but other victims of the troubles will not.

If prosecutions of troubles related crimes are already so infrequent, it is a mystery why it is necessary to ban them completely. If, at the judiciary's behest, a plan has been drawn up and funding already set aside for a series of legacy inquests, it is unclear why they must be stopped mid-stream. And if the rule of law means anything, it is very odd that access to justice through judicial review applications can be banned, even though their purpose is merely to ensure that decisions taken by public bodies are within the bounds of reasonableness. Civil suits are in a slightly different category because claims for assault and negligence are in any event subject to limitation periods and so even under current arrangements they rarely reach back more than three years or so.

But perhaps my most basic complaint with the Bill is that its fundamental premise is highly questionable. The government claims that the Bill's provisions on information provision and oral histories will help bring about reconciliation in Northern Ireland. The claim was probably made because in a case against Croatia

some years ago the European Court of Human Rights hinted that it might tolerate an amnesty law, even in relation to killings, if one of the consequences was enhanced reconciliation in the society in question. I do not know what evidence the UK government will be able to adduce to show that such reconciliation in fact ensues, and the Bill is silent on what concrete steps will be taken to promote reconciliation.

I am also rather sceptical – notwithstanding the expectations of Padraig Yeates and his colleagues in the admirable Truth Recovery Group – that more than a mere handful of former paramilitaries will eventually come forward to give information to the proposed new Independent Commission. If the conscience of such informants has already been pricking them, and if the likelihood of prosecutions is already very low, there are many existing ways in which they could enhance reconciliation by making information available anonymously to families – as well as more widely – without them having to make a special application for any kind of conditional immunity certificate.

Returning to Wilhelm Verwoerd's views, I was struck by his admission that the experience of working for the TRC led him to renounce his initial assumption that the process was inimical to justice. In the end he was convinced that the process was a very moral one. I cannot help but suspect that this was a purely personal epiphany. It was possibly animated to some extent by Wilhelm's awareness of his own grandfather's part in supporting the apartheid regime when he was Prime Minister of South Africa. That may be unfair, but none of us is free from unconscious bias. I myself, no doubt, am somehow influenced by my upbringing in a Presbyterian family living in a relatively quiet town in Northern Ireland where there were few Catholics and little overt political violence. And, full disclosure, I am legally qualified, a veteran humanist and nearing 70.

My own moral position then, quite simply, is that if people did bad things during the troubles they need to not only own up to them but also, if they caused harm to others, pay some price for their actions. In the absence of such accountability, it is at least comforting that a "victims' pension scheme" is, at last, operational in Northern Ireland, and that payments can be backdated to when the Stormont House Agreement was reached in 2014. Financial help to victims of the Troubles, including not just the bereaved but also, crucially, those who are still living with the physical or psychological injuries they suffered, must be a great relief to them.

It is important that the wishes of victims should always be carefully considered within a legal system, but even victims should not be able to dictate how the criminal law operates. The criminal law is primarily an exercise of state power against alleged perpetrators of offences. In a democracy the law usually bends over backwards to make it difficult for the prosecutors to win their case: the liberty of the accused is at stake and every step must therefore be taken to ensure that trials are conducted fairly and that any doubt about the accused's guilt is resolved in their favour. Even the accused's past criminal record, if there is one, cannot be mentioned during a criminal trial for fear it might prejudice the judge or jury against the accused.

Sentencing, moreover, is a task for experienced judges: they should listen to victims' impact statements, but they must also take account of a range of other factors to ensure that one accused is not punished to a noticeably different extent – greater or smaller – from another person convicted of the same type of crime. The criminal justice system is, if you like, the state's moral system. It is based on sets of rules and practices which, just as Wilhelm Verwoerd wishes, aim to achieve equity and mercy. We should not rule it out of play for purely political, sociological or theological reasons. Not when the crimes committed were so heinous.

**Brice Dickson, Emeritus Professor of International and Comparative Law,
Queen's University Belfast and Chief Commissioner of the Northern Ireland
Human Rights Commission 1999-2005.**

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Time out of mind: A response to Wilhelm Verwoerd by Cillian McGrattan

Wilhelm Verwoerd's considered and precise reflections on the ethics of amnesty draws on his work on the South African Truth and Reconciliation Commission (TRC) and focuses, in particular, on the tragic death of Amy Biehl in 1993. As a nuanced and wide-ranging exploration of the idea of amnesty, Verwoerd's argument is that amnesty is not (or not simply) opposed to justice, but complements juridical procedures: 'Blanket amnesty condones past wrongs. Amnesty within the TRC process pardoned past wrongs'. Verwoerd focuses on the amnesty of the killers of Biehl and centres his reflections, not simply on how the TRC dealt with that case, but its aftermath – the reactions of Biehl's parents in advocating forgiveness and working towards racial reconciliation; her killers (two of whom went on to work for the foundation Biehl's parents established in her name); and his own intellectual and emotional response.

As Verwoerd acknowledges, it would have been virtually impossible for Nelson Mandela to have established a Nuremberg-style truth uncovering and retribution process. As the Financial Times pointed out at the TRC's conclusion, that would simply have risked 'triggering the charge of victor's justice from the white community and alienating a key stakeholder in South Africa's future'. As Verwoerd argues, after 1946 (when the Nuremberg trials ended), the Allies more often erred on the side of rebuilding the (West) German state than de-nazification and judicial punishment. Yet he also points to the failings and criticisms of the South African process – including the distinctions between the TRC process and the justice system; the vacuity of some apologies; and the failure to secure in any meaningful way an understanding of social justice.

The criticisms of the TRC are long-established: the failure to take seriously gender-based violence; the tendency to focus on the apartheid regime and downplay ANC violence; the failure of politicians such as F.W. de Klerk and P.W. Botha to accept responsibility for atrocities; or the very limited socio-political impact of the experiment. Although Verwoerd dwells on equity, the seeming need to perform truth and apology that J.M. Coetzee's character, David Lurie, found wanting in *Disgrace*, could also have been developed. Certainly, Amy Biehl's parents' example was, in many ways, symbolic and emblematic of the type of peer pressure Desmond Tutu seemingly tried to cultivate – namely, the (Christian) demands to forgive and reconcile.

Of course, not all perpetrators were amnestied and not all families followed the Biehls' example: for instance, at the time, Steve Biko's killers were contrasted with those of Amy Biehl. Unlike the latter, the former did not admit to a crime (in 1977 Biko was beaten and tortured in a police cell before being driven 750 miles for treatment days after the attack). Unlike the Biehls, Biko's family opposed an amnesty for the officers involved and believed that the TRC did not get to the truth of his death.

Verwoerd's paper does not dwell on the limitations of the TRC, but looks to the opportunities involved in its use of amnesty as a tool of truth recovery and a form of reconciliation. In this, it builds on his personal journey from grandson of Henrik Verwoerd to anti-apartheid activist, and on previous academic work where he traces the distinctions in understanding of reconciliation within South Africa about the TRC and argues for a reflexive appreciation of reconciliation that recognizes distinctions and comparisons in scale – between, for instance interpersonal and intergroup cases. Verwoerd's deeply personal essay ends by applying that reflexivity to himself. The forgiveness and generosity of the Biehls demand from him a 'moral response – I was challenged to reflect how I would have behaved in a similar situation, on how one should respond in that context'. Amnesty and forgiveness, he argues, do

not have to be perpetrator-friendly, but they can resonate beyond individual cases to inspire new perspectives and understandings.

Verwoerd's paper is fundamentally concerned with change and it is the interjection of questions of amnesty, justice and forgiveness that precipitated the impulse to reflection. As Verwoerd makes clear, the Biehl case before the TRC demanded a moral response: his *'feelings about the hotly criticized amnesty process were never the same... It felt as if a heavy burden had been lightened.'*

Arguably, however, the peace process in Northern Ireland only added burdens due to its calibration along the perpetrator-friendly exigencies of bringing the IRA into a political process without creating a constitutional crisis. The structuring of the new political dispensation inaugurated by the peace process was based on the logic of what was pithily described by Anthony McIntyre of bringing republicans in but leaving republicanism out. The de facto amnesty of early prisoner release was judged politically necessary to achieving that end but, in Verwoerd's terms, it worked to condone past violence by framing politics as future-oriented. The Belfast/Good Friday Agreement made this clear – reconciliation was never going to be about the past, but the future: We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.

As Andy Pollak has recently pointed out, it is a small step towards the types of normalisation of historic republican violence in the mainstream media and on social media: of normalisation of historic republican violence in the mainstream media and on social media: We are moving towards a society where this kind of

MOUNTAIN FUNERAL, 1983
Brian Maguire
Acrylic on canvas:
56½ × 69¼ inches
(143.5 × 176 cm)



rationalisation (and eventually defence) of IRA violence is going to become more and more common, as Sinn Fein become a (perhaps even the) power in the land'.

Pollak is pointing towards a kind of after-effect in which the memorialisation of the conflict has little if anything to do with the history. This is taking place as the living memory of the Troubles is becoming less and less important – the median age being over 40 for women and 38 for men. This is, of course, occurring within the context of a failure to delegitimise violence and division, and instead, valorise difference by incentivising identity politics in a consociational system at Stormont.

The divided memory that resulted is explicable by reference to the distinction the Israeli philosopher Avishai Margalit draws between common memory and shared memory. He defines a common memory as an 'aggregate... of the memories of all those people who remember a certain episode which each of them experienced individually'. A shared memory, however, is 'not a simple aggregate of individual memories.

It requires communication. A shared memory integrates and calibrates the different perspectives... into one version.' He goes on to argue that people who may not have directly witnessed an event can be 'plugged into' this shared memory, which is 'built on a division of mnemonic labour'.

The Northern Ireland peace process incentivises a mnemonic labour, or what Elizabeth Jelin termed struggles over memory. Those struggles promote ethnic commemoration and, ultimately, militate against the prospect of shared memories. The movement away from integrating Northern Ireland's two ethno-nationalist communities to working with (rather than through) their distinctiveness and differences occurred in the 1990s. But, as was pointed out at the time, the consequence of that was not only a recognition of the dual party system (where voting occurred within and not between ethnic blocs) – colloquially known as the 'sectarian headcount' – but also the creation of a cultural politics targeted at the reproduction of ethnic norms, beliefs and myths.

As such, the reproduction of the two communities model is fundamental to the politics of the peace process. Indeed, the very idea of reconciliation in the Belfast/Good Friday Agreement was geared towards the future rather than the past in that it was linked to the workings of the institutions: 'we will endeavour to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements'.

This is politics viewed through the lens of ideas and ideologies – of collectives and communal politics rather than individual actors or integrated, non-aligned interests and activism. Northern Ireland did not have a figure of the symbolic, moral and emotive significance of a Mandela (or a Martin Luther King). The Nobel Peace Prize was shared between John Hume and David Trimble as it was earlier shared between Mandela and F.W. de Klerk. However, it was certainly less affecting the everyday level of people's experiences and public participation than say the visit of Bill Clinton in December 1995, which 'lifted spirits, concentrated minds and [gave] an entirely new lease of life to a peace process which has been experiencing potentially fatal problems', according to the Irish News at the time. Yet, even that indication of international recognition did not have the same cachet as the Mandela release.

The rationalisation and normalisation, commodification and banalisation of the conflict, the passing of lived memory into received wisdom means that, time out of mind, discussions about the past are more likely to be about the present (or the future). Although amnesty may demand a moral response in Northern Ireland, the problem might be that that response has already happened and the debate about legacy is really a history of troubled memory.

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The author thanks Arthur Aughey, Jeffrey Dudgeon, William Mat-chett, Austen Morgan and Padraig Yeates for comments. Cillian McGrattan is a member of the Malone House Group. The views and any remaining errors expressed in this piece are his own.

Dean E. Murphy, 'Ideas and trends: Letting go; beyond justice: The eternal struggle to forgive', *New York Times*, 'Week in Review', 26 May 2002, p.1. Murphy quotes Biehl's father attitude: 'To us it is liberating to forgive'. See also Scott Kraft, 'South African killers now work on behalf of their victim', *Los Angeles Times*, 21 October 2008.

Financial Times, 'Painful truth', 3 August 1998.

See, for instance, Adrian Guelke, 'Commentary: Truth, Reconciliation and Political Accommodation', *Irish Political Studies*, 22 (3) (2007), pp.363-66; Fiona C. Ross, *Bearing witness: women and the truth and reconciliation commission in South Africa* (London: Polity, 2003); Greta Styn, 'South African home truths fail to heal new nation's divide: Commission ends its work with still a long road to reconciliation', *Financial Times*, 31 July 1998.

J.M. Coetzee, *Disgrace* (London: Vintage, 1999), Lurie's trial is depicted in chapter six, pp.47-58.

Michael Henderson, 'The road of forgiveness', *Christian Science Monitor*, 24 November 1999, p.11. The emblematic quality of the Biehl case is exemplified in its commodification by Marina Cantacuzino's *The Forgiveness Project*, which collects testimonies that 'bear witness to the resilience of the human spirit and act as a powerful antidote to narratives of hate and dehumanisation, presenting alternatives to cycles of conflict, violence, crime and injustice'; at www.theforgivenessproject.com/our-purpose/; accessed on 17 December 2022. For a critique of this practice of storytelling and forgiveness in Northern Ireland, see Cillian McGrattan 'Spectres of history: Nationalist party politics and truth recovery in Northern Ireland', *Political Studies* 60 (2), 455-473, 2012. Coetzee himself was rather noncommittal on the subject: 'In a state with no official religion, the TRC was somewhat anomalous: a court of a certain kind based to a large degree on Christian teaching and on a strand of Christian teaching accepted in their hearts by only a tiny minority of the citizenry. Only the future will tell what the TRC managed to achieve'. 'J.M. Coetzee in conversation with Jane Poyner', in J.M. Coetzee and the Idea of the Public Intellectual, edited by Jane Poyner (Athens, Ohio: Ohio University Press, 2006), p.22.

Suzanne Daley, 'Officer is denied amnesty in the killing of Steve Biko', *New York Times*, 10 January 1999.

Wilhelm Verwoerd, *Verwoerd: My Journey through Family Betrayals* (Tafelberg: E-edition, 2019).

Trudy Govier and Wilhelm Verwoerd, 'Trust and the Problem of National Reconciliation', *Philosophy of the Social Sciences* 32 (2) (2002), pp.178-205.

Henry Patterson, 'The Limits of "New Unionism": David Trimble and the Ulster Unionist Party', *Éire/Ireland*, 39 (1 and 2) (2004), pp.163-88

Anthony McIntyre, 'Modern Irish republicanism and the Belfast agreement: chickens coming home to roost, or turkeys celebrating Christmas?', in *Aspects of the Belfast Agreement*, edited by Rick Wilford (Oxford: Oxford University Press, 2001), p.217.

The Agreement, Declaration of Support, para. 2. At www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf; accessed 17 December 2022.

Guelke, 'Commentary'.

Cillian McGrattan, *Memory, Politics and Identity: Haunted By History* (Basingstoke: Palgrave Macmillan, 2012), p.24.

Andy Pollak, is this columnist's frightening republican vision shared by young Irish people? At www.2irelands2gether.com/2022/10/28/is-this-columnists-frightening-republican-vision-shared-by-young-irish-people/ <https://2irelands2gether.com/2022/10/28/is-this-columnists-frightening-republican-vision-shared-by-young-irish-people/>; accessed on 17 December 2022.

This may also be, at least in part, behind public support for amnesty to draw a line under the past. See The Institute of Irish Studies, Liverpool University/The Irish News, '4th Attitudinal Survey, July 2022'. Available at www.liverpool.ac.uk/media/livacuk/humanitiesampsocialsciences/documents/Institute,of,Irish,Studies,UoL,Irish,News,Poll,July,2022.pdf <https://www.liverpool.ac.uk/media/livacuk/humanitiesampsocialsciences/documents/Institute,of,Irish,Studies,UoL,Irish,News,Poll,July,2022.pdf>; accessed on 7 January 2023, p.15.

See Statista, 'Forecasted median age of Northern Ireland population from 2017 to 2041, by gender'; at www.statista.com/statistics/383798/northern-ireland-forecasted-median-age-gender-timeline-uk/ www.statista.com/statistics/383798/northern-ireland-forecasted-median-age-gender-timeline-uk/; accessed 19 December 2022.

Avishai Margalit, *The Ethics of Memory* (London: Harvard University Press, 2004), pp.51-52.

Elizabeth Jelin, *State Repression and the Labors of Memory*; translated by Judy Rein and Marcial Godoy-Anatívia (Minneapolis: University of Minnesota Press, 2003).

The Agreement, op. cit. para.5.

Irish News, 2 December 1995.

See Cillian McGrattan, *Northern Ireland, 1968-2008: The Politics of Entrenchment* (Basingstoke: Palgrave Macmillan, 2010), p.147.



Gender, Truth and Legacy

by Fidelma Ashe

All official attempts at dealing with the past in Northern Ireland have marginalised gender issues. The occlusion of gender from processes designed to address the legacies of the region's conflict is a direct consequence of how peace and conflict have been framed. The NI conflict has been fashionised as a war between men that led to their death, injury, and imprisonment. Both state and non-state militaries were numerically dominated by men. Men experienced the highest death toll: 3,145 were killed compared to 321 women during the conflict. In terms of imprisonment men also predominated. It is estimated that 90% of politically motivated prisoners were men. Women did assume combatant roles, but the numbers were small. Due to this gender differential, combatant women have also been discounted in mainstream narratives and processes concerned with dealing with the past.

It is not only women who have been marginalised - a range of other groups' experiences of the Troubles have been neglected in official discourses and processes. Nationalist blocs have taken precedence over all other social groups in terms of how we remember and address the past. The primacy of these blocs in conflict transitional processes across the board has meant that the core principles of peacebuilding, justice, equity and human rights have been defined tightly in relation to each bloc's version of the past. However, meaningful peace requires a broader vision of peace that is inclusive of the experiences of different identities. If this broader vision of peace is to develop, then the injustices and inequities caused by the exclusion of historically subjugated groups such as women must be addressed.

Gender and dealing with the past

Gendering processes to deal with the past require more than simply adding women as a relevant constituency, and gender as a variable in terms of institutional processes. As the authors of a report on Gender, Justice and Truth Commissions (World Bank, 2006:2) make clear, 'the notion of gender being a last-minute add-on is... problematic. Gender perspectives shed light on factors and issues that usually have major implications on all aspects of the work' of peacebuilding. In the Northern Ireland context 'adding on' gender to conflict transitional processes would be a vast improvement on approaches to date. Yet a much deeper engagement with gender is required to instigate meaningful changes in terms of how we, as a society, approach our transition from conflict. Understanding the importance of gender in strategies to deal with the past requires a significant shift in how the dynamics and effects of political conflict and peacebuilding have been framed.

Most societies have a history of reiterating the age-old stereotypes that men are tough, and women are tender. Gender research has shown how central gender scripts are to the dynamics of war. Gender narratives frame political conflict as a normative sphere for men; conversely, women are framed as outside of the theatre of violence, constitutive of a vulnerable group left behind in the safe space of civil society. Conflict-affected societies trade in these gender binaries to mobilise societies for war and conflict. Consequently, gender must be viewed as part of the logic of war.

Gender norms, narratives and practices underpin the gender differentials in political and social power that are often reinforced by conflict. Men's dominance in the political arena and in militaries situates them at the centre of conflict-related forms of power. These gender differentials in decision-making power and influence during conflict are often preserved in the peacebuilding period and impact on all aspects of conflict transformational processes, including dealing with the past. Women become under-represented in key peacebuilding institutions. Moreover, because gender framings of conflict remain unchallenged during peace-building, they provide a fertile ground for the broader exclusion of women's experiences, knowledges and needs. It is these dynamics that United Nations Security Council

Resolution 1325, passed in 2000, on Women and Peace and Security attempted to address. The Resolution's provisions include the increased participation and representation of women in decision-making during peacebuilding and the adoption of a gender perspective in post-conflict processes.

Gender and dealing with the past in Northern Ireland

The under-representation of women and the absence of a gender perspective has characterised approaches to dealing with the past in Northern Ireland. The preservation of traditional gender hierarchies and conflict-related gender narratives have led to an under-representation of women in negotiating approaches to legacy issues and in framing processes to address them (Ashe 2019a; Ashe and Roulston, 2016).

The negotiations leading to the Belfast / Good Friday Agreement (1998) were dominated by men, as were the St. Andrews negotiations (2006). Attempts to deal directly with the legacies of the past have also failed to include women in adequate numbers. For example, two out of the eight members of the Consultative Group on Dealing with the Past (2009) were women. What became known as the Haass-O'Sullivan talks (2013), designed to address cultural and legacy issues, were comprised of two nominees from each of the five political parties and Junior Ministers. While different members of political parties shifted in and out of those talks, only two of the ten key negotiators were women (Ashe and Roulston, 2018). The Cardiff conference (2013) organised to address issues around parading and flags, had over 30 participants, of which three were women. More recently, the Commission on Flags, Identity, Culture and Tradition (2021) was comprised of 14 men and one woman. This level of gender exclusion cannot be viewed as acceptable in a modern liberal democratic society, and the failure to include women in processes that address complex legacy issues reflects a society highly resistant to progressive international trends in the arena of peacebuilding.

Often the only route open for grassroots women to influence some of the initiatives above has been through submissions to the chairs during the public consultation phase. Detailed submissions by the women's sector to the Consultative Group on Dealing with the Past and to Haass and O'Sullivan laid out the gender issues at stake when dealing with conflict legacies in NI. None of the women's sector's recommendations were included in the reports of either group. Consultation with civil society groups gives the impression of an inclusionary process, but recommendations on gender are rarely acted on or integrated into policy (Ashe, 2019a).

As gender has been diminished in terms of its importance in dealing with the past, women's identities become reduced to the singular status of victim or bereaved, which strips them of their right to agency in terms of influencing approaches to legacy. Viewed as neither the agents of political conflict or as important actors in conflict transformational initiatives, women too often can become, as Rubli and Baumgartner (2014) note, the 'objects' of processes designed to deal with the past.

Importantly, aspects of the conflict become hidden when women are relegated to this status. Cadwallader's (2017) research exposed the often-hidden harms women from both communities experienced during the conflict. Women were never located in a safe space during the conflict, it affected all aspects of their lives. Many were plunged into long-term poverty due to the conflict-related deaths of male partners. Many more dealt with conflict-related trauma exacerbated by the failures of state responses to developing a more holistic approach to legacy harms including who was responsible for those harms.

The truth of the past cannot be told without the inclusion of these experiences. A history of the conflict that includes the experiences of both men and women serves as a basis to create an inclusive and much fairer society. Neither gender had a homogeneous experience of the conflict, but both deserve to be recognised in terms of how we remember and address the effects of our past. While monetary reparations

for victims and survivors regardless of gender are an essential aspect of dealing with the past, as are processes of information recovery and legal redress, the underpinning dynamics that caused women's experiences of the conflict must also be recognised, addressed and repaired. Gender-sensitive peacebuilding processes include, but also extend beyond, these aspects of dealing with the past to encompass questions about healthcare, poverty, social exclusion, trauma and the legacies of male hierarchies and control in working-class communities.

International approaches

The 'de-gendered' approach to dealing with the past in Northern Ireland is not unique. Historically, women have been marginalised in peacebuilding processes across the world. However, there are now a number of progressive international examples of societies emerging from conflict recognising the role and effects of not just gender, but also sexuality and gender identity in transitional processes. The Colombian Peace Agreement (2016) included recognition of the effects of conflict on women, sexual and gender minorities and a range of other historically derided groups harmed in different ways by the conflict (see Ashe 2019b). That Agreement incorporated forms of redress including monetary reparations for those groups and increased rights protections. Peru's Truth and Reconciliation Commission (TRC) (2001-2003) established a gender unit which engaged in gender research. In Sierra Leone, the legislation that created the TRC (2002 - 2004) called for a specific focus on the situation of women during the armed conflict. Both TRCs led to proposals for reparations and gender-based reform. While the implementation of a TRC is highly contested in NI, what these international examples show is that it is possible to address gender issues when dealing with legacy issues if there is political will to do so.

The absence of any agreed truth recovery mechanism in NI, as O'Rourke (2014-2015:1) notes, has led to a process of dealing with the past that developed into a 'patchwork of criminal and legal processes [that] have consistently failed to meet the expectations of victims and their families'. As the Gender Principles of Dealing with the Past (2016) highlight, much work needs to be done to gender and improve processes of dealing with legacy for women. However, in the final analysis, progress on dealing with the gendered legacies of the past requires recognition of women in all their diversity (legislators, legal experts, victims and survivors, grassroots advocates and peacebuilders) as key stakeholders in peacebuilding processes. Recent developments suggest that developing this approach will be challenging in the current political context. Without some fundamental shift in how we deal with legacy, the challenge of gendering the past will be shouldered by civil society organisations with a low resource base and little recognition of their work. Women have so much experience and expertise to offer in the area of dealing with the past, they must be viewed as equal stakeholders in this task and in all other areas of peacebuilding.

Fidelma Ashe is a professor of politics at Ulster University and a member of the Transitional Justice Institute. She has published widely in the area of gender, sexuality and peacebuilding. Her most recent book *Gendering Conflict Transformation: New Themes and Old Problems in Northern Ireland Politics* was published by Routledge. She is currently working on gender equality and constitutional change on the Island of Ireland.

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REFERENCES

Ahmed, Y., Duddy, S., Hackett, C., Lundy, P., McCallan, M. McKeown, G., Murphy, A., O'Rourke, C. Patterson-Bennet, E., Wing, E. and Schulz, P. (2016) 'Developing Gender Principles for Dealing with the Legacy of the Past', *International Journal of Transitional Justice*, Volume 10, Issue 3, pp. 527-537.

Ashe, F. (2019a) *Gender, Nationalism and Conflict Transformation: New themes and old problems in*

Northern Ireland politics, London and New York: Routledge.

Ashe, F. (2019b) 'Sexuality and Gender Identity in Transitional Societies: Peacebuilding and Counterhegemonic Politics', *International Journal of Transitional Justice*, Volume 13, Issue 3, pp. 435-457.

Ashe, F. and Roulston, C. (2016) 'The Gender Politics of Negotiating the Peace in Northern

Ireland'. In Kaufman, J. and Williams, K. (eds) *Women, Gender Equality and Post-Conflict Transformation: Lessons Learned, Implications for the Future*, New York: Routledge, pp. 75-98.

Cadwallader, A. (2017) 'The Role of Women in Truth Recovery Processes'. Online: www.wrda.net/wp-content/uploads/2017/05/Anne-Cadwallader-Role-of-Women-in-Truth-Recovery-Processes-Presentation-Compatibility-Mode.pdf <https://wrda.net/wp-content/uploads/2017/05/Anne-Cadwallader-Role-of-Women-in-Truth-Recovery-Processes-Presentation-Compatibility-Mode.pdf>

O'Rourke, C. (2014-2015) 'Dealing with the Past in Northern Ireland: Putting Gender on the Agenda', KESS Seminar, NI Assembly. Online: [www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series4/briefing-](http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series4/briefing-orourke.pdf)

[orourke.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series4/briefing-orourke.pdf) Rubli, S. and Baumgartner, E. (2014) *Gender and Dealing with the Past, Essential, Swiss Peace*. Online: [www. \l ":-:text=There are various reasons why gender dimensions are,thus differently experience violence and human rights violations"https://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_1_2014.pdf#:~:text=There%2Oare%2O various%2Oreasons%2Owhy%2Ogender%2O dimensions%2Oare,thus%2Odifferently%2O experience%2Oviolence%2Oand%2Ohuman%2O rights%2Oviolations.](http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_1_2014.pdf)

The World Bank (2006) *Gender, Justice and Truth Commissions Report*. Online: www.peacewomen.org/sites/default/files/transjustlawref_genderjusticetruthcommissions_worldbank_june2006_o.pdf http://peacewomen.org/sites/default/files/transjustlawref_genderjusticetruthcommissions_worldbank_june2006_o.pdf



MAN OF WAR (BALKANS), CA. 1995
Brian Maguire
Acrylic on paper:
43 ¼ x 29 ½ inches
(110 x 75 cm)

Canvassing Across the 'Divide' by Mike Jennings

*Painted kerbstones scream allegiances
Red, white and blue glares across*

At green, white and orange.

A sign for slow learners says

"This is a Loyalist Estate"

I knock on the door of the first house.

The one on the enclave's very edge.

A front-line position which,

For all my parachuted sensitivity

I hadn't given a single thought to.

As I wait I hum a tune.

Even without words, my accent

screams difference.

The door opens slowly, tentatively.

In the narrow sliver of light,

I see half a face,

The one eye narrowing then widening,

with fear.

It sees a hand thrusting something forward.

Just a leaflet but it could be a weapon.

Not about to take that chance he slams

the door.

Almost severing my "hand of solidarity".

I learn an unexpected lesson.

You can't reassure people with words

Which they are too terrified to hear.

© Mike Jennings 2023

EACH ONE
DIMINISHES US ALL, 2010
Brian Maguire
Acrylic on canvas:
32 ¼ × 68 ½ inches
(82 × 173 cm)



I couldn't see for lookin' by Eamon Baker

Back in the summer of 1971, when the Troubles were being ratcheted up, with riots, shootings and bombings becoming commonplace, and even with 75 people having already been killed, I was still in many ways a twenty year old 'innocent abroad'. I was a relatively privileged young Creggan man, having a university place on a full grant, the very first from my family circle to reach third level education. I was studying English and Anglo-Irish literature: Chaucer, Shakespeare, Joyce, Eliot, Auden. How's that for a daytime job? I read a few novels, plays, poems; made my 'innocent abroad' assessment of their literary merits. Then beetled off to the Club Bar for inevitably more than one pint of Guinness with a cluster of Derry folk hell bent on 'divilment'; some of us more aware than I was of the burgeoning storm outside the cocoon of the Club.

Who was it introduced me to marijuana? In the fog, I cannot quite remember, but what a funny night that was - one of our friends staggering to the loo with the words "I don't know whether it's a shit, a shave or a haircut I need", and the rest of us, gathered around a joint, guldering with laughter at this "existential profundity". When Van Morrison was aboard that train on the way "from Dublin up to Sandy Row", was it the drink, was it the dope or was it the lyrics that almost brought a tear to the eye? Van Morrison was dangerous. His Astral Weeks album could nearly assault the soul, stoned or sober.

The shocking deaths on July 8th 1971 of Seamus Cusack and Dessie Beattie rattled and rocked me, as they rocked and rattled our Creggan/Bogside community. "How the f--- could British Army soldiers do this?" With lies and impunity was the answer. Seamus Cusack was from Creggan, from Melmore Gardens, not far from where I grew up and where less than ten years before I had been gathering 'brock' for PJ Kelly's pigs. Dessie Beattie was from down the way in Rosemount. Ten minutes or less would get me there from our family home in Iniscarn Road. Both men shot, Seamus dead within minutes of reaching Letterkenny hospital after a British Army shooter fired at him from close range. That soldier's subsequent inquest statement rang horribly hollow and cruelly self-serving in our community- "I shot to kill him. He was bringing his weapon up - what do you want me to do? Let him kill me?"

Seamus was twenty eight and engaged to be married. We heard that he spoke about his girlfriend on that terminal twenty mile long journey to the hospital. Dessie Beattie was shot dead in the midst of a riot later that same day. A prestigious independent inquiry the following month chaired by Lord Gifford (hereditary peer, senior barrister and later QC) supported by Albie Sachs (South African activist-lawyer and later judge) and Paul O' Dwyer (Irish-American lawyer and politician) found that neither Dessie Beattie nor Seamus Cusack were armed or carrying any form of weapon. It appeared almost inevitable that the British government would reject these findings. They did.

Four years later in 1975 Lord Justice Gibson awarded a derisory £375 to Seamus Cusack's father.

A temporary shrine was dolefully created where Dessie Beattie had been shot down. Prayers were said, some through clenched teeth as daily rioting overshadowed all 'normal business' on the streets of Creggan and the Bogside. Nail bombs splattered in the direction of soldiers armed with SLRs. Shots ringing out might hurl you to the ground for fear that what had happened to Seamus or Dessie could happen to you. Someone told me: "If you hear the shot, (whether it's from the IRA or the Army) that means you are still alive." That pithy remark made my heart pump hard. "Scatter" someone would shout and we'd clear. Rioting had become our community's 'bread and butter'. We were told that a vinegar soaked handkerchief tied around the mouth and nose could offer protection from the clouds of CS gas saturating our neighbourhoods during riots. Fifty years on, the talk in these same communities is of cancers caused by CS gas.

Later that same summer month, eight year old Damien Harkin was killed. A few weeks before he had made his First Communion. That Saturday morning he had been at the childrens' matinee, 'the flicks'. That lunchtime he was crushed to death by a British Army transport lorry, a 'three tonner' (part of a military convoy), which mounted the pavement out of control just where Blucher Street meets with Westland Street in the broken heart of the Bogside. It was July 24th. Damien died minutes from where Seamus Cusack and Dessie Beattie were shot. A blanket covered his lifeless body. His mammy, Lily, knew straight away it was him when the blanket, when it was lifted just a little, revealed the same shoes he had worn for his First Communion.

What, if anything, had the poems, the plays and the novels I was faced with at Queen's, got to say about this deadly traumatic whirlwind? 'Enough' it would turn out - but not that summer.

In 1971 I only knew a handful of people in the Protestant community. There were some Protestant neighbours in Creggan – the Hunters in Cromore Gardens, the Wrays in Iniscarn Crescent to name a couple, but I hardly knew them. And up at Queens that 'divilish' band in the Club Bar was almost exclusively Catholic, past pupils of St Columb's and Thornhill colleges, joined sometimes by new found friends from the Lower Falls or Newry.

The internment swoops, mainly in Catholic nationalist areas, on August 9th 1971 heralded the murderous savagery of the Paratroopers in Ballymurphy. It took almost fifty years – until May 2021 - for the truth of what happened there in August 1971 to be confirmed by Mrs Justice Keegan.

By August 9th Derry was exploding: buildings on fire, shops and factories in William Street toppling to the ground. Internment prompted grim and serious violence. Over August 9th and 10th it's reckoned twenty three people died, including the ten people who were shot dead in Ballymurphy. The internment swoops provoked huge Catholic and nationalist resentment against the unionist state led by Brian Faulkner. It also served as a recruitment boost for the IRA. From August 9th until the end of that year close to 150 people were killed, with many hundreds injured. Numbers don't begin to tell the tragic human story of forever loss.

Almost fifty years on from internment I was to meet with Trevor Donnell, the nephew of Winston Donnell, the first UDR man to be shot dead - on August 9th by the Provisional IRA.

Trevor says: "My father was out on duty with the UDR on 9th August 1971. A newsflash came on TV about a UDR man being shot dead. I was nine. Our house went quiet. Everybody began to think: "Has something happened our father?" He eventually arrived home. It was my uncle, his brother Winston, who had been shot dead. My father wasn't with him. He had been on patrol in the Castlederg area while Winston was on patrol around the Urney Road near Clady. I was a primary school pupil but since it was August, I was off on holidays. The funeral took place in Urney. I wasn't at the funeral. They kept us home. But I was told that it was one of the biggest funerals seen around these parts because he was the first UDR man to be murdered. Winston's remains were carried on a ceremonial gun carriage. I have photos of that. That for me was the start of the Troubles."

In Derry the next day, August 10th, while rioting against police and army stormed around 'the New Road' (its been called this since I was in primary school sixty years ago!) A few shots rang out in Eastway Gardens and Demesne Avenue. I was there amidst a cheering crowd. I did not hear Paul Challenor's dying scream. Paul was 22, a soldier with the Royal Horse Artillery stationed in the Bligh's Lane army post. He was the first British soldier to be killed in Derry. I did not know then that Paul's wife had given birth to their baby a month previously. In the aftermath of Paul Challenor's death, his mother sent an open letter to the people of Northern Ireland and therefore by implication to the people of Creggan: "You say you are all Christians. For God's sake start acting like Christians. I wish you could see the grief that my son's death has

caused in my house and in his wife's home." Paul's child is fifty this summer, Paul himself would have been seventy two, Dessie Beattie sixty nine, Seamus Cusack seventy eight and Winston Donnell seventy two. Paul Challenor's mother's appeal to our Christian faith and upbringing would not entirely fall on deaf ears. But some would have countered angrily: "Where's the Christianity in the behaviour of the RUC and the British troops on our streets? Where's the Christianity in the behaviour of their political paymasters?" That warm welcome back in August 1969 for British soldiers as a peacekeeping force was by now a torn and tattered dream. State forces were now clearly seen as part and parcel of the problem, their 'honest broker' role in smithereens.

That autumn in the Creggan and Bogside areas we had more controversial deaths at the hands of British soldiers: father of two, Hugh Herron shot dead; fourteen year old St Cecilia's pupil Annette McGavigan (remembered in the stunning Bogside Artists' mural), shot dead; William (Billy) Mc Greanery, shot dead from the Bligh's Lane post where Paul Challenor and Martin Carroll (see below) had died, and Kathleen Thompson, shot dead in her own back garden in Rathlin Drive, Creggan, just up the street from our home. Any responsibility for these deaths was vigorously contested and infuriatingly denied by British state spokesmen.

There were other tragic deaths that August too, both of teenage IRA men - nineteen year old Eamonn Lafferty, shot dead during a gun battle with soldiers in the Southway area of Creggan and sixteen year old Jim O'Hagan, killed in much disputed circumstances in the Waterside.

Back in Queens that autumn it was time to marshal our responses to Chaucer's early poetry – The Parliament of Foules - and for theatre we were to explore Restoration comedy. I had no idea that the playwright, George Farquhar, was originally from Derry.

Meanwhile there was no let up in the deadly drama unfolding on the streets of our communities. There was no happy ending in sight. No convenient deus ex machina.

On our Derry streets that autumn there were other deaths that, sadly, scarcely caught my attention - the deaths of seven soldiers: North Wales man, Martin Carroll, was shot dead at Bligh's Lane. He had been fired on from just down our street in Eastway. His wife was five months pregnant at the time. Martin's family on his father's side were from the Republic. Roger Wilkins, a member of the Royal Anglian Regiment, was shot dead in the Bishop Street area. His wife was expecting their sixth child. Joseph Hill from the Royal Green Jackets was shot dead in Columcille Court just a few days later on October 16th. He was 24, a married man from Kent. Less than two weeks later two soldiers – Angus Stephens and David Tilbury - were blown up and killed at the rear of the RUC station by a bomb hurled over the bowling green wall at Brooke Park. Three days after our neighbour Kathleen Thompson was shot dead, another soldier was shot dead again in the Foyle Street/Bishop Street area. This was 23 year old Ian Curtis from near Portsmouth and just before New Year another young Welsh soldier, 20-year-old Richard Ham, was shot dead. Apparently his mother had offered to buy him out of the army but he had refused. "He loved the army," she said. "It was his life." And, tragically, his death.

Some years ago Nell McCafferty wrote a poignant piece - "Stranger who died on the Lone Moor Road" - reflecting on the death of a British soldier killed in an IRA explosion not far from her Beechwood Street family home. She finishes: "He was, truly, a stranger among us. He did not belong to the North, or to Ireland. He was a British soldier, and he died, far from home, on the Lone Moor Road."

Reflecting on our traumatic history now as a seventy year old who has 'lived through' the Troubles, I sometimes think that we exist in what might be best described as 'story ghettos'. Because we often choose to live apart, in segregated communities (reading different newspapers, scanning different social media) we tell ourselves separate stories, suffer and endure separate wounds/ traumas, commemorate different deaths, celebrate different lives. How many from the unionist/loyalist community in

New buildings or Nelson Drive could speak now of Annette Mc Gavigan or Kathleen Thompson? How many in the nationalist/republican community of Creggan or the Bogside could speak now of Winston Donnell? Who remembers Paul Challenor or Martin Carroll? This is certainly not to pitch guilt at anyone. More to plead kindly for an ethical inclusive story telling/truth telling process that promotes and nourishes empathy and human connection. "What about you?" instead of "Whataboutery". Empathy would help bridge our divisions. And empathy I think grows from compassionate listening to those from the 'other' community, grows from listening with 'the ears of our hearts', grows from listening with love.

I 'got' that exhortation towards love...eventually... from the writers. Some words from Damian Gorman's recent poem 'Field Notes' continue to stake their claim on my heart:

*"I am trying to avoid the word love
Like a fully loaded trap
I am trying to avoid the word love
But why would you do that?
For love is thought which has a bit of thought
Is feeling with an inkling of what to do;
Is something in us knows, within its heart,
That there are hearts in other people too.
It stands for something clearly, like a whinbush on the road
Beautifully resolute and gold,
And is the fulsome, real love - love enough -
Could keep us going when the going's tough.
A love that is magnificent, or mild;
Love like Solomon's, reaching for the child."*

And the going continues to be tough: witness the communal and political slugger-heads around how best to ethically remember, forty years on, the death (August 8th 1981), after 62 days on hunger striker, of Bellaghy republican Thomas Mc Elwee.

For certain sure, we here continue to need those loving, generous, creative energies and actions exhorted by Damian Gorman in his 'Field Notes'.

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RAINFOREST BURNING 2022
Brian Maguire

The Truth about the Troubles *by Ian McBride*

Northern Ireland is a small region, comparable in size to Yorkshire or Connecticut, and with just 1.8 million inhabitants. But for scholars and students interested in the burgeoning field of memory studies it presents a vast academic safari park. Where else can we find a society – or perhaps we should say two societies – that re-enact their violent past so obsessively? In the 1990s there were close to 3,500 commemorative parades taking place annually – one for every 500 inhabitants, or ten for each day of the year.¹

The vast majority of these are organised by the Orange Order, that curious mixture of masonic fraternity, old boys club and vigilante patrol – and of its cognate organisations; they mark the anniversaries of the two iconic seventeenth-century confrontations, the Battle of the Boyne and Siege of Derry, but also of the Battle of the Somme (1916) and more recent confrontations. Republican parades are fewer, but are still vital to mobilising the faithful; this is no longer the job of the Ancient Order of Hibernians, which closely mirrored the structures and symbols of Orangeism, but is now effectively controlled by Sinn Féin and related groups such as the National Graves Association, Belfast. Easter remains the crux of the republican calendar, and the 1916 rising is still the paradigmatic act of resistance, even if Belfast's contribution to it was practically non-existent.

It is hard to overstate the absolute centrality, in terms of both ideology and organisation, of these processions to Unionist and Nationalist mobilisation. In the lulls between Northern Ireland's various elections they keep the pot boiling. This is especially true of the marches of the Orange Order, whose leadership has painted the organisation into a series of increasingly futile corners since the Drumcree standoffs of the mid-1990s.² In all the upheavals within Unionism since the sixties the Orange Order has indicated where the political centre of Unionism lies, and the bands, banners and slogans associated with it have provided the standard trappings of loyalist rebellion.³

It is the oldest political institution in Ireland, twice as old as the Ulster Unionist Council or the original Sinn Féin, and it is remarkable that no satisfactory historical study of the organisation exists.⁴ Like Terence O'Neill and Brian Faulkner before him, David Trimble became convinced in the 1990s that Northern Ireland could not survive without cross-community support. Like them he found it necessary to articulate a modern, pluralist kind of Unionism, and indeed did so with more conviction and imagination than any of his predecessors. Eventually, however, he was defeated by segregationists who emphasised the traditional religious and cultural expressions of Ulster Protestants, and above all the rituals of Orangeism.⁵

Republicanism has been equally reliant on 'memory work'.⁶ A trawl through issues of An Phoblacht over the last fifteen years will quickly confirm this point. In just a few weeks during the summer of 2011, An Phoblacht reports a march through Kilrea in remembrance of volunteer Tommy Donaghy, led by a colour party from the South Derry Martyrs Band, with a graveside oration by Sinn Féin politician Francie Molloy; the Eamonn Lafferty Memorial Lecture, given by Martin McGuinness, in honour of the first Derry volunteer killed by British Army in the 1970s; a graveside oration for Patrick Cannon, who died in a premature explosion on the Donegal/Tyrone border in 1976; the unveiling of a plaque in memory of Fian Tobias Molloy, killed by rubber bullet fired by the British Army 1972, and an article to mark the 35th anniversary of the assassination of vice-president of Sinn Finn, Maire Drumm.⁷ 'Republicanism sustains itself', as Malachi O'Doherty once caustically observed, 'for the work of respecting the dead. If the cause collapses, there may be no one left to tend their graves or honour their memory. Conversely, if people forget to honour the dead, the cause will collapse, and scepticism is as close as a neighbour.'⁸

The republican movement is by far the most dynamic manipulator of collective memory on the island of Ireland. The Provisionals often present themselves as a

natural outgrowth of the Civil Rights campaign of the 60s. They have quietly appropriated Joe McCann, the pre-eminent icon of the Official IRA.⁹ And, all the while, they preserve the republican tradition of Wolfe Tone, the Fenians and Patrick Pearse in what they regard as its purest form. Without abandoning the language of national self-determination, republican groups have broadened their appeal by reframing political demands in the newer discourse of human rights violations. The Bloody Sunday Justice Campaign, to take one prominent example, has demonstrated the remarkable capacity of republicanism to reinvent itself, successfully internationalising the elaborate rituals that grew up around the annual commemoration of the fourteen unarmed protestors killed by soldiers of the Parachute Regiment on 30 January 1972. At the same time, the prolonged campaign to overturn the findings of the Widgery Tribunal became linked with other, exclusively Republican goals: the recovery of the remains of Tom Williams, the IRA man hanged for killing a Catholic RUC constable in 1942, or the call for an inquiry into the three unarmed IRA members killed on Gibraltar in 1988.¹⁰ This closer identification with physical-force resistance to British rule takes us a long way from the famous image of Fr Edward Daly waving his white handkerchief as he helped move the dying Jackie Duddy: the brutality of the Paras marked a turning point precisely because it was indiscriminate: ordinary Catholics realised that 'it could have been me'.¹¹

In the years since 1998 Sinn Féin has successfully repositioned itself as the most effective guarantor of equality for Nationalists, while simultaneously protecting its monopoly over the memory of republican armed struggle. Maintaining this tight-rope act means that, for some of the time at least, republican violence has to be characterised not so much as a revolutionary instrument in the struggle for national liberation, but as the unfortunate product of unequal political and social relationships. Such elisions have shocked historians and journalists but are easily forgiven by Nationalist voters who see Sinn Féin as their most effective political voice.¹² As with the DUP, Sinn Féin has compromised its founding principles for electoral gain, maintaining the illusion of ideological fundamentalism through the energy it devotes to memorialisation, thus safeguarding its core constituency from more radical alternatives. Each celebration of armed struggle risks alienating moderates within the Nationalist bloc; but the offence caused to Unionists is always much deeper, and ultimately the inevitable Unionist overreaction will reproduce the basic communal faultline which sustains the Sinn Féin vote.¹³

These entrenched cultures of commemoration profoundly shaped the emergence of the Northern Ireland conflict.¹⁴ They continue to shape the post-conflict era, in which the Troubles are fought over again, this time symbolically, as the main protagonists seek to control public discussion of the past. Scholars interested in the memory boom will find all the hard cases familiar from other 'transitional' societies.¹⁵ Investigation of the 'dirty war' has uncovered evidence of persistent collusion between the security forces and loyalist paramilitaries.¹⁶ The publicity surrounding public inquiries into state violence (most obviously Bloody Sunday) has reinforced the demand for official investigations of particular republican atrocities: Omagh, Claudy, La Mon, Kingsmill. Those injured or bereaved in such notorious attacks have sometimes combined to exert political pressure, as when the La Mon victims denounced Ian Paisley for entering government with Sinn Féin.¹⁷ Northern Ireland also has its own 'disappeared': the painstaking identification and excavation of burial sites has so far uncovered the remains of ten of the seventeen individuals killed and secretly interred by republican paramilitaries.¹⁸ Finally, the Troubles created their own lieux de mémoire, most obviously the prisons of the Crumlin Road, Armagh and above all Long Kesh/the Maze, the subject of recurrent controversy since the 360-acre site was transferred to the Office of the First Minister and Deputy First Minister in 2002.¹⁹

The plan to construct a 'Peace-Building and Conflict Resolution Centre' alongside the retained buildings of the Maze prison has on several occasions produced a state of paralysis in the power-sharing executive. But an examination of newspapers during the first fifteen years since the Good Friday Agreement also reveals the continuous low-level antagonism caused by the 'memory wars' at a local level. The memorialisation of the Troubles dead began soon after the first IRA cease-fire.²⁰ A number of republican memorials were denounced by Unionists as offensive to those families who had suffered as a result of paramilitary violence. Perhaps the most dramatic case was the sculpture of a ten-foot masked INLA man in Derry City Cemetery, erected in honour of the Hunger-Strikers Michael Devine and Patsy O'Hara. One Protestant pensioner threatened to exhume the remains of his parents from the cemetery and have them reburied elsewhere so that he would not have to pass 'this disgusting statue of a terrorist' every time he visited their grave.²¹ The Equality Commission was asked to investigate complaints into two other Hunger Strike memorials in Dungiven and Dromore (Co. Tyrone), and a Celtic Cross dedicated to Colum Marks, an IRA man killed during a mortar bomb attack on Downpatrick RUC station.²² Both are located in public spaces. Depressingly, memorials on all sides – republicans, loyalists, British soldiers, the local security forces and even civilians – have been paint-bombed, defaced or smashed.²³

Like flags, murals, and painted kerbstones, memorials to the victims of the Northern Ireland conflict have become boundary markers in a society where communal segregation has increased rather than diminished since the ceasefires. The combination of voter polarisation with the relative stability of power-sharing has created a situation where cultural validation – and perhaps even the past itself – becomes a resource to be sliced up and allocated like social services, schools, broadcasting funds or housing. The result is a kind of territorialisation of memory, where mutually exclusive narratives of the conflict become embedded in Northern Ireland's tangled sectarian geography, and the task of establishing a principled basis for coexistence between the two communities is abandoned. The impossibility of reaching a common understanding of the conflict is encapsulated in the comments of the Democratic Unionist MP Jeffrey Donaldson, a key figure in discussions over the Conflict Resolution Centre intended for the vast Maze prison complex: Hand on my heart, if I'm being totally honest with you, I would have levelled the site, I just would have levelled the site. It's in my constituency. I would have put things on it that are about the new Northern Ireland not the old Northern Ireland. Look, if people want to retain an H-Block, or want to retain elements of the prison, fine, take it down, ship it off to West Belfast... You could give the Loyalists an H-Block and put it wherever they want to put it as well.²⁴

In spite of increasingly high levels of segregation, not all the inhabitants of the six counties live in ethnic enclaves, or want to, however; and even those who do still share the same state-run institutions (including the Equality Commission, the Parades Commission, the Victims Commission), the same public spaces and the same mass media, where they not unreasonably expect to have their values given some form of expression. So far it has proved impossible to devise a method of dealing with the past that commands widespread support. The past has been used to maintain ethnic solidarity in the divided towns of the North, and used in ways that reinforce hostility between the two communities. For those who hope that history – or memory – might help people of the North to overcome division the outlook is bleak.

The conflict about the conflict

Surveying rival explanations of the Troubles, O'Leary and McGarry have remarked that Northern Ireland is the subject of a 'meta-conflict', that is, 'a conflict about what the conflict is about'.²⁵ The antagonism between Unionists and Nationalists has variously been viewed as an ethnic conflict, a clash of cultures, an anti-colonial struggle, or a terrorist campaign; some think it is about national self-determination,

others see it as an expression of religious sectarianism. Concealed within the term 'Troubles', the rather homely euphemism used in everyday speech by large sections of both communities in Northern Ireland, there exists a complicated range of violent acts. It might be helpful to make a basic distinction between two patterns of conflict, which could be described as vertical and horizontal. The first or vertical pattern consists of the violence between republican insurgents and the security forces of the British state, and it accounts for many of the deaths that resulted from gun-battles, sniper attacks, assassinations and ambushes. Of the 2001 deaths attributable to republican paramilitaries, more than half were members of the security forces. The British Army meanwhile killed 117 republicans, and the principal objective of Operation Banner was to contain the IRA. Many observers viewed this conflict as a form of anti-colonial struggle, a continuation of the IRA campaign of 1919-21. This is also how the Provisionals portrayed their own 'armed struggle'. It is an interpretation embodied in the military terminology employed by republicans – of volunteers, OCs, active service units – and mimicked to some extent by Loyalist paramilitaries. Republican insurgents saw themselves as fighting a war against the British state. But the IRA campaign was activated and fuelled by street disturbances between Protestant and Catholic crowds. Patterns of residential segregation, rioting along territorial boundaries, and localised bursts of ethnic cleansing or 'burning out' were all re-current features of the history of Belfast since the 1830s.²⁶ The sporadic rumbling of this horizontal violence was present during those periods of Irish history which appeared to be relatively calm at the level of high politics. As early as 1813 a Twelfth of July parade in Belfast precipitated a riot resulting in two fatalities. Regular detonations followed in 1832, 1835, 1841, 1843, 1852, 1857, 1864, 1872, 1880, 1884, 1886, 1898, 1907, 1909, 1912, 1920-22 and 1935. Orange processions frequently provided the spark, but other precipitating factors included elections, the preaching of anti-papery sermons, a funeral procession, even on one occasion a Sunday school procession. In Derry, meanwhile, there were major disturbances in 1869 and 1883, while riots occurred in other towns such as Lisburn, Lurgan and Portadown. By the 1880s these riots had already assumed ritualised forms. In his vivid book, *THE TRUTH ABOUT ULSTER* (1914), the journalist F. Frankfort Moore re-called how he had learned 'the proper way to construct a street riot' in Portadown in 1869; in later decades he charted the adaptation of the street-fighter's technology as kidney shaped cobbles gave way to 'square setts' and eventually to riveter's nuts from the shipyard.²⁷

That the IRA should have been resurrected in the streets running between the Shankill and the Falls Road should not surprise us. West Belfast had provided the fault-lines of Victorian and Edwardian disturbances as it did in 1964 and 1969. The most recent scholarly account of the early Troubles documents fully the communal tensions fomented by John McKeague's Shankill Defence Association, frequently but inaccurately labelled 'Paisleyites' at the time. The stone-throwing and street-fighting orchestrated by McKeague escalated into full-scale rioting and the intimidation of Catholic families living in 'Protestant areas', creating the conditions in which 'forties men' like Billy McKee, Seamus Twomey and Joe Cahill were able to reactivate the IRA. If the loosely structured Protestant crowd was the initial aggressor, it was the armed interventions of this small group of veteran republicans at Unity Flats in August 1969 and at St Matthew's Church in June 1970 that propelled the violence onto a more lethal plane.²⁸

In their attempts to manage the Northern Ireland problem, London and Dublin have left the 'meta-conflict' to the natives. It is surely part of the historian's job, however, to test the concepts and categories employed by the protagonists, particularly where they depend on simplified or distorted representations of the past. Since the 1994 ceasefire our understanding of the character of political violence in Northern Ireland has been transformed by the statistical analysis carried out by Marie Smyth and the other researchers associated with the 'Cost of the Troubles Survey'.²⁹

Their findings have challenged common perceptions of perpetrators and victims in a manner that discomfits both Unionists and Republicans. Most notably, the examination of those killed reveals that Republican paramilitaries have been responsible for more Catholic deaths than the British army and the local security forces combined – in spite of the IRA's self-image as the defender of Nationalist communities. For most Unionists, meanwhile, Northern Ireland was a successful democratic polity in which ordinary people came under attack from terrorists. A subconscious tendency to equate the majority of ordinary, law-abiding people with the Protestant majority is perhaps evident in a detailed memorandum drawn up by FAIR (Families Acting for Innocent Relatives) in 2004: "We must make the point that [our case] was in fact a mirror image of the South African experience where instead of a majority being denied their rights and democratic expression by a minority we saw the opposite. Here a violent terrorist minority sought to overturn the democratic wish of the majority and impose their political will through force. In the process they abused the rights of all and murdered with abandon. To equate that to a struggle for liberation and freedom is simply to accept the propaganda of the terrorist".³⁰



IRISH LANDSCAPE, 1996
 Brian Maguire
 Acrylic on paper:
 43 3/4 x 30 3/4 inches
 (111 x 78 cm)

This link was explicitly recognised in the ‘Long March’ of victims groups and their supporters between Derry and Portadown in the summer of 1999, where the organisers’ aims slipped unthinkingly from drawing attention to the ‘forgotten victims’ of the conflict to the broader project of securing ‘parity of esteem for Protestant culture and heritage and for support for deprived unionist communities’.³¹ In fact the Catholic minority (roughly a third of the population in 1969 rising to roughly two-fifths by 1998) accounted for a majority of all those killed, 1,548 people. If we exclude those victims who were not from the six counties, and those whose religious background cannot be identified, we find that 59% were Catholic.

Table 1: Distribution of deaths by religion, 1966 - 1966

	Number	%
Catholic civilians	1,232	33.8
Protestant civilians	698	19.2
Security forces (NI)	509	14.0
British Army	503	13.9
Republicans	392	10.8
Loyalists	144	4.0
Other	158	4.3
Total	3,636	100

Source: David McKittrick, et al., *Lost Lives: the Stories of Men, Women and Children who died as a result of the Northern Ireland Troubles* (Edinburgh, 1999), p. 1477.

Table 2: Responsibility for deaths, 1966-1999

	Number	%
Republican paramilitaries	2,139	58.8
Loyalist paramilitaries	1,050	28.9
British Army	301	8.28
RUC	52	1.4
UDR	8	0.2
Other	80	2.2
Total	3,636	100 (rounded)

Source: *Lost Lives*, pp. 1475-6.

These statistics – particularly the finding that republican paramilitaries caused almost 60% of all deaths – are now frequently repeated in the public domain, where they are used to close down debate rather than open up the subject. They do not provide anything like a complete view of ‘the cost of the Troubles’. Much less research has been carried out on those injured during the conflict – around ten times the number of fatalities. To get some idea of the challenge it is worth considering a little-known survey on Post-Traumatic Stress Disorder carried out by four psychiatrists working at hospitals in and around Belfast in the 1980s. Examining the case records of 499 victims of political violence they found a high incidence of depression, sleep

disturbance and startle reactions; 46% had experienced marital disharmony and 4% had attempted suicide. The cases remind us of the wider impact of insurgency and civil disturbance, scarcely the subject of serious research. They include 90 targets of attempted assassination, 34 people injured in knee-cappings or other ‘punishment’ assaults; and 75 people held captive by paramilitaries, usually in their own houses. Almost 40% of the total had been witness to a violent incident in which the subject or someone close to them at risk; almost 30% had sustained injuries of various degrees of severity; 17% had seen someone being killed. Of the total group it was found that 23% had suffered PTSD.³²

It has been pointed out that these statistics also conceal significant local variations which have shaped perceptions of responsibility and blame.³³ In the working-class Nationalist areas of West and North Belfast we can find patterns of violence dominated by the ‘vertical’ struggle between the IRA and the security forces. In Ardoyne, for example, 99 local people died during the conflict, most of them Catholics. Although twenty-six residents were killed by the state forces, more often than not in disputed circumstances, no one has ever been arrested or questioned about these deaths. A further fifty residents were killed by loyalist paramilitaries, who in some cases at least benefited from collusion with the state forces. It is easy to see how many people in North Belfast came to regard the Troubles as an attempt by the British state to coerce and control the Nationalist people. Following four years of gathering oral histories, the Ardoyne Commemoration Project reached three conclusions:

1. *The British State forces acted with impunity.*
2. *There was collusion between the British State agencies and Unionist paramilitaries. This was structured and institutional.*
3. *The British Government was an armed, active participant in the conflict.*³⁴

In many rural areas east of the Bann, in contrast, members of the local security forces greatly outnumbered civilians or paramilitaries among those who lost their lives. In many cases family members witnessed the attacks, and sometimes were injured or killed. In the town of Dungannon, County Tyrone, republicans were responsible for two-thirds of all deaths, while the local security forces killed none. In the ‘bandit country’ of Newry and South Armagh republicans were responsible for 88% of all deaths, while 60% of those killed belonged to the state forces.³⁵ Particularly vulnerable where the members of the RUC and UDR, often part-timers, who lived on isolated farms in areas where republican sympathies were entrenched. Of forty police officers and UDR soldiers killed in County Armagh during the 1980s, more than a quarter were ambushed whilst off-duty – visiting a livestock market, driving to a darts match, doing the milk delivery round or other day jobs. In addition the IRA killed four civilians who were former members of the security forces and one retired Unionist politician – mostly in their homes. The nature of these attacks inevitably gave the impression family members were fair game: 17-year old Trevor Foster was blown up while parking his father’s car in the family’s garage, while Cecily Gibson was killed in a landmine alongside her husband, a senior judge.³⁶ Against a background of low-level harassment and sectarian tension republican violence in such areas was interpreted as a struggle to drive out the Protestants.

The most contentious element in the meta-conflict has been the role of the Provisional IRA. It should be immediately obvious that divisions over the IRA’s campaign cannot be completely divorced from differences over the existence of Northern Ireland itself. Republicans were able to claim during the 1970s and 1980s that they could not join the democratic process because there was no authentically democratic process while partition remained. Sinn Fein’s position is now constrained, however, by its participation in constitutional structures which do not provide any compelling reasons for thinking that a united Ireland is significantly closer than

it was twenty or thirty years ago. Republicans have been unable to reverse the partition of Ireland, to undo the basic legal and constitutional framework of Northern Ireland, or even to have the criminal records of politically-motivated prisoners expunged. Increasingly, therefore, mainstream republicans justify their long war by reference to the brutality of the British Army and the complicity of British intelligence agencies in loyalist assassinations, as opposed to the mere fact of British rule itself. For the most part the London and Dublin governments have tolerated this rewriting of the republican past in the interests of peace. Many people have been bewildered or angered by the latitude allowed to former paramilitaries. Michael Gallagher, whose son Aidan was one of the twenty-nine civilians killed in the Omagh bomb on 15 August 1998, has complained that 'the word "terrorist" seems to have been removed from the dictionary that we used too often in Northern Ireland over the past 35 years'.³⁷

Republicans are perfectly aware that they never enjoyed the active support of most the Nationalists they claimed to represent. But the self-image of the IRA volunteer as a soldier of the people is nevertheless rooted in experience. The Provisionals derived their mandate from the networks of sympathisers who gave them intelligence, shelter and food and who supported their protest within the prisons.³⁸ Their morale was further sustained by the fact that many of those Nationalists who rejected the violence nevertheless 'felt they could identify with the hurt and anger that was generating it'.³⁹ It is impossible to quantify levels of popular backing for the IRA and very difficult to interpret what little evidence there is. John Hume's principled denunciations of violence were consistent and in the circumstances courageous.⁴⁰ In the 1984 European elections Sinn Féin ran a high-profile candidate, Danny Morrison, who received 13.3% of first preference votes as compared to Hume's 22.1%. This was perhaps as the closest thing we have to a Nationalist poll on the relative attractions of moral and physical force. Research carried out in 1978 found that 65.8% of Catholics approved, to various degrees, with the statement that 'The IRA are basically a bunch of criminals and murderers' (table 3). Even Sinn Féin voters were divided on the use of armed struggle, with more than a fifth of those sampled in a MORI poll conducted in 1984 opposing the pursuit of political change by physical force (see table 4).

Table 3: Attitudes towards paramilitary violence (1978)

'The IRA are basically patriots and idealists'

	Catholics %	Protestants %
Strongly disagree	18.8	45.8
Moderately disagree	19.9	13.0
Slightly disagree	14.9	6.5
Slightly agree	21.8	11.6
Moderately agree	15.7	9.2
Strongly agree	8.8	13.9

'The IRA are basically a bunch of criminals and murderers'

	Catholics %	Protestants %
Strongly disagree	11.8	2.1
Moderately disagree	9.6	1.9
Slightly disagree	12.9	3.8
Slightly agree	21.2	5.0
Moderately agree	21.2	13.0
Strongly agree	23.4	74.2

Source: E. Moxon Browne, *The Water and the Fish: Public Opinion and the Provisional IRA in Northern Ireland*, *Studies in Conflict & Terrorism*, vol. 5, no. 1-2 (1981), pp. 41-72.

Table 4: Nationalist attitudes to political violence (1984)

How strongly do you agree or disagree that the use of violence can sometimes be justified to bring about political change?

	Sinn Féin (%)	SDLP (%)
Agree	70	7
Neither	7	8
Disagree	22	81
Don't know/no opinion	1	4

Moxon Browne, *Alienation: The Case of Catholics in Northern Ireland*, p. 84.

Perhaps we can conclude that the IRA campaign enjoyed the active or passive support of somewhere between a third and two-fifths of Nationalists. All serious scholarship stresses that the momentum of the Provisionals' campaign in Belfast was closely related to the aggression of the security forces, and in particular of the British Army.⁴¹ Even in strongly Nationalist areas of Belfast, however, attitudes were not static. In 1972-73 the sociologist Frank Burton found that around a third of the Catholics of Ardoyne were consistently pro-IRA with the local priests leading the critique of militant republicanism. In between these poles, the majority of residents tilted back and forwards, depending largely on the behaviour of the British soldiers (house searches, verbal abuse, physical violence and humiliation). Many local Catholics complained that the Provisionals, far from acting as defenders of their districts, were cynically using the local population as a shield, manipulating children and adolescents. There was some ill-feeling too about punishment shootings and beatings inflicted on residents. On the other hand Burton emphasised that the Provisionals took care not to overstep the boundaries of tolerable behaviour: 'If the movement persistently violated community norms, doors would stop opening, billets would be harder to get, informing would rise and their isolation would increase.'⁴² Even in Ardoyne, ambivalence was probably more common than absolute positions on the morality of physical force.

Northern Ireland in transition

In the Good Friday Agreement itself the importance of grappling with the legacy of violence was clearly recognised, but reconciliation was hastily subordinated to more urgent political priorities. The Northern Irish political settlement is based on a variety of consociational government, creating institutions which work around the entrenched antagonisms of the two main communities rather than attempting to overcome them.⁴³ Its most distinguished theorist is Brendan O'Leary, who has memorably described the accommodation in Northern Ireland as 'a bargain derived from mutually conflicting hopes about its likely long-run outcome.'⁴⁴ These mutually conflicting hopes could be sustained because the external forces in London and Dublin who have driven the peace process forward have no desire to impose an official version of the past on the region's inhabitants.

The devolved structures created in 1998 constitute a repudiation of the simple majority-rule model of government which had been discredited under the old Stormont regime. By institutionalising cross-community consensus as the basis of decision-making, however, the Agreement also inadvertently institutionalised the communal division deplored by so many of the individuals and groups who actively tried to make Northern Ireland a more equal, tolerant and peaceful society.⁴⁵ Members of the Legislative Assembly are required to register as Unionist, Nationalist or 'other'. Executive power is exercised by a duumvirate appointed by parallel consent, that is, by the support of concurrent majorities in both the Unionist and Nationalist blocs. Other key decisions are reached by a 'weighted' majority procedure, that is, by 60% of assembly members including 40% in each of the communal blocs. Ministerial positions are then allocated according to the d'Hondt rule, with parties

nominating ministers in proportion to their strength in the assembly. The resuscitated Stormont government reflects an entrenched stalemate rather than the hope of conflict resolution.

The obvious drawback is that political stability derives from the hard bargaining of the political elites rather than any broader societal shift in attitudes. A stark demonstration of this situation can be derived from results in the first elections to the legislative assembly, held in June 1998. The adoption of the single transferable vote system created the welcome possibility that moderates on either side might transfer their lower-order preferences across the divide in an attempt to protect the Agreement against the extremes. But the habits of communal solidarity proved resilient, with most voters transferring predominantly within their own ethno-national bloc.

The available evidence suggests that a relatively small number of SDLP votes (17%) and 'Yes' Unionist votes (13%) were cast in support of each other's candidates. By contrast, 41% of SDLP transfers went to Sinn Féin, with 56% of Sinn Féin lower-preference votes going to the SDLP. The pattern on the Unionist side is even more revealing. The largest beneficiaries of transferred votes from the pro-agreement Unionists – candidates, that is, backing David Trimble – were in fact 'No' Unionists, including the DUP (31%). Although the DUP fought the election on a belligerent 'No' platform, their bitter personal attacks on Trimble for caving in to 'IRA/Sinn Féin' did not prevent 44% of their lower-preference votes – by far the largest single category – going to Trimble's 'Yes men'.⁴⁶ Even during this brief honeymoon period, the traditional determination of the Northern Irish voter to keep out 'the other side' remained decisive.

Whereas all Nationalists elected to the Legislative Assembly in June 1998 were supporters of the peace process, the Unionists were split down the middle. What needs to be emphasised, however, is that divisions within Unionism were not caused by unhappiness with the constitutional arrangements agreed on Good Friday – power-sharing plus cross-border bodies. The institutional links between North and South which absorbed so much attention in the all-party negotiations before Good Friday have since been viewed with remarkable indifference by Unionists and Republicans alike. In 1998, for first time, the vast majority of Irish people, North and South, effectively recognised the partition of Ireland – albeit in a new, pluralist form. Sinn Féin ministers in the devolved executive engaged in an increasingly token opposition to the Union, as when Conor Murphy advised his Civil Service staff to refer to Northern Ireland as 'the North' or simply 'here'.⁴⁷ Every single act of the assembly, Unionists point out, is an act of the Crown – a judgement shared by dissident republicans. Instead, Protestant alienation was overwhelmingly focused on the early release of paramilitary prisoners, the reform of the RUC, and the refusal of the IRA to decommission its weapons.

The importance of guns was not merely symbolic. The existence of Northern Ireland had always been closely linked to its security forces – and to some extent had actually grown out of them. But prisoners, policing and decommissioning were issues with fundamental implications for the clashing historical narratives cherished by Unionists and republicans. By refusing to engage convincingly in the decommissioning process between 1998 and 2005 the republican movement made it impossible for David Trimble to survive as Unionist leader. Reluctance to hand over its weapons also kept Sinn Féin at the centre of the peace process and left the SDLP struggling on the sidelines. This was not a risk-free strategy. Polls showed that Catholics were split over the early release of prisoners, with a third in favour, another third opposed and the remaining third somewhere in between. More than half of all Catholics surveyed believed that decommissioning should take place before the release of politically motivated prisoners (57%) and before the admission to government of parties with paramilitary links (53%).⁴⁸ But as decommissioning became the rallying cry of the Unionist parties – and, indeed, the key area in which the DUP sought to outbid

the Trimble's moderates – it increasingly appeared to Nationalists that the real obstacle to peace was not so much the failure of the IRA to destroy its weapons as old fashioned Unionist intransigence.⁴⁹

The Good Friday Agreement has therefore brought the political class together in a workable form of devolved government; to some extent, indeed, it has helped to create a political class which did not exist twenty or twenty-five years ago. In doing so, it defied the expectations of many of Northern Ireland's most experienced commentators, including some of its most accomplished historians.⁵⁰ But it rests upon one central, constructive ambiguity. The question of the perceived legitimacy of the IRA's campaign is still bitterly divisive, often cutting through Nationalist communities as well as exacerbating hostility between Nationalists and Unionists. This question was left unresolved by the 1998 agreement, which provided for the early release of politically-motivated prisoners, but also required committed parties to renounce the use or threat of physical force for political purposes. As Sinn Féin has entered the political mainstream, so too has the term 'IRA volunteer', once strictly avoided in the media, and the grouping together of the security forces and paramilitary organisations as 'ex-combatants'.

The core principles of consociational democracy provide that executive power should be shared across the two communities, that each community enjoys a measure of autonomy, particularly in cultural matters, that each benefits proportionally from public resources and each possesses the right of veto over major changes. It is very difficult to see how this kind of logic can be applied to the profoundly moral challenges of 'dealing with the past'. Consociationalism has proved capable of managing the Northern Ireland conflict, but it has done nothing to resolve the conflict-about-the-conflict.

To illustrate the point we only have to recall the complete failure to find an agreed definition of the 'victims' of the Troubles. When the executive was unable to agree on the appointment of a victims commissioner at the beginning of 2008, the decision was taken instead to appoint four, rather in the spirit of the d'Hondt mechanism. They were Bertha McDougal, whose husband, a reserve police officer, was shot dead by the INLA in 1981; Patricia McBride, whose brother Tony was killed in a shoot-out with the SAS near the Fermanagh border in 1984; the peace activist Brendan McAllister, director of Mediation Northern Ireland, and Mike Nesbitt, a former television news presenter who would go on to become leader of the Ulster Unionist Party. It was an admirably balanced team, representing both the shades of opinion in the region and the multi-faceted nature of the conflict. But a press release describing McBride's brother as an 'IRA volunteer' who was 'killed on active service' instantly alienated Unionists, forcing the DUP to harden its position on 'dealing with the past'.⁵¹ As the party's spokesman for victims put it: 'There has to be some moral line that you create here, because if you don't create that moral line what you say to future generations is that, well actually it's okay to go out and kill people, it's okay to engage in criminal and terrorist activity because eventually you'll be almost absolved of it, and you yourself are a victim.'⁵²

The trouble with the truth

Official attempts to deal with the legacy of the conflict began with the appointment in October 1997 of Sir Kenneth Bloomfield as victims commissioner, a new post with a controversial future, as we have seen. Bloomfield had previously been head of the Northern Ireland Civil Service and Governor of BBC Northern Ireland. His approach reflected the more liberal, cosmopolitan strand of Unionism that Jennifer Todd has called the 'Ulster-British' tradition.⁵³ Perhaps predictably, Bloomfield's report *We Will Remember Them* (1998) displeased some of the most vocal elements within both Unionism and nationalism. The political context for the report was the anger caused by the phased release of paramilitary prisoners envisaged in the Good Friday Agreement, hence perhaps Bloomfield's conclusion that 'victims

must, at barest minimum, be as well served as former prisoners in terms of their rehabilitation, future employment, etc', and his recommendation that those killed or injured in the service of the community – that is, the security forces – should receive special consideration.⁵⁴ This was not enough to satisfy some of the Unionist victims organisations, but Bloomfield's relatively brief consideration of those killed by the security forces also led to accusations that 'a hierarchy of victimhood' was being constructed: over the next decade Bloomfield was repeatedly attacked by organizations such as Relatives for Justice who lobbied for inquiries into state violence, with an increasing emphasis on allegations of collusion between the security forces and the loyalist paramilitaries.

Bloomfield's vision of a Northern Ireland Memorial Building, set in 'a peaceful location, amidst beautifully-landscaped gardens', inspired partly by the Hadassah Medical Centre in Jerusalem, with its 'extraordinary Chagall windows', implied a level of decorum rather at odds with the unfolding debate on victimhood.⁵⁵ The various options he considered – a memorial, an annual Reconciliation Day, a truth recovery process – were subsequently explored in a series of extensive consultation exercises and reports carried out by the Healing through Remembering project (2002), the Northern Ireland Affairs committee of the House of Commons (2005) and the Consultative Group on the Past (2009) chaired by Robin Eames and Denis Bradley. The creativity, sensitivity and sheer hard work involved in these investigations provides a stark contrast with the masterful inactivity of the politicians. The Eames-Bradley team, in particular, crafted plans for a series of interlocking mechanisms to deal with sectarianism, the review of 'historical cases', a victim-centred mode of information recovery and 'thematic' inquiries into collusion and paramilitary activity. Months of painstaking research and reflection were nullified when the Consultative Group's recommendation that relatives of those killed during the conflict – paramilitaries included – should receive a recognition payment of £12,000 was leaked to the press.⁵⁶

In the absence of state-driven projects, the memorialisation of the dead has proceeded in the partisan and piecemeal manner described earlier. Rather than bringing together the two communities on the basis of their shared experience of loss, commemoration has reinforced the convoluted sectarian geography of the North, adding new refinements to its enclaves, interface areas and borderlands. Even the most appalling civilian losses – such as the Omagh bombing of 1998 – cannot be remembered without objections.⁵⁷ Although the numbers of paramilitaries who lost their lives is far outweighed by the British Army (c. 400), the RUC (c. 300) and the UDR (c. 200), the State security forces have mourned their dead largely in closed spaces. There are exceptions such as the memorial windows to the RUC and the UDR in Belfast City Hall; but the RUC George Cross Gardens, inside the headquarters of the Police Service of Northern Ireland, can only be visited by prior arrangement, while British Army memorials are sited within barracks. Individual officers have been commemorated privately, on plaques in churches or Orange Halls, or on Orange banners: in Clogherny Parish Church, near Omagh, 17 members of the security forces and three civilians are named in a Roll of Honour.⁵⁸

While the British government naturally seeks to protect the reputation of its political institutions and armed forces it is neutral in the struggle between Unionists and Nationalists across the water. British governments have seldom expressed any commitment to foster a British identity in Northern Ireland.⁵⁹ During the peace process Ulster Unionists discovered that they could still obstruct the removal of Northern Ireland from the United Kingdom, but they could not prevent the United Kingdom, as an ideological or cultural force, being incrementally removed from Northern Ireland.⁶⁰ The bitter disagreements over republican memorials, mentioned earlier, are exacerbated by the demotion of the symbols of Britishness, particularly west of the Bann, where the political and demographic retreat of Union-

ism has been most marked.⁶¹ Nationalists now occupy public spaces which Unionists had monopolized under Stormont. Derry's Guildhall Square, once the preserve of the city's Unionist establishment, provided the stage for the dramatic broadcast of David Cameron's apology to the Bloody Sunday families. Even in Stormont buildings, the greatest monument to Unionist power, it is now possible to celebrate the life of IRA martyr Mairéad Farrell as an inspiration for contemporary Irish women.⁶²

Proposals for a truth recovery process have encountered the same obstacles, above all the difficult question of how to treat victims, like Mairéad Farrell, who have themselves been perpetrators of violence.⁶³ At one end of the spectrum are those like FAIR, who believe that the only appropriate way to deal with the past is through the British criminal justice system. A number of the submissions made to Healing Through Remembering rejected talk of truth and reconciliation in language that implied entrenched hostility to the entire peace process and the compromises it required, including one recommendation that the best way to remember the victims of the conflict would be to build more jails.⁶⁴ A much broader section of opinion, mostly but not entirely Unionist, expressed fears that a truth process would be exploited by Republicans to rehearse the familiar justifications for armed struggle, and to 'condemn so-called British imperialism as the root cause of everything that is wrong with Northern Ireland society'.⁶⁵ For these groups and individuals, it was vital that the remembrance of victims of the Troubles should exclude those who were killed whilst engaged in acts of terrorism, and should focus on the 'innocent' people 'who had no choices in their lives'.⁶⁶

At the other end of the spectrum are the Nationalist lobbying groups such as Relatives for Justice, the Eolas Project Group, the Ardoyne Community Project and Firinne, who have sought to expose the brutality and unaccountability of the state security forces. For these organizations British criminal justice is not the solution but a large part of the problem. The following two statements, taken from memoranda drawn up for the Northern Ireland Affairs committee in 2004, make the point forcefully:⁶⁷

MEMORIAL, 1998
 Brian Maguire
 Acrylic on canvas:
 105 7/8 x 166 7/8 inches
 (269 x 424 cm)



The British Parliament justified torture in Castlereagh and other police interrogation centres as referenced in various UN reports. They justified British soldiers murdering men, women and children on our streets. And worse still soldiers who murdered our loved ones were retained as serving soldiers within the ranks of the British Army. Their legislation facilitated daily harassment, house raids, physical and verbal abuse. [Relatives for Justice and the New Lodge Six].

It is important to note that a de facto amnesty has existed for the actions of the security forces since 1969. On the few occasions where soldiers have been convicted of murder for instance they have been granted early release from life sentences and allowed to rejoin the armed forces. At present two soldiers convicted of murder, Guardsmen Wright and Fisher, are serving soldiers. One has been promoted. Mrs Thatcher's claim that 'murder is murder is murder' has not been reflected in the actions of various governments to wrongdoing by the security forces. [Pat Finucane Centre].

Matters would be simple if one or both of these views was manifestly absurd, but they are held by substantial numbers of people and accurately reflect the complex realities of the situation. Between these two polarised positions, what is most striking is the sheer diversity of responses to the problem of dealing with the past. The 108 submissions collected by Healing Through Remembering range from lengthy disquisitions complete with citations of Bourdieu or Derrida, to the brief declaration that loyalist and republican paramilitaries deserved to 'Rot in Hell'.⁶⁸ Many of the clergy of all denominations have viewed both the Northern Ireland problem and its solution within a Christian framework in which constitutional preferences and national allegiances are muted or set aside. One of the most memorable statements came from a Presbyterian elder, who described how he used a marked-up copy of *Lost Lives* to pray every day for the victims of the Troubles.⁶⁹ Indeed spiritual commitments are clearly vital to some of the most prominent figures associated with Healing Through Remembering. Christian perspectives on forgiveness and reconciliation increasingly overlap with the psychological language of pain, closure, trauma and acknowledgement employed by a significant number of respondents, also generally free from overt political allegiances.

An extensive survey carried out in 2004 found that just over 40% of respondents believed that a truth recovery process would help the people of Northern Ireland to come to terms with the past, although Unionists were notably more sceptical than Nationalists. When given the statement, 'you wouldn't necessarily get the truth from a truth commission', however, a resounding 83% agreed.⁷⁰ Analysis of the South African experience reinforces the view that the truths uttered to truth commissions are likely to be selective, and that in many cases the tactical release of information rather than full disclosure is the likely result. In South Africa 'powerful groups and organisations have determined their own acceptable levels of truth through negotiation'.⁷¹ The investigation of human rights violations was inevitably subordinated to political considerations: Chief Buthelezi's refusal to participate was tolerated, for example, by those anxious not to endanger the fragile relationship between the ANC and the Inkatha Freedom Party. The TRC abandoned attempts to obtain documents from the South African Defence Force, and the records of the Directorate of Special Tasks, the branch of Military Intelligence at the centre of the 'dirty war' in Angola, Mozambique, Lesotho and Zimbabwe, appear to have been shredded. Access to the ANC's own records was also severely limited.⁷²

It is hard to imagine that truth commissioners meeting in (say) Armagh might be able to compel American citizens to give evidence about the gunrunning operations which were vital to creating the Provisional IRA, or former MI5 operatives to reveal details of the agents they handled, or members of paramilitary punishment squads to describe how they inflicted lacerations and bone fractures

on thousands of teenagers with metal bars, baseball bats with nails driven through them, hammers, knives, axes, concrete blocks and handguns.⁷³ Members of loyalist groups are acutely aware that they never received the levels of communal support enjoyed by their republican counterparts, and have been particularly anxious about proposals for South-African style truth hearings: Children today will probably find it difficult to imagine the threats and fears that inspired their fathers to take up arms. Once their fathers became involved in the 'dirty war' a certain hardening often took place, which will be difficult to understand unless one has been in the same situation and political context.⁷⁴

Is it actually helpful, anyhow, to imagine that loyalist assassins are really capable of knowing the truth about their own motivations? What might it mean for individual republicans to give a true account of the deaths and injuries for which they accept responsibility? Even those who are not practiced politicians must have mentally arranged and rearranged their experiences in the light of their political commitments, which have often evolved over time. Presumably the men and women who joined paramilitary organisations share with the rest of us the subconscious tendency to construct self-serving truths that enable us to live comfortably with the choices we have made.

The most compelling argument in favour of a truth recovery process is the palpable need of the bereaved to find out what happened to their relatives. Reading *Ways of Dealing with Northern Ireland's Past*, one encounters again the range of human responses to physical injury and emotional pain. Here are three female voices from the report. The first is Barbara Deane, a mathematics teacher who sustained multiple injuries in a bomb blast on Belfast's Ormeau Road in 1971, which resulted in the amputation of her right leg, 1,000 stitches and plastic surgery to her mouth and jaw.

I had my hand on the red skirt when I became aware of a commotion behind me and turned to see a man with a gun. He put something down next to the wall beside the police station and I realised it was a bomb since it was lit. Calmly I asked him how long we had got – up until then there had been 20 minutes warning. He answered '20 seconds from when it was lit'. My memory is that I tried to marshal the others on the ground floor and as I emerged (last of them). I saw the police emerge and I went to towards them to direct them after the man. I hesitated then, because he was heading round the corner to where mother was sitting in the car. If I had dashed in the other direction I might have got away as some others did. As I turned he was firing at them from the corner but I must have been looking down the barrel of his gun because I saw the intense light coming from it and thought 'Oh that is where the lost energy goes' – we had been doing sums in A-level maths about this. Afterwards someone told me that he had shot my ear almost off.

I personally would have no problems with an amnesty but I know that some of the wider groups in the community might not feel like that. I just go on living; that is thrown you see. I would not let them win by making me bitter.⁷⁵

The second is an Armagh social worker who, like a surprising number of people, was made a victim of the Troubles more than once. In August 1969 her father was shot dead by the B Specials, one of the very first to die. Twenty-one years later she was injured in a land-mine explosion which killed three policemen and a nun on the outskirts of Armagh. One of the IRA bombers, released under the terms of the Good Friday Agreement, had returned to live in the town and now saluted her in the street.

He knows me personally, this man who had served 10 years for four murders and one attempted murder. For me, I would like at some stage to get in a room with him, sit down beside him and talk to him. I would like that to be facilitated in a way that would make it easy for me and make it equally easy for him. I do not want any apology from him but I would like him to hear my story and the im-

pact that it has made on me and to hear, unlike the stories he has been told that he did not do me any harm, but I went on to live my life, have a nice home, have a nice job, have a nice car and a nice family, what he has put me and all my family through. For me he is a victim in that sense in that he does not really know what it has done to me. He sees it from his side. I would like to hear what his story is. I do not want an apology from him but I would like to hear his story.⁷⁶

Finally, 'Witness C' is the mother of a thirty-four year old man shot dead in 1999, when Northern Ireland was supposed to be at peace. He was the target of a random sectarian attack carried out by a loyalist group calling themselves the Red Hand Defenders.

We are very lost people. We are here today now talking to you but we are very lost people. We are like a book you take off the shelf and dust us and take us out now and again and it makes everybody feel good and we have coffee or we have a meal and it is all very nice and we go away and we do not hear a thing. I really want to know what is going to come out of this... I reared my child to be a moderate and so when it came to my door I could not understand because I taught my children not to hate. As we were saying earlier on, only when it comes to your door do you understand. I said to an MP, 'When your daughter or son walks down a road and somebody shoots him in the back of the head then you can tell me you understand'. I just think we are used. There are a lot of people that you do not hear about. There are a lot of Catholics who are not Sinn Féin supporters here. We are just ordinary people and you never hear our voices; you do not hear our voices.⁷⁷

Ways of dealing with Northern Ireland's past shows how a truth commission might help to recover the experiences of ordinary people who found themselves in very extraordinary circumstances after August 1969. It reveals how many individuals sought to maintain a moral space in which the pressures of communal solidarity could be weighed against other commitments. The same can be said for the numerous 'storytelling' projects and workshops which have set out to encourage and record testimonies from individuals and groups who have suffered in the conflict.⁷⁸ Its advocates suggest that storytelling has a 'levelling effect': although we might disagree with narrator's political viewpoint we can nevertheless 'recognise and appreciate the human experiences of loss, trauma, disappointment, hope and triumph'.⁷⁹

This kind of latitude is probably an unrealistic aspiration for many of those damaged by the Troubles. Two academics from Queen's University who recorded the experiences of border Protestants in 2004-5 have described unforgettably the emotional intensity of storytelling, in this case concerning harrowing experiences of IRA attacks. Listening to the story of one man, shot seven times with an Armalite automatic rifle in his home, and now partially paralysed, they were confronted by two local women who asked: 'Are you going to tell the truth? Do you know that this is a story of innocent victims murdered by butchers?'⁸⁰ The members of the Ardoyne Community Project equated 'storytelling' with fiction, preferring to published their oral histories as *Ardoyne: The Untold Truth* (2002); the 'truth' in this case was 'very much bound up with a sense of bearing witness' and consciously opposed to what the residents viewed as the 'hierarchy of victimhood' established by Bloomfield.⁸¹ Nevertheless, the accumulation of individual testimonies is already helping historians to appreciate further the complexity of violence in Northern Ireland and the multi-dimensional nature of the conflict. In time it may also help us to understand that the inhabitants of Northern Ireland do not all come neatly stacked in two opposing piles labelled 'perpetrators' and 'victims', but that many played more than one role in the conflict still widely known as the Troubles.

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1 Neil Jarman, *Material Conflicts: Parades and Visual Displays in Northern Ireland* (Oxford, 1997), p. 119. This figure is for 1995, when there were 2581 loyalist and 302 republican parades; the remainder included St Patrick's Day parades, May Day parades, but also events organised by the Boys Brigade and the Salvation Army. The population was then 1.6 million.

2 See Eric P. Kaufmann, *The Orange Order: A Contemporary Northern Irish History* (Oxford, 2007), chs. 6-7.

3 Henry Patterson and Eric Kaufmann, *Unionism and Orangeism in Northern Ireland since 1945: The Decline of the Loyal Family* (Manchester, 2007).

4 Up until his death, David Fitzpatrick had been working on a major study of Orangeism. In the absence of his completed work, the work of David W. Miller remains essential. See 'The Armagh Troubles, 1784-95', in Samuel Clark and James S. Donnelly, Jr (ed.), *Irish Peasants: Violence and Political Unrest, 1780-1914* (Matheson, WI, 1983), pp. 155-91; *Queen's Rebels: Ulster Loyalism in Historical Perspective* (Dublin, 1978). See also Frank Wright, *Two Lands on One Soil: Ulster Politics before Home Rule* (Dublin, 1996). On the social and cultural functions of Orangeism see Dominic Bryan, *Orange Parades* (2000) and Desmond Bell, *Acts of Union: Youth Culture and Sectarianism in Northern Ireland* (Basingstoke, 1990); also relevant is A. D. Buckley, 'The Chosen Few: Biblical Texts in the Symbolism of an Ulster Secret Society', *Irish Review*, no. 1 (1986), pp. 31-40.

5 Jonathan Tonge and Jocelyn A.J. Evans, 'Faultlines in Unionism: Division and Dissent within the Ulster Unionist Council', *Irish Political Studies*, 16/1 (2001), pp. 111-31.

6 Surprisingly, the commemorative culture of Northern republicanism – as distinct from Irish nationalism more generally – has attracted few scholars. See Margaret O'Callaghan, 'From Casement Park to Toomebridge: The Commemoration of the Easter Rising of 1916 in Northern Ireland in 1966 in Political Context', in Margaret O'Callaghan and Mary Daly (eds.), *1916 in 1966: Commemorating the Easter Rising* (Dublin, 2007), pp. 86-147; John Mulqueen and Jim Smyth, "'The Che Guevara of the IRA': The Legend of 'Big Joe' McCann', *History Ireland*, 18/1 (Jan./Feb. 2010), pp. 46-47.

7 These examples are taken from An Phoblacht, 18 August and 9 September 2011, the period when the first version of this essay was written. They also contain articles on the Pat Finucane campaign and the 30th anniversary of the Hunger Strikes.

8 Malachi O'Doherty, *The Trouble with Guns: Republican Strategy and the Provisional IRA* (Belfast, 1998), p. 22.

9 'Parties unite to honour memory of shot IRA chief', *Irish News* 14 April 1997

10 Graham Dawson, *Making Peace with the Past? Memory, Trauma and the Irish Troubles* (Manchester, 2007), pp. 160, 183. See also Brian Conway, *Commemoration and Bloody Sunday: Pathways of Memory* (Basingstoke, 2010).

11 Graham Dawson, 'Trauma, Place and the Politics of Memory: Bloody Sunday, Derry, 1972-2004', *History Workshop Journal*, 59 (2005) 151-178.

12 Henry McDonald, *Gunsmoke and Mirrors: How Sinn Féin Dressed up Defeat as Victory* (Dublin, 2008).

13 For the most recent example, see <http://sluggerrotoole.com/2013/07/31/republicancastledegr-parade-theinsensitivityof-theimpotent/>.

14 See Ian McBride, 'Memory and National Identity in Modern Ireland', in idem (ed.), *History and Memory in Modern Ireland* (Cambridge, 2001), pp. 1-42.

15 Graham Dawson, *Making Peace with the Past? Memory, Trauma and the Irish Troubles* (Manchester, 2007).

16 See, for example, Statement of the Police Ombudsman for Northern Ireland on her Investigation into the Circumstances Surrounding the Death of Raymond McCord Junior and other Related Matters (Belfast, OPONI, 2007).

17 'La Mon victims lash out at power-sharing', *News Letter*, 28 Jan. 2008. Michelle Williamson, whose parents were killed in the Shankill bomb of 1993, has actively campaigned to have

the statutory definition of a 'victim' redefined to exclude those engaged in acts of terrorism.

18 See www.thedisappearedni.co.uk.

19 See, for example, 'Coiste proposes museum for Long Kesh', *An Phoblacht*, 12 June 2003; 'Raze it to the ground', *Belfast Telegraph*, 27 April 2004; 'Interpreting and Developing Contested Sites', *Coiste.com*, 8/1 (Jan.-April 2006); 'Long Kesh: Preserved site will tell story of those held there', *An Phoblacht*, 26 Jan. 2006; 'Shared vision for Long Kesh site', *An Phoblacht*, 2 Nov. 2006; 'Historical status of Long Kesh must be maintained', *An Phoblacht*, 12 July 2007; 'Victims oppose Euro funding for Maze site', *News Letter*, 28 Dec. 2010; 'Maze "shrine" row in assembly', *News Letter*, 26 Nov. 2011. See also Brian Graham and Sara McDowell, 'Meaning in the Maze: The Heritage of Long Kesh', *Cultural Geographies*, 14:3, (2007), pp.343-368. There are other, less well-known lieux de mémoire, including the restored First Presbyterian Church, Derry, a regular target of sectarian violence during the last 40 years. Indeed the entire walled city and the Bogside constitutes one complex site of memory.

20 See 'Memorial to black taxi dead unveiled', *Anderstown News*, 15 Feb. 1997; 'Plaque unveiled in honour of Fian', *An Phoblacht*, 18 April 1996; 'Harvey memorial unveiled', *An Phoblacht*, 23 Jan. 1997; 'New memorial to Strabane volunteer', *An Phoblacht*, 14 Aug. 1997.

21 'Pensioner's anger over terrorist memorial', *Belfast Telegraph*, 3 March 2000; 'Anger over terror statue in graveyard', *Belfast Telegraph*, 2 March 2000; and for other examples, 'Unionist anger at memorial to IRA murderer', *Irish News*, 2 Oct. 1998; 'IRA memorial to be erected on peaceline', *News Letter*, 3 Feb. 2009.

22 The debate over the Marks monument can be followed in 'Row over tribute to shot IRA man', *Irish News*, 22 Feb. 2000; 'Graves group to care for IRA statue', *Belfast Telegraph*, 22 June 2000; 'War of words on "IRA plaque"', *Irish News*, 8 Nov. 2000; 'Memorial is "sending out wrong message"', *Irish News*, 17 Sept. 2001; 'Marks memorial is unveiled', *Irish News*, 2 April, 2002. For a similar case in Fermanagh, see 'Unionist anger at memorial to IRA murderer', *Irish News*, 2 Oct. 1998.

23 'Monument for dead IRA men vandalised', *Irish News*, 21 October 1998; 'Headstone stolen from an IRA grave', *Irish News*, 30 June 2000; 'IRA memorial demolished by sledgehammer attack in town', *Belfast Telegraph*, 20 November 2001. Other vandalized monuments include a memorial to the eight Protestant workmen killed by the IRA at Teebane crossroads in 1992 ('Teebane memorial reinstated following attack', *Tyrone Courier*, 6 Nov. 1996), a granite memorial to two UDR men killed in an IRA landmine in 1980 ('Shattered memories', *Belfast Telegraph*, 15 Nov. 1996; a monument to the fifteen Catholic civilians killed by a UVF bomb in McGurk's bar, 1971 ('Memorial to bar bomb victims is vandalised', *Belfast Telegraph*, 11 June 2002), and the memorial to the eight British soldiers killed near Ballygawley roundabout in 1988 ('Anger as arsonists attack memorial', *Belfast Telegraph*, 27 Aug. 2002). Finally, loyalist factions have defaced each other's memorial, as when a mural tribute to Billy Wright on the Shankill estate was defaced, apparently by UVF supporters: 'UDP fury at mural attack', *Belfast Telegraph*, 17 April 2000.

24 Interview with author, Westminster, 8 Dec. 2010.

25 John McGarry and Brendan O'Leary, *Explaining Northern Ireland: Broken Images* (Oxford, 1995), p. 1.

26 S. E. Baker, 'Orange and Green: Belfast, 1832-1912', in H. J. Dyos and M. Wolff (eds.), *The Victorian City: Images and Realities* (2 vols., London, 1973), ii. 789-814; Mark Doyle, *Fighting like the Devil for the Sake of God: Protestants, Catholics, and the Origins of Violence in Victorian Belfast* (Manchester, 2009); A. C. Hepburn, 'The Impact of Ethnic Violence: the Belfast Riots of 1936', in idem, *A Place Apart: Studies in the History of Catholic Belfast 1850-1950* (Belfast, 1996), pp. 174-202.

27 F. Frankfort Moore, *The Truth about Ulster* (London, 1914), pp. 16, 22, 25, 45

28 Simon Prince and Geoffrey Warner, *Belfast and Derry in Revolt: A New History of the Start of the Troubles* (Dublin, 2012), chs. 6 and 9, quotation from p. 208.

29 Marie-Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland's Troubles: The Human Costs* (London, 1999)

30 House of Commons Northern Ireland Affairs Committee, *Ways of Dealing with Northern Ireland's Past: Interim Report - Victims and Survivors* (London, 2005), II, Ev. 180.

31 Andrew Finlay, 'Defeatism and Northern Protestant "Identity"', *Global Review of Ethnopolitics*, 1/2 (Dec. 2001), p. 17.

32 G C Loughrey, P Bell, M Kee, R J Roddy and P S Curran, 'Post-Traumatic Stress Disorder and Civil Violence in Northern Ireland', *British Journal of Psychiatry*, 153 (1988), pp. 554-560. Cases of PTSD have also been reported among both former prisoners and the targets of paramilitary punishment squads.

33 The next two paragraphs are indebted to Mike Morrissey and Marie Smyth, *Northern Ireland after the Good Friday Agreement: Victims, Grievance and Blame* (London, 2002), ch. 2.

34 H.C., *Ways of Dealing with the Past*, II, Ev 46.

35 Fay, Morrissey and Smyth, *Human Costs*, p. 175.

36 *Lost Lives*, nos. 2385, 2834.

37 HC, *Ways of Dealing with Northern Ireland's Past*, II, Ev 185.

38 Interview with Patrick Magee, King's College London, 27 October 2010.

39 Malachi O'Doherty, *The Trouble with Guns: Republican Strategy and the Provisional IRA* (Belfast, 1998), p. 86.

40 For examples see P. J. McLoughlin, '...it's a United Ireland or Nothing? John Hume and the Idea of Irish Unity, 1964-72', *Irish Political Studies*, 21/2 (2006), pp. 169-70

41 English, *Armed Struggle* (Oxford, 2003), p. 140.

42 Frank Burton, *The Politics of Legitimacy in a Belfast Community* (London, 1978), ch. 3; quotation on p. 109.

43 See, for example, John McGarry and Brendan O'Leary, 'Consociational Theory, Northern Ireland's Conflict, and its Agreement', in *Government and Opposition*, 41/1 (2006), pp. 43-63 and 41/2 (2006), pp. 249-77. Consociationalism is not the only component in the Good Friday Agreement. It also builds upon the efforts of the British government since the 1980s to redistribute economic power and cultural esteem more evenly between the two communities. In the long term this social engineering may have more important consequences than the constitutional arrangements of 1998.

44 Brendan O'Leary, 'The Nature of the Agreement', in John McGarry and Brendan O'Leary, *The Northern Ireland Conflict: Consociational Engagements* (Oxford, 2004), p. 263.

45 Robin Wilson, 'From Violence to intolerance: Ethno-Nationalism and the Crowding out of Civic Life', in Christopher Farrington (ed.), *Global Change, Civil Society and the Northern Ireland Peace Process: Implementing the Political Settlement* (Basingstoke, 2008), pp. 199-213.

46 Geoffrey Evans and Brendan O'Leary, 'Northern Irish Voters and the British-Irish Agreement: Foundations of a Stable Consociational Settlement?', *Political Quarterly*, 71/1 (Jan.-Mar. 2000), pp. 89-90.

47 Kevin Bean, *The New Politics of Sinn Féin* (Liverpool, 2007), p. 174.

48 The corresponding figures for Protestants were 84% and 88%: Evans and O'Leary, 'Northern Irish Voters and the British-Irish Agreement', p. 93, table 14.

49 David Mitchell, 'Sticking to their Guns? The Politics of Arms Decommissioning in Northern Ireland, 1998-2007', *Contemporary British History*, 24/3 (2010), 341-61.

50 Richard English, 'Challenging Peace', *Fortnight*, 362 (June 1997).

51 'Victim's daughter in legal challenge to commissioners', *News Letter*, 26 Feb. 2008; "'Volunteer' row rocks Victims' Commission', *News Letter*, 30 Jan. 2008

52 Interview with author, Westminster, 8 December 2010.

53 See her influential 'Two Traditions in Unionist Political Culture', *Irish Political Studies*, 2 (1987), pp. 1-26.

54 *We will Remember them: Report of the Northern Ireland Victims Commissioner*, Sir Kenneth Bloomfield KCB (Belfast, 1998), 3.3, 8.1.

55 *Ibid.*, 7.13-18.

56 For Unionist reactions see the extended coverage in *News Letter*, 26, 27, 28, 30 Jan., and 2, 7, 24, 26, 28 Feb. 2009; for the cross-community Wave Trauma Centre see *Wave Newsletter*, Feb. 2009. Eames's defence of the recognition payment is in 'We have listened to all sides - Eames', *News Letter*, 28 Jan. 2009.

57 See, for example, 'War of words over Omagh memorial', *News Letter*, 19 Sept. 2007; 'Omagh memorial wording is agreed', *News Letter*, 7 March 2008.

58 'Crossgar murder victim remembered by plaque at his place of worship', *Down Recorder*, 22 Nov. 1995; 'IRA victims remembered', *News Letter*, 19 April 1996; 'Dromore fire bomb victims remembered', *Orange Standard*, May 1996; 'Troubles Memorial', *Belfast Telegraph*, 27 Oct. 1997 (for Clogherny); 'Banner painting "fitting tribute to murdered soldier"', *News Letter*, 3 Feb. 2009; 'Order pays tribute to Troubles victims', *News Letter*, 22 Sept. 2010.

59 Indeed it is arguable that this reticence dates back to the Act of Union. See Peter Mandler, 'Nation and Power in the Liberal State: Britain c. 1800-1914', in Len Scales and Oliver Zimmer (eds.), *Power and the Nation in European History* (Cambridge, 2005), pp. 354-69.

60 I am paraphrasing John Lloyd's well-known remark, made during his interview with John Reid: *New Statesman*, 26 Nov. 2001.

61 One of the more creative was the greening of up to 50 Royal Mail postboxes in County Tyrone by members of Ógra Shinn Féin. 'Anger as republicans paint postboxes green',

62 'Fury over tribute to terrorist', *News Letter*, 23 Feb. 2008; 'Republican women celebrated in Stormont', *An Phoblacht*, 13 March 2008.

63 Few republicans will accept Christopher Andrew's account of the Gibraltar incident, which dismisses accusations that Farrell, McCann and Savage were the targets of a shoot-to-kill operation. But his conclusion that the IRA bombing mission, executed successfully, would have caused many civilian as well as military casualties, seems entirely reasonable. See Christopher Andrew, *The Defence of the Realm: The Authorised History of MI5* (London, 2005), p. 744.

64 I am grateful to Kate Turner and the staff of Healing Through Remembering, Belfast, for permitting me to consult anonymised versions of the 108 submissions summarised in their 2002 report. Quotation from S039. See also S005

65 *The Report of the Healing Through Remembering Project*, June 2002 (Belfast, 2002), p. 30.

66 HTR, Belfast, 2002 submissions S024, S073. One victim of a loyalist assassination attempt (S062) commented, 'I know that we have to move forward but not at the cost of giving all to the Perpetrators and fuck all to Victims' [bold in original]. *News Letter*, 31 July 2010.

67 *Ways of Dealing with Northern Ireland's Past*, II, Ev 45.

68 HTR, Belfast, 2002 submissions: S082, 086, 020.

69 *Ibid.*, S085.

70 Patricia Lundy and Mark McGovern, 'Attitudes towards a Truth Commission for Northern Ireland in Relation to Party Political Affiliation', *Irish Political Studies*, 22/3 (2007), pp. 328-9.

71 Elizabeth Stanley, 'Evaluating the Truth and Reconciliation Commission', *Journal of Modern African Studies*, 39/3 (2001), p. 531.

72 Janet Cherry, John David and Madeleine Fullard, 'Researching the "Truth": A View from Inside the Truth and Reconciliation Commission', Deborah Posel and Graeme Simpson (eds.), *Commissioning the Past: Understanding*

South Africa's Truth and Reconciliation Commission (Johannesburg, 2002), pp. 17-36.

73 Between 1970 and 2000 more than 4,000 people were hospitalised as a result of vigilante attacks and around 115 people killed. Even by Belfast standards their experiences make for horrific reading. Andrew Silke, 'The Impact of Paramilitary Vigilantism on Victims and Communities in Northern Ireland', *International Journal of Human Rights* 4/1 (2000), pp. 1-24.

74 HC, *Ways of Dealing with Northern Ireland's Past*, II, Ev 4.

75 H.C., *Ways of Dealing with the Past*, II, Ev. 107. I have silently corrected the misspelling of the Ulster Scots word 'thrown', meaning obstinate.

76 H.C., *Ways of Dealing with the Past*, II, Ev. 75.

77 H.C., *Ways of Dealing with the Past*, II, Ev. 112.

78 There have been at least 33 of these: *Healing Through Remembering, 'Storytelling' Audit: An Audit of Personal Story, Narrative and Testimony Initiatives Related to the Conflict in and about Northern Ireland* (Belfast, 2005, updated 2007).

79 'Memorandum submitted by David Bolton', HC, *Ways of Dealing with Northern Ireland's Past*, II, Ev. 257.

80 Hastings Donnan and Kirk Simpson, 'Silence and Violence among Northern Ireland Border Protestants', *Ethnos*, 72:1 (2007), p. 18.

81 Patricia Lundy and Mark McGovern, 'Participation, Truth and Partiality: Participatory Action Research, Community-based Truth-telling and Post-conflict Transition in Northern Ireland', *Sociology*, 40/1 (2006), p. 83.



IRISH POLITICAL HISTORY, 1997
Brian Maguire
Acrylic on canvas:
70% x 55% inches
(180 x 142 cm)



A Case Study of Mistaken Identity - featuring 'John Wayne' and 'Comanche'

by James Kinchin White

At around a quarter to eight on the morning of 15 April 1972, John and Gerard Conway were, as they usually were on a Saturday morning, walking along Whiterock Road to catch a bus to McQuillan Street on the Falls Road, where they had a fruit and vegetable stall. Within an hour, both brothers would be in the Royal Victoria Hospital with gunshot wounds. The initial reporting of the incident in the local media indicated that the two victims 'were known to the security forces' and that they had opened fire on a British Army patrol. The Irish News quoted an 'RUC spokesman' who said there were no military or police personnel involved in the shooting and that it was more likely to have been an example of "IRA justice". Several witnesses described the three gunmen, who were all dressed in casual civilian clothes, had arrived in a civilian vehicle and appeared friendly with uniformed soldiers who turned up later.

Nevertheless, the brothers were never questioned by the RUC, never charged with any offence and never subjected to any forensic examination of their person or their clothing. The incident became just another mysterious shooting during an increasingly violent time in Belfast. There was no record of it having been investigated any further until journalists took an interest several years later. One of the first accounts in the mainstream media appeared in 1989 when it was claimed that the SAS, operating as the Military Reconnaissance Force (MRF) had 'claimed their first victims' by shooting the Conway brothers at the junction of Whiterock and Ballymurphy Road. This account included a statement by a former soldier taken from a magazine published by the Troops Out movement in 1978, in which he claimed to have been involved in the incident and 'scored several hits' himself.

Another version of the incident, published in 1990, also claimed an SAS/MRF link with the shooting. Again, it made reference to the same 1978 Troops Out publication, but with an expanded quotation from the same former soldier. This extract includes the claim that he was a member of the MRF, but adds that the Army's version of events was untrue – both of the men shot were innocent, victims of mistaken identity. By 2003 yet another account appears to confirm MRF involvement which, the author explains, accounts for why the 'gunmen' remained at the scene to speak to the uniformed soldiers – "the MRF unit remained on the scene because they thought they had successfully taken down two of the most important IRA men in Belfast."

Several features are common to all three of the above accounts of the shooting. First, they mention the names of the two men that the attackers thought they were shooting at – namely, James Bryson and Thomas Tolan. Second, they agreed that two innocent men were shot. Third, they all believed the shooting was the work of the MRF. As we shall see, on the first count, this is relatively accurate. On the second count, they are entirely correct. But, on the third count, they are completely wrong.

James Emerson Bryson, described by the army as 'a notorious and fearsome gunman', had joined the IRA following the introduction of internment in August 1971. He was suspected of having been involved in numerous shooting incidents, including the killing of Lance Corporal Peter Sime of the Kings Own Scottish Borderers (KOSB) on 7 April 1972. The soldier had been on duty in a sandbagged emplacement at the entrance to the Henry Taggart Hall in Ballymurphy. He left the post to speak to a bus driver reporting an attack on his vehicle. The driver said he heard a shot, and the soldier took a few steps before collapsing. The KOSB were deployed to West Belfast on a four-month emergency tour from December 1971 to April 1972. Battalion HQ was located at the Springfield Road joint army/RUC

barracks. C Company manned the Henry Taggart Hall and Vere Foster School in Ballymurphy. Elements of the battalion's reconnaissance platoon were split into small units, about 6 men, and attached to each of the companies for the purpose of gathering intelligence. They were colloquially known as the 'Squirrels'.

The commander of 'C' Company's 'Squirrels' was Lieutenant Julian Antony Ball, who had enlisted in the army in 1961 as a private in the Parachute Regiment. Later he served with the SAS. During his first three years, he served in Cyprus with the United Nations peacekeeping force. He later served in Borneo, South Arabia and Northern Ireland. On the first day of his tour in Belfast, Lieutenant Ball arrested Jim Bryson and sent him to the prison ship HMS Maidstone – a former submarine supply vessel moored in Belfast Lough. But along with six other detainees, Bryson attained legendary status within the Republican movement when the 'magnificent seven' escaped in January 1972.

In a scene reminiscent of a Second World War POW movie, the men camouflaged themselves with boot polish. They covered themselves in butter to insulate themselves from the cold waters they would have to swim through if they were to make it to freedom. Cutting through a steel bar in a porthole, they clambered down the ship's steel cable... the magnificent seven were out.

However, Bryson's escape proved more consequential than mere folklore might imply. At 7.30 on the morning of 15 April, an RUC police officer driving to work contacted the Ops Room at the Henry Taggart Hall to say he thought he had spotted Jim Bryson standing near the flats in Norglen Parade. Despite having been on a search operation at quarter to two that morning, Lieutenant Ball was up again early. Perhaps the potential to apprehend a 'notorious gunman' suspected of killing a British soldier was reason enough for him to follow up on this report. Taking his platoon sergeant (Sergeant JS) and a driver (Private TS), the three men, all in civilian clothes, proceeded to the Turf Lodge area in an unmarked vehicle to search for the wanted man. The patrol informed the Ops Room that they had found nothing in Norglen Parade nor in nearby Ballymurphy. But on exiting the estate onto the Whiterock Road, the man they thought was Bryson was reportedly seen in the company of another man.

Ball, nicknamed 'John Wayne' by local residents, Sergeant JS, similarly nicknamed 'Comanche' and Pte. TS, jumped from their car with Browning 9mm pistols in their hands. The NCO and driver gave chase to one of the men while Ball went after the man he thought was Bryson. The military police's report of the incident confirmed that the man chased by the NCO was Gerard Conway, who was shot and hit by two 9mm pistol rounds fired by Private. TS. The victim was taken to the hospital by a uniformed sub-unit called up in support.

Meanwhile, Lieutenant Ball reported he was shot at by 'Bryson' who fired '3-4 bullets' at him before tripping and dropping a 9mm Star pistol and two magazines, each containing three rounds of ammunition. The man they thought was Bryson, the report continues, 'was very fast, and escaped'. By 08.13, the Royal Military Police at the Royal Victoria Hospital established that the man shot by the driver was hit in both legs. A further military police report at around nine o'clock confirmed that a second man, suffering a gunshot wound to his hip, had been admitted to hospital. After some initial confusion, he was identified as John Conway, the brother of the man admitted earlier. At 10.50 on the morning of the shooting, the 39th brigade's operations room reported to army headquarters that John Conway was admitted to the hospital and that "he may be the chap they thought was Bryson".

Around lunchtime, the soldiers at Henry Taggart Hall received a telephone call from Lt. Col. Riddle, the KOSB's commanding officer based at Springfield Road RUC station. He had information that James Bryson, apparently in rude health, was reportedly driving around in a greyish Morris Marina. It follows that within 2-4 hours of the shootings, both the local army brigade and army headquarters

knew that the Conway brothers were probably victims of mistaken identity. The initial report sent by the plain-clothes patrol explicitly states that they identified and approached only two men – a fact repeated in the brigade report to headquarters. Nonetheless, over one month later, on 19 May 1972, a record of a meeting held at the Northern Ireland Office, reveals that: Soldiers do on occasion operate in plain clothes. These are, however, no “assassination squads” sent out in plain clothes to kill. An incident did occur on 15 April, in which two brothers named Conway when approached by soldiers in plain clothes, fired at them. The soldiers then returned fire and captured one of the Conway brothers. Lord Windlesham [at the NIO] has approved the disclosure of these facts, to dispel rumours that Army “assassination squads” are operating. [NIOM, 19 May 1972, para. 7, pp. 2-3]

The closed nature of the military reporting system was such that a contemporary understanding of a situation might diminish during a period when one historian has argued that “HQNI could mistake overly aggressive groups of soldiers for high-functioning units. As recently as 2013, it has been claimed that the shooting of the Conway brothers had been the work of the MRF (Mobile Reaction Force) – a covert organisation that operated in plain clothes and civilian-type cars between 1971 and 1973. It will be seen (below) that obfuscation about the identity and purpose of the MRF was officially sanctioned. When the Secretary of State for Northern Ireland, William Whitelaw, expressed his concern in August 1972 about the high number of ‘mystery’ shootings that began in Belfast in the spring of that year, he was assured by the Chief Constable of the RUC that all such events were ‘thoroughly investigated’. And yet neither Lord Windlesham nor any other government, military, or police official saw fit to state precisely who did shoot the Conway brothers. If they had, it would have done much to reassure all concerned that the event had nothing to do with the operations of a covert plain-clothes unit. Whatever the degree of diligence during initial inquiries into mystery shootings, concern continued about the actions of a plainclothes army unit. But the timing and wording of the information approved for disclosure by Lord Windlesham convinced many later observers that the incident was one of the first shootings by the MRF.

It may have been precisely because the event was known not to involve the MRF that disinformation was used to enhance the fog of war rather than inform the prime minister, parliament, or the media. Indeed, a general staff officer assigned to department MO4 of the Ministry of Defence had this to say: *‘Although the term MRF has been used in the Press, only two papers have got the name right, and the correctness of these newspapers’ reports has never been confirmed one way or the other by the Army. As far as the general policy of making an official comment on intelligence gathering and plainclothes operations is concerned, there seems to be a considerable advantage in maintaining as much confusion as possible.’* (MO 4 was the Ministry of Defence department responsible for military operations in Northern Ireland)

What then of the 1978 former soldier’s statement to the Troops Out movement? If the informant had, in fact, been the ‘gunman’ who claimed a ‘few hits’, then he was Pte TS, but TS was a soldier in C Company, 1 KOSB and could not have been in the MRF at the time. If, on the other hand, he was an MRF soldier, then he wasn’t involved in the shooting.

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Ciarán De Baroid, *Ballymurphy and the Irish War* (London: Pluto Press, 2000 – first published 1989) p. 08. See also: Raymond Murray, *The SAS in Ireland* (Dublin: Mercier Press, 1990) pp. 44-45.
TNA WO 305/4249, Headquarters 39th Infantry Brigade: Commanders Diary April 1972, Log Sheet 15 April 1972, p. 4, Serials 22 and 24.
Sunday Express, 16 Apr 1972. News of the World, 16 Apr 1972.
The Irish News, 17 Apr 1972. Ciarán De Baroid, Op. Cit.
Raymond Murray, Op. Cit. Martin Dillon, *The Trigger Men*

(Edinburgh: Mainstream Publishing, 2003), p54.
Ed Moloney and Bob Mitchell, *The Bryson Incident and the Provisional IRA*, (Politico, 2013) online at [www://politico.ie/politics/bryson-incident-and-provisional-ira](http://www.politico.ie/politics/bryson-incident-and-provisional-ira), accessed 12 Jan 2017.
TNA, WO 305/4249, HQ 39th Infantry Brigade Commanders Diary, April 1972, Log Sheet 15 Apr 72, Sheet 04, Serial 21
David McKittrick, Seamus Kelters, Brian Feeney, Chris Thornton and David McVea, *Lost Lives: The stories of the men, women, and children who died as a result of the Northern*

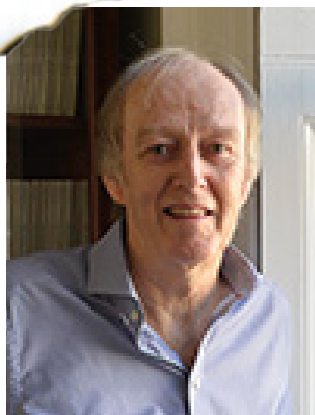
Troubles (Edinburgh: Mainstream Publishing, 2007).
TNA KOSB C1/1-31, *Borderers in Belfast, Newsletter of the 1st Battalion the Kings Own Scottish Borderers* (Belfast: 1972).
Dix Noonan Webb, Information included with an Auction lot of the medals of Lt. Col. J.A. ‘Tony’ Ball of the Sultan of Oman’s Special Force, 16 December 2003.
Special Forces Roll of Honour online at [www.specialforcesroh.com/showthread.php?4519-Ball-Julian-Antony-\(Tony\)](http://www.specialforcesroh.com/showthread.php?4519-Ball-Julian-Antony-(Tony))
Troubles Magazine, Issue 9 (Belfast: Glenravel Publications, 1972) p. 21.
An Phoblacht online at www.anphoblacht.com/contents/16314
TNA KOSB C1/15, C Company, 1 Kings Own Scottish Borderers, Watchkeeper Diary 28 Dec 71 to 24 Apr 72, p. 196.
Ibid. Ibid.
Ibid. Ibid.

TNA, WO 305/4249, Op. cit., Serials 22 and 27
TNA HQNI Commanders Diary XXXXXX
TNA KOSB C1/15, Op. Cit. p. 197

Edward Burke, Counter-Insurgency against ‘Kith and Kin’? The British Army in Northern Ireland, 1970–76, *The Journal of Imperial and Commonwealth History*, DOI: 0.1080/03086534.2015.1083215
PRONI CAB/9/G/27/6/4, Conclusions of Morning Meeting held at Stormont Castle on Tuesday 1 August 1972 at 10 am.
TNA, DEFE 19/969. Loose Minute, Enclosure 1 to A/BR/480/MO4, 23 May 1973. MOD response to IP Brief (note 10) signed by Col. F.M.K. Tuck, GSO1, MO4 (MO4 is the branch of the MOD dealing with Northern Ireland).



THE BOMBERS'
AESTHETIC, 1996
Brian Maguire
Acrylic on paper:
43 3/4 x 29 1/2 inches
(110 x 75 cm)



Paramilitary Terror and Human Rights Violations *by Liam Kennedy*

The agonising wait by a hospital bed for the family of Detective Chief Inspector John Caldwell of the PSNI continues. An easy target for dissident republicans, he was shot multiple times after a children's football training session near Omagh. Should he die from his wounds, he will join the roll-call of more than 300 police officers murdered during the course of the 'Troubles'. Should he live, he will join thousands of other officers who were severely injured or traumatised while seeking to preserve order within a deeply divided society.

There has been widespread condemnation of the shooting. But there is a privileged sliver of society in Northern Ireland that might, belatedly, find itself challenged by this outrage. This is the human rights sector in the North. The question some more conservative human rights advocates might consider is this: Did the attack on John Caldwell constitute a human rights offence?

Taking a step back in time: in 1991 Amnesty International found it necessary to identify non-state actors as perpetrators of human rights abuses. This was in response to atrocities committed by groups such as the Tamil Tigers in Sri Lanka and Sendero Luminoso (the Maoist Shining Path guerrillas) in Peru.

A few months later Peter Benenson, the founder of Amnesty, on a visit to Dublin and in the presence of President Mary Robinson, maintained that secret trials conducted by the IRA were 'both unjust and dishonourable' and that Amnesty would in future criticise the activities of 'non-governmental entities' such as the Provisional IRA and the loyalist UVF. Even more explicitly Benenson stated: *'Amnesty inevitably deploras the IRA's policy of killing and maiming those to whom it is opposed and, even more vehemently, innocent civilians.'*

We might take an even longer step back in time. The seminal moment in terms of codifying human rights thinking was the adoption by the United Nations of a Universal Declaration of Human Rights on 10 December 1948. The Universal Declaration did not limit the concept of human rights violations to actions taken by states. Its Preamble explained that the United Nations was setting out a list of human rights "to the end that every individual and every organ of society... shall strive... to promote respect for these rights... [and] secure their universal and effective recognition and observance".

The UN recognised the right to life as fundamental, as does Article 2 of the European Convention on Human Rights. This surely includes the right to life of John Caldwell. Or does it?

Despite the UN Declaration and the lead shown by Amnesty International more than three decades ago, the major human rights organisations in Northern Ireland have resolutely refused to bring murders, maimings, and so-called 'punishment' shootings carried out by the IRA, UVF, UDA and other smaller terrorist groups within the purview of human rights violations. But why the silence, at least so far as the public might notice?

Perhaps it was due to ignorance about developments in human rights thinking over time. If so, this would raise serious doubts about the nature of human rights education and research in the two northern universities. Since the Balkan wars of the 1990s international human rights law has expanded its reach into non-international armed conflicts. And as we know, non-state actors can now be prosecuted before the International Criminal Court for serious breaches of human rights such as genocide, torture and war crimes.

Or maybe the silence was down to an anti-state bias, which would raise questions about the impartiality of well established organisations such as the Committee on the Administration of Justice or the Pat Finucane Human Rights Centre. Or it might simply signify some provincial eccentricity.

The dangers of selectivity and silence should be obvious. For one thing, this stance serves to obscure the frequency and severity of human rights violations by non-state armed groups. Yet the frequency of deadly attacks on civilians by paramilitary organisations, not to mention wounding, maiming and bomb injuries, far outweighs unambiguous examples of unlawful killings by British (or Irish) state forces.

For whatever reason, the human rights discourse in Northern Ireland has been partial to the point of distortion. It is as if the abuses by non-state actors existed in a parallel universe while those by the state – undoubtedly there are egregious examples of which Bloody Sunday is the most notorious – are floodlit in court rooms in Derry, Belfast and elsewhere. More generally, this selectivity tends to skew understandings of the 'Troubles' and of contemporary society, particularly, one might imagine, for the rising generations who have had no direct experience of the conflict.

The failure to adopt a more holistic approach, in which violations by state agents and armed groups are integrated within a single human rights discourse, is troubling. Might we speak of *trahison des clercs*, or the treason of intellectuals and community leaders, among them prominent human rights advocates?

An artificially partitioned human rights agenda is not helpful, and may even give succour to 'patriots' who feel they've done a great day's work for Ireland by trying to murder an outstanding police officer near a town that has already borne more than its share of tragedy.

Liam Kennedy is Professor of History, Institute of Irish Studies, Queen's University Belfast. His most recent book is *Who was Responsible for the Troubles? The Northern Ireland Conflict* (McGill-Queen's, 2022)

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THE ROAD THROUGH THE FOREST
Brian Maguire



What would be an appropriate

Memorial Archive? *by Kathryn Johnson*

The question of building a memorial to victims of the Troubles which is acceptable to all sections of the community here is problematic. There is dissent from some on the definition of victims.

In addition, there are difficulties in the idea of a permanent memorial, engraved with the names of victims. Where would the name of Lennie Murphy (Ulster Volunteer Force paramilitary who led the Shankill Butcher gang, later murdered by the IRA on 16 November 1982), be situated? Clearly, Murphy was a paramilitary, but he was also a victim of terrorism. And if his name was placed either alphabetically or chronically, it would be placed beside Patrick Murphy (shot dead by the UVF, also on 16 November 1982).

I believe that an archive of the troubles should be housed at the Maze Long Kesh site, simply called the Memorial Archive, with the aim of ensuring that we may remember and interpret the past in order that we do not repeat its mistakes in the future. The Memorial Archive should be dedicated to all those who suffered during the troubles.

In addition to archiving the past, the main aim of the Archive would be to promote and facilitate truth recovery and reconciliation, as well as providing a focus for a common comprehensive history curriculum on dealing with the past for local schools, adult and community education, and to provide an international research centre.

In Northern Ireland we already have a facility which could provide the starting point for the Memorial Archive.

It is the security archive amassed by the Historic Enquiries Team (HET), set up by the PSNI to review troubles murders. All available evidence on the 3,268 troubles deaths that the HET is currently investigating is already held in a massive store near Lisburn. Besides police, army and MI5 files, the HET has collated press cuttings, the claims of paramilitary groups, the files of official investigations and over 3,000 books on the troubles.

This vast database contains material which, while perhaps not providing evidence that could stand up in court beyond reasonable doubt, could be the closest we may get to many of the unanswered questions of the troubles. It is the raw material of history.

In Germany, where Stasi records from the former communist state of East Germany were released post reunification, there has been a process of publication with some amendments to protect individuals from attack and preserve their right to life under article 2 of the European Convention of Human Rights. Individuals have a right to request records held about them and there has been a planned publication programme of items of general interest.

Such an archive here would need similar safeguards, including a process of sifting and assessment by an independent body. To get results, strict rules of official secrecy would have to be suspended, though some details might need to be withheld for a fixed time period to protect life. To command public confidence such a body would need real teeth and an international element.

A panel of historians, security experts and victims' representatives could go through this material with a view to publishing as much as possible in a coherent and non-judgemental narrative. They could have a remit to publish as full an account as possible, and to review any information withheld at regular intervals, say every five years, to see if the circumstances are right to release it.

While a repository of state papers would not carry a full account of all sides of the conflict, the panel's remit could be extended to cover the process of truth recovery through story telling. This could allow it to bring pressure on paramilitaries and individuals to co-operate, publicly indicating those who they believe hold vital information but have refused to co-operate. Not only would this enable them to name and

shame, refusal to co-operate could carry the same penalties as contempt of court.

I further suggest that the NI Executive should introduce a Bill in the Assembly to establish a new public holiday to mark European Day of Remembrance for the Victims of Terrorism on 11 March each year, with a public ceremony at the Memorial Archive. (After the Madrid train bombings on 11 March 2004, the European Commission proposed this date as a European Day of Remembrance for the Victims of Terrorism.)

Though it must be added that this could prove contentious and would probably be better put out to public consultation.

In addition to learning from the German experience, we also believe that there is much to be gained from studying the experience of the French victims' group, SOS Attentats, founded on January 24th 1986 by Françoise Rudetzki, who herself was a victim of a terrorist attack in Paris on December 23rd 1983.

SOS Attentats' achievements include:

- *A successful campaign to amend French legislation in relation to compensation;*
- *Establishing a Guarantee Fund to compensate victims, funded by a 3.30 euro levy on every home, private business and car insurance policy sold in France;*
- *Advising on medical and psychological assessment procedures;*
- *Successfully campaigning for tax relief and educational funding for victims.*

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DIVIS FLATS, 1986
Brian Maguire
Acrylic on canvas:
71 x 49 inches
(180.5 x 124.5 cm)



Brian Maguire - Artist

Brian Maguire (72) is an artist based in Dublin and Paris. He is represented by the Kerlin Gallery (Dublin) and the Christophe Gaillard Gallerie (Paris). His most recent show was *The Clock Winds Down* (2023) in the Kerlin Gallery, which focuses on the deforestation of the Amazon Rain Forest in Brazil. Brian travelled on the river in 2022. Another recent show was *North and South of the Border* (2022) in the Rhona Hoffman Gallery, Chicago, which deals with the deaths of immigrants in the Arizona desert and the murders and disappearances of Native Americans in Montana. Starting work as an artist in the late 1970s his paintings often included the violence taking place in Ireland. Where possible he has made work about events he was close to. From 1975 to 2010 he worked as a teacher in Portlaoise Prison, as well as every other prison in the South. In the North he worked in Long Kesh/The Maze, the Hybank Wood and Maghaberry prisons. He also carried out projects with Protestant Paramilitaries and, again separately, with Protestant communities in the border regions, and in East and West Belfast.

Contributors

Wilhelm Verwoerd is the grandson of former South African Prime Minister Hendrik Verwoerd, the main architect of apartheid. He rejected the racist regime and joined the ANC after studying in Holland and Oxford. He was a researcher in the Truth and Reconciliation Commission and subsequently worked with the Glencree Centre for Peace and Reconciliation on its Survivors and Former Combatants Programme between 2002 and 2011. Since 2019 he has been a senior researcher and facilitator at Studies in Historical Trauma and Transformation, Stellenbosch University.

Brice Dickson is Professor Emeritus of International and Comparative Law at Queen's University Belfast. He was former Chief Commissioner of the Northern Ireland Human Rights Commission from 1999 to 2005. His latest book is *The Irish Supreme Court: Historical and Comparative Perspectives* (OUP, 2019).

Cillian McGrattan lectures in Politics at Ulster University. He is the author of *Peacebuilding and the Politics of Trauma: Lessons from Northern Ireland* (Routledge, 2017) among other books and articles on Northern Ireland. He was awarded a PhD in 2008 and has previously taught at Swansea University and the University of the West of Scotland. He is a member of the Malone House Group.

Fidelma Ashe is a professor of politics at Ulster University and a member of the Transitional Justice Institute. She has published widely in the area of gender, sexuality and peacebuilding. Her most recent book *Gendering Conflict Transformation: New Themes and Old Problems in Northern Ireland Politics* was published by Routledge. She is currently working on gender equality and constitutional change on the Island of Ireland.

Mike Jennings is a graduate of the University of Galway. He worked for the IT&GWU/SIPTU before becoming General Secretary of the Irish Federation of University Teachers. He is currently Chair of TASC, the public education charity engaged in research and public outreach concerning inequality, democracy and climate justice.

Eamon Baker was born in Springtown Camp, Derry, in 1951. The family moved to Creggan in 1952 where he grew up and now lives. He has been involved in community work for many years beginning in Cork with the Simon Community in 1974. From 2009 until his retirement in 2022, he was training co-ordinator and manager of the small peace-making and peace-building organisation, Towards Understanding and Healing.



INSTALLATION IMAGE OF
THE CLOCK WINDS DOWN,
Kerlin Gallery 2023



Front cover: ROADSIDE ASSASSINATION, 1983/84

Brian Maguire

Acrylic on canvas: 68 $\frac{1}{8}$ × 74 $\frac{3}{8}$ inches (173 × 189.5 cm)

We thank Brian Maguire for the use of the images from his work documenting victims not alone of the Troubles but conflicts in other countries across the globe since the 1970s!