

Truth Recovery and Justice after Conflict

Managing violent pasts

Marie Breen Smyth

Routledge Studies in Peace and Conflict Resolution

Truth Recovery and Justice after Conflict

This book considers the problem of managing the unfinished business of a violent past in societies moving out of political violence. Truth Commissions are increasingly used to unearth the acts committed by the various protagonists and to acknowledge the suffering of their victims. This book uniquely focuses on the conditions which predispose – or prevent – embarkation on a truth recovery process, and the rationale for that process. There is, it argues, no magic moment of ‘readiness’ for truth recovery: the conditions are constructed by political ‘willingness’ rather than spontaneously occurring.

Much of the literature on Northern Ireland’s past provides historical analyses of the conflict – Republican, state or Loyalist violence – and is often (implicitly or explicitly) associated with one or other of the partisans in the conflict. This book focuses on the dynamic between the protagonists and how each of their positions, in this case on truth recovery, combine to produce the overall political status quo in Northern Ireland. As the society struggles to move forward, Marie Breen Smyth considers whether the entrenched positions of some, and the failure to understand the views of others, can be shifted by a societal revisiting and re-evaluation of the past.

Truth Recovery and Justice after Conflict arises from a decade’s writing and research with both victims and those close to the armed groups in Northern Ireland. It is also informed by the author’s work in South Africa, West Africa, Israel and the Occupied Palestinian Territories. It will be of great interest to students and researchers in politics, international relations, peace studies and law.

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**Routledge Studies in Peace and
Conflict Resolution**

Series Editors: Tom Woodhouse and Oliver Ramsbotham
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Routledge

Taylor & Francis Group

LONDON AND NEW YORK

First published 2007
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Simultaneously published in the USA and Canada
by Routledge
270 Madison Ave, New York, NY 10016

This edition published in the Taylor & Francis e-Library, 2007.

“To purchase your own copy of this or any of Taylor & Francis or Routledge’s collection of thousands of eBooks please go to www.eBookstore.tandf.co.uk.”

*Routledge is an imprint of the Taylor & Francis Group,
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British Library Cataloguing in Publication Data

A catalogue record for this book is available
from the British Library

Library of Congress Cataloging in Publication Data

Smyth, Marie, 1953–

Truth recovery and justice after conflict : managing violent pasts /
Marie Breen Smyth.

p. cm. – (Routledge studies in peace and conflict resolution)

Includes bibliographical references.

1. Truth commissions. 2. Truth commissions – Northern Ireland.
3. Peace-building. 4. Peace-building – Northern Ireland. I. Title.

JC580.S59 2007

303.6'9–dc22

2007014221

ISBN 0-203-93422-9 Master e-book ISBN

ISBN: 978-0-415-43398-3 (hbk)

ISBN: 978-0-203-93422-7 (ebk)

**In memory of my beloved husband
Alan Johnston Breen
16 February 1948–7 July 2005**

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Acknowledgements

Phillip Appleman, 'Waiting for the Fire' from *New and Selected Poems 1956–1996*. Copyright © 1997 by Phillip Appleman. Reprinted with the permission of the University of Arkansas Press, www.uapress.com. I also wish to acknowledge the help of my colleagues in *Healing Through Remembering* who provided me with invaluable opportunities to learn from them about truth recovery and its various dimensions, and without them this book would not have been written. Thanks also to my colleagues in the University of Wales, Aberystwyth, especially Professor Andrew Linklater who patiently read and commented on earlier drafts, to Professor Jenny Edkins for pointing me towards Levi, to Elaine Lowe who prepared the final manuscript and Dr Jeroen Gunning for collegial empathy. Patricia Campbell in Northern Ireland undertook some of the analysis and Mike Morrissey contributed his comments and usual incisive insights. In Pontrhydfendigaid, thanks to Sue, Alan and Beth Davies for their friendship and taking me for regular walks. The help and support of my parents, brothers, parents-in-law and sister and brother-in-law and my neighbours in Clady, my friends in Ireland, Wales, United States and South Africa was essential in these last years of illness and sudden widowhood. I owe special thanks to Gwyn Evans for his support, to Margaret Ames for her friendship and especially to Ken Sparks who made all the difference.

Abbreviations

ABCNY	Association of the Bar of the City of New York
APLA	Azanian People's Liberation Army, South Africa
AZAPO	Azanian People's Organisation, South Africa
CEH	Comisión de Esclarecimiento Histórico, the Guatemalan Truth Commission
CFNI	Community Foundation for Northern Ireland
CLMC	Combined Loyalist Military Command, Northern Ireland
Coiste na n-Iarchimi	A Republican ex-prisoners organisation in Northern Ireland (Ex-Prisoners' Committee)
DUP	Democratic Unionist Party
ECHR	European Court of Human Rights
EPIC	Ex-Prisoners' Interpretative Centre, UVF-aligned ex-prisoners' organisation in Northern Ireland
FACT	Families Achieving Change Together (victims group in Northern Ireland)
FAIR	Families Acting for Innocent Relatives (victims group based in Unionist community)
FEAR	Victims' group in the Unionist community in Northern Ireland
Firinne	(Truth) group of victims of state violence in Northern Ireland
HET	Historic Enquiries Team, police team dedicated to examining unresolved killings in Northern Ireland
HTR	Healing Through Remembering, a voluntary group concerned with managing Northern Ireland's past
INLA	Irish National Liberation Army
IRA	Irish Republican Army
LTTE	Liberation Tigers of Tamil Ealam
MK	Umkhonto We Sizwe (armed wing of the African National Congress, South Africa)
NIAC	Northern Ireland Affairs Committee, Westminster
NIHE	Northern Ireland Housing Executive, public housing authority
NIHRC	Northern Ireland Human Rights Commission
NILT	Northern Ireland Life and Times (a continuous social attitudes survey of Northern Ireland)

x *Abbreviations*

NIO	Northern Ireland Office
NIVA	Northern Ireland Veterans' Association (for ex-British soldiers)
RFJ	Relatives for Justice – victims' group in Northern Ireland's Nationalist community
RTL	Radio Télévision Libre des Mille Collines, radio station in Rwanda
SADF	South African Defence Force
SAVER/NAVER	Victims group based in North and South Armagh and Mid-Ulster, Northern Ireland
SDLP	Social Democratic and Labour Party, Northern Ireland
TRC	Truth and Reconciliation Commission, South Africa
UDA	Ulster Defence Association (Loyalist paramilitary group)
UDR	Ulster Defence Regiment (now defunct regiment of the British army, amalgamated in 1992 into the Royal Irish Rangers to form the Royal Irish Regiment)
UFF	Ulster Freedom Fighters, a sub-grouping within the UDA
UNHRC	United Nations Human Rights Committee
UUP	Ulster Unionist Party
UVF	Ulster Volunteer Force, Loyalist paramilitary group
VOICE	West Tyrone-based victims group in Northern Ireland
WAVE	A cross-community victims' group in Northern Ireland

1 Introduction

If we ever thought of the wreckage
of our unnatural acts,
we would never sleep again
without dreaming a rain of fire;
somewhere God is bargaining for Sodom,
a few good men could save the city; but
in that dirty corner of the mind
we call the soul
the only wash that purifies is tears,
and after all our body counts,
our rape, our mutilations,
nobody here is crying; people who would weep
at the death of a dog
stroll these unburned streets dry-eyed.
But forgetfulness will never walk
with innocence; we save our faces
at the risk of our lives, needing
the wisdom of our losses, the gift of despair,
or we could kill again.

Phillip Appleman¹

Much of the literature on transitional justice, whether located within the field of law or international relations, adopts a legal, retributive justice focus, and is often generated by lawyers. Increasingly, those interested in conflict resolution and peace-building, victimology and contemporary history, from outside the legal profession have become interested in the challenges and paradoxes presented by the management of the violent past of newly pacified regions. This book is an attempt to move beyond what is posited as that rather narrow legalistic framework, and to consider transitional justice in general and truth recovery in particular as contextualised not only in the world of victims and perpetrators, but also in the world of politicians, civil society actors, silent majorities and interested third parties. The project of this book is to move not only beyond rather thin conceptualisations of truth and justice in times of transition, and the perception

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of this as primarily or simply the concern of victims, perpetrators, their legal representatives and truth commissions towards a re-conceptualisation of truth and justice, but also beyond perceiving even victimhood and responsibility as matters not merely of elite agreement and negotiation, but of popular contestation and interest.

Even within the legal framework, an exclusive focus on retributive forms of justice with its emphasis on punitive outcomes, at the expense of more restorative forms which emphasise the establishment or restoration of relationship between the victim and victimiser is problematic. Arguably, the retributive form relies on the knowledge and expertise of elite legal authorities who define and determine the meanings, processes and outcomes of quests for truth and justice in the transition out of political violence. Similarly, human rights discourses, not only seem unable to establish in international and local law victims' formal rights to justice, and punishment of perpetrators or reparation, but also tend to favour punitive rather than restorative judgements for perpetrators, especially in the international domain. Together these attributes create conditions in which (re)negotiation of concepts such as truth and justice is restricted to a qualified (rather than an elite) community of victims, perpetrators, their proxies and legal representatives, leaving civil society, the media and other societal institutions in the role of bystanders and commentators, as if they did not have a substantial stake in such (re)negotiation.

This book is a preliminary attempt to imagine how truth and responsibility might be re-imagined in broader ways, within contexts where such redefinition is crucial to the creation and sustenance of a more secure and connected sense of societal solidarity, which supersedes, at least to some extent, the societal fractures of the past. These are societies in which citizens (and state agents) have killed and harmed each other systematically across fault-lines or ethnic, racial or national difference. The book is not only a scholarly work; it arises out of the attempt to apply such an imagination to the daily life of the author in a personal life conducted in Northern Ireland and South Africa.

The book leaves largely uninterrogated the idea of a 'peace process' which occurs periodically throughout. It is possible to see peace processes as entirely constructed by the imposition of certain frameworks of meaning on an armed conflict by powerful external and internal political actors. This imposition results in certain political events and developments being interpreted within the framework of a peace process and emphasising events which fit easily into such a frame, whilst sidelining events which provide evidence of moves away from peace. The asserted existence of a peace process is perhaps more evidence of active engagement of internal and external actors and the exertion of political will to find resolution and settlement, rather than any diminution of levels of hostility. Certainly, efforts will be directed at achieving cessations or at least reductions in levels of violence, but the existence or even resurgence of violence does not necessarily negate a peace process. Therefore it is argued that a peace process is primarily the framework of meaning applied to the situation, rather than any material alteration or empirical summary of the political conditions within the

conflict itself. That peace processes fail may well be as much a product of the waning strategic and other interests of powerful third parties, or their distraction from the management of the peace process by other more pressing political demands, as it is a product of the tractability or otherwise of the conflicts themselves.

This is, however, a subject for another day. In this book, the term peace process is used largely uncritically. Here the focus is more narrowly on certain aspects of those political conditions, specifically, truth, responsibility, victims, shame and prospects for building new societal solidarities.

The book arises out of writing and research with both victims and those close to the armed groups in Northern Ireland, and the author's participation there in Healing Through Remembering, a voluntary initiative concerned with formulating proposals on the management of Northern Ireland's past. The book is also informed by the author's work in South Africa, West Africa and Israel and the Occupied Palestinian Territories. Much of the literature on truth recovery is composed of edited works concerned with international comparative evaluations of the functions and outcomes of truth commissions and tribunals, or detailed consideration of particular processes, most popularly the South African Truth and Reconciliation Commission.

Since 1973, more than twenty truth commissions have been established in post-conflict societies, the majority of which have been comprehensive and state-sponsored. Other methods of managing the past, such as memorialisation, documentation, storytelling have been deployed largely operated by civil society organisations. These approaches, however, do not offer the official recognition afforded by a state-sponsored, official process. Such processes offer, *inter alia*, the possibility of reconstructing the history of conflict, and of drawing a line between the past and the future of the society. Yet there is often resistance to the establishment of state-sponsored truth recovery mechanisms. Factors such as a sense of collective guilt about the past have led to a bilateral agreement to avoid close inquiry into the past. Where no sense of collective responsibility has developed, resistance to any comprehensive inquiry into the past is to be expected.

The primary concern of the book is with the contribution that processes of truth recovery may make to the project of consolidating new societal solidarities after conflict is ended, rather than with the more narrow concerns with ending impunity, obtaining justice or prosecuting the guilty. Truth recovery is cast more broadly than the usual conceptualisation as a formal legal process with prosecutory dimensions. Here, we are concerned with the conditions which predispose or prevent embarkation on a truth recovery process and the rationale for that process. Using a detailed case study of Northern Ireland, the book argues that there is no magic moment of 'readiness' for truth recovery, but rather that the conditions are constructed rather than spontaneously occurring. The role of the state and the concept of political 'willingness' are placed at the centre of the analysis. This book takes as its focus the dynamic between the protagonists and how each of their positions, in this case on truth recovery, combine to produce the overall political status quo. As a society struggles to move forward, the book

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considers if the entrenched positions of some, and the failure of others to understand and recognise the positions of others can be shifted by a societal revisiting and re-evaluation of the past.

In Chapter 2, the book aims to examine the function of truth recovery in transitional societies, what claims are made for formal processes of truth recovery, and how might they act on societies in transition. It enumerates the main claims made for truth recovery in societies coming out of violence. This chapter reviews the purpose and expectations of truth recovery in societies coming out of political violence, in terms of their value to victims, their challenge to perpetrators and their potential contribution to putting the past to rest, to transforming antagonistic relationships and writing a more inclusive history of the conflict.

In Chapter 3, the book then moves on to consider the problems surrounding the notion of 'truth', and points to particular complexities in the definition of truth, and the conditions within violently divided societies in which truth is subsumed by cultures of organised or normalised lying. The chapter then examines the implication of this more complex conceptualisation for truth recovery.

The concept of shame is examined in Chapter 4, and the idea of shame as a regulating agent is discussed in the light of the work of Norbert Elias and Primo Levi's accounts of life in Auschwitz. The alteration brought about to patterns of shame during conditions of armed conflict is seen in the light of cultures of warrior honour, and their role in supporting political violence. The use of shame as a deterrent to violence and the development of shame as part of a 're-civilising process' in the post-conflict period is also examined.

The concept of victimhood is interrogated in Chapter 5, and simple dualistic definitions of victims and perpetrators are questioned, and a more complex conceptualisation of victimhood proposed. Common assumptions about the role of victims in post-conflict truth recovery are also critically examined.

The book then moves on to consider the issue of readiness of a society coming out of a conflict by considering a detailed case study of the Northern Ireland peace process. A brief background to the study is provided in Chapter 6, with a focus on developments since the Belfast Agreement. This chapter sets the context of contemporary political deadlock in Northern Ireland and the reasons for it, the waning of international interest and the failure to establish a devolved government. The patterns of violence and responsibility for violence during the conflict are set out, and a survey of the major unresolved grievances and puzzles of the past is provided.

In Chapter 7, a detailed analysis of the deliberations of the Northern Ireland Affairs Committee (NIAC) at Westminster, which was charged with the responsibility into inquiring into the feasibility of a truth recovery process for Northern Ireland is undertaken. The NIAC held a comprehensive inquiry into ways of dealing with Northern Ireland's past and heard a large volume of evidence from a range of sources before concluding that Northern Ireland was 'not ready' for truth recovery. The evidence not only provides a cross section of the range of opinion within Northern Ireland on the issue of truth recovery, but the manner of its evaluation by the committee affords insight into how the British government formed its view.

This chapter examines the evidence to the inquiry in some detail, and raises questions about the way the committee weighed the evidence and the basis for its conclusion that Northern Ireland was not ready for truth recovery. The chapter concludes by raising questions about the impartiality of this government committee's deliberations on the issue.

Chapter 8 considers the state of readiness of Northern Ireland for a truth recovery process in the light of the political impasse and considers the potential value of truth recovery in destabilising a deadlocked political status quo. An analysis of the resistance to truth recovery, and the disposition towards truth recovery of the various groupings of protagonists in Northern Ireland, Republicans, Loyalists and including the state is provided. The chapter also critiques the notion of 'readiness' for truth recovery and considers the official conclusion, that Northern Ireland is not ready for truth recovery. Using Zartman's concept of 'ripeness' (usually applied to armed conflicts amenable to transformation through negotiation), it is argued that 'readiness' cannot be judged except in hindsight, and the more useful concept of 'willingness' is advocated.

Chapter 9 examines the fears lying behind resistance to truth recovery, namely of destabilising the society. The initiation of truth recovery implies that the 'war is over' and reconciliation is a priority. The continuation of the 'war by other means' reinforces the respective protagonists' reliance on their bifurcated 'narratives' about the past, and ensures that the war continues. The potential impact of any truth recovery process on these narratives and on political stability is examined, in the context of the desirability of 'destabilising' the current deadlocked political status quo. The chapter also briefly considers the models of official truth recovery available and the chances of Northern Ireland embarking on an official truth recovery process, in the light of waning international attention and the lack of relatively disinterested third parties to champion such a process. The book draws conclusions about the potential impact of truth recovery on relationships within Northern Ireland, the stability of peace processes and the prospects for truth recovery and political progress.

2 The function of truth recovery in transitional societies

Truth commissions or official bodies of various kinds established to shed light on human rights abuses or violations of international law during a previous defined period of time have come to be regarded as part of the process of societal transitions out of political violence. A growing scholarship on the varieties, role, function and effectiveness of truth processes from 1974 onward (e.g. Hayner, 1994, 2001; Hamber, 1998; Barahona De Brito *et al.*, 2001; Biggar, 2001; Cairns and Roe, 2003) has pointed to the varieties of form, various functions and limitations of such initiatives. The wide variety of such bodies, and their diverse remits and levels of impact is knowledge available to those who consider the dilemmas associated with the challenge of managing the past.

Several lessons and principles about the operation of such bodies emerge from the literature. The need to examine comprehensively all aspects of the conflict, including the role of the state; the importance of independence and international involvement; the significance of state sponsorship; the dilemmas associated with providing incentives in the form of amnesties for perpetrators in return for their testimony thus pre-empting criminal proceedings; the quality and completeness of evidence; securing and maintaining cooperation from former parties to the conflict; the psychological impact of public truth processes on victims; methods of addressing corporate and institutional complicity and involvement in violations; and the role of truth processes in public education are all issues explored comparatively across a number of contexts.

The work of uncovering the past and providing a mechanism for listening to victims' voices in societies divided by and in the transition out of violent conflict can potentially fulfil a number of functions. These have been dealt with at greater length elsewhere¹ and will be dealt with only briefly here.

The potential for ending denial

Appleman's poem argues that 'forgetfulness will never walk with innocence; we save our faces at the risk of our lives, needing the wisdom of our losses, the gift of despair, or we could kill again...' The human consequences of conflict are depicted not only in the work of truth commissions, but in that of journalists, international humanitarian organisations, human rights organisations and in a

wide variety of creative endeavours. Truth recovery mechanisms, particularly state-sponsored attempts to comprehensively survey the damage done, can raise public consciousness, and focus on the human consequences which are not always prominent in public discourses, and certainly not during the period of conflict.

Normatively, various mechanisms, such as denial, stoicism, indifference, pleasure at the suffering of enemies and emotional numbing have emerged as methods of dealing with the ubiquitous violence of the past, and this compounded the effects of jingoism, censorship and propaganda to facilitate the toleration of violence. Processes such as denial serve a purpose during armed conflict, and facilitate psychological survival. Indeed, some, such as Cohen, argue that all societies are built on such denial (Cohen, 2001: p. 294). Denial and objectification of the 'enemy' are psychological devices universally deployed by armed groups and their civilian supporters to facilitate the practice of violence.

In peacetime, however, such devices are dangerous because of the role they can play in the facilitation of violence. The return to violence is a political risk alongside the risk of the proliferation of more domestic forms of violence during peace processes (Darby and McGinty, 2000).

Truth recovery mechanisms can potentially facilitate the initiation of processes characteristic of more-peaceful societies, processes that support the new peaceful dispensation. Elias' concept of 'the civilising process' may be of service here; Elias explicates the link between the processes of change in social relations and the change in the psychic structure through shifts in standards of behavioural expectations (etiquette) and the shift in behaviour towards higher levels of self-restraint. Elias described 'the continuous correspondence between the social structure and the structure of the personality'.² These 'civilising processes' are methods of ensuring that people can find ways of satisfying their basic needs without 'destroying, frustrating, demeaning or in other ways harming each other...' According to Elias, increased thresholds of shame and repugnance are the processes through which such behaviour regulation is achieved. The significance (and the potential value of) shame in the Northern Ireland context will be dealt with at length in Chapter 4.

Modernity, according to Elias,³ led to a shift in the view of the social universe, from the previous egocentric view to a perspective where people were able to see themselves 'from a distance' – as others saw them, achieving a more-detached view of themselves. Certainly, a public truth recovery process offers the opportunity for such perspectives of the conflict to be manifest and engaged with 'from a distance'.

Societies coming out of conflict could benefit from shifts in individual behaviour towards the new etiquette of a peaceful society. The ability to acknowledge aspects of the past without recourse to denial and, to feel compassion for fellow citizens and those who previously were considered to be enemies, are examples of this behavioural shift. The psychic landscape that facilitates killing and other forms of violence is one in which compassion, particularly compassion for our enemies, is largely absent. Yet this landscape does not automatically vanish when

the conflict ends. Rituals, rites of transition and formal processes such as truth commissions, inquiries, tribunals and public hearings create the conditions where old enmities, grievances associated with past acts, desires for revenge and perceptions of impunity can be revisited, aired, acknowledged and some of them resolved. Otherwise they are likely to remain embedded in the culture, maintaining the conditions of the societal volatility which makes it prone to outbreaks of violence and capable of regression into war.

Providing access to discourses of the ‘other’

In conflicted societies, even the most enterprising citizen who wishes to understand and learn about perspectives of the ‘other’ must usually overcome many obstacles. First, the *prima facie* risk – real or imagined – of relating directly to those who have been previously regarded as inherently untrustworthy and dangerous must be taken. Then the risk of ostracism by the home community must be faced, since re-negotiating the actual or imagined relationship with the ‘other’ depends not only on access to and engagement with that ‘other’ but also on the resilience to take risks in the home community. Yet in deeply divided societies, access to the ‘other’ and to particular conflict-related discourses and accounts is severely constrained by patterns of spatial and ideological segregation (see Shirlow and Murtagh, 2006).

Risk-takers play a key role in initiating and promoting departures from patterns of exclusionary interaction and dominant versions of truth. Officially promoted truth recovery mechanisms can open up sanctioned spaces for such departures, and play an important role in building complex, multi-dimensional perceptions of the ‘other’ by improving access to the ‘other’s’ perspectives and experiences. The human consequences of violence for ‘the other side’ may not be accessible to citizens, preventing even those open-minded enough to engage with such material the opportunity to do so. Ensuring the general accessibility of such discourses across societal divisions is a key function of a valid truth recovery process. Building on Elias’ notion of the ability to see oneself from a distance, increasing the ability to project oneself into the shoes of the ‘other’ and think from their point of view would be a valuable contribution to the process of building political stability. The public process of a truth recovery mechanism which carefully exposes the public to accounts of the experiences of the ‘other’ offers the potential for the development of empathy across the sectarian divide. In the absence of a stable monopoly of power, perhaps truth commissions have the capacity to promote progress towards pacification, whilst extending emotional identification between previously antagonistic elements.

Creating potential disincentives to violence

Some form of public documentation of the tragedies and losses due to conflict can focus attention on the human costs, and uncover the dimensions of that cost which have been previously ignored or hidden, and the pervasive nature of the

damage. Such documentation affords the opportunity for public reflection on the human costs of conflict which may be denied or hidden in a militarised society. During conflict and continued societal division, the suffering of the 'other' is often a cause for celebration, or indifference. Societal reflection on the suffering due to conflict conducted in a comprehensive and inclusive manner and made accessible to the general public can assist with the societal development of compassion across old lines of enmity. Such compassion for enemies can act as a strong counter-indication to and a powerful disincentive from future violence.

Exploring the distribution of damage

Citizens do not suffer equally during periods of conflict. Typically, civilians, the young and those on lower incomes suffer more than other groups. Violence is also concentrated in certain locations and sub-populations, and because of the divided nature of the society, this distribution of damage may be hidden, and erroneous assumptions made about how others have been affected. Some, such as members of the security forces, live secret lives, concealing the realities of their experience from even their closest family members. Elites and more privileged groups may be largely ignorant of life in the epicentre of conflict, yet these same elites may be policy and decision makers. Yet good information about the nature, distribution and effects of the damage is essential to those who would make good the damage and build a peaceful society.

Attempt to synthesise polarised discourses of the past

During conflict, the production of propaganda, and the ongoing hostilities between the various factions lead to the production of a range of diametrically opposed accounts of past events, and interpretations of them. Unless the parties to the conflict can begin to produce a more-inclusive account, the political dynamic and contests over 'truth' in the supposed transition out of violence can resemble a 'war by other means'. The continuation of vigorous contests and the lack of a common framework of meaning in the post-settlement period can impede political progress and tax the patience of intermediaries. This pattern has been apparent in Northern Ireland consistently and increasingly since the Good Friday Agreement, and indeed in the period leading up to that agreement.

Formal truth recovery processes can provide a mechanism where various accounts of the past can be rehearsed and interrogated, and a structure within which irreconcilable accounts can be juxtaposed and compared. Without a formal container for this process, the contest between divergent accounts will occur in a piecemeal and chaotic fashion, with no mechanism for formalising any progress or resolution that might be made, making for a constant reiterating of contested accounts, absorbing political energy and goodwill and maintaining a conflicted dynamic – a 'war by other means'. A formal process with the express purpose of creating an inclusive record according to pre-agreed principles and with a formal imprimatur can channel these energies, focus the contest and remove some of the necessity for these debilitating contests.

The incorporation of new material – towards a common history

In the process of truth recovery, new facts are uncovered and previously unknown or hidden aspects of the past emerge. Of course, this is one of the reasons why former combatants, both those in the paramilitary groups and in the security forces are nervous about truth recovery. There is an appetite amongst some victims for new information about certain events, and about admissions from key actors about their past deeds and misdeeds. In a truth recovery process, aspects of events that have been either concealed or denied emerge for the first time, and change understandings, altering perceptions of culpability and responsibility. This requires a departure from the discourse characteristic of the post-conflict period, which, as was stated earlier is characteristic of a 'war by other means'. Rather, the establishment in the public sphere of an arena where a Habermasian 'ideal speech situation' could be established might facilitate the emergence of new material, and its absorption.

Truth recovery processes can usefully be seen in the light of Habermas' analysis of formal pragmatics, a theory of meaning and understanding, which sets out the conditions under which ideal speech acts can take place. Such acts can lead to a coming to an understanding, with the goal of 'intersubjective mutuality ... shared knowledge, mutual trust, and accord with one another'.⁴ For Habermas, such understanding was predicated on the social actors sharing the same meanings in language, which in turn matched their social expectations in a 'mutually recognised normative background'.⁵

Habermas set out four factors which influence the understanding of the meaning of an utterance – namely the recognition of its literal meaning; the hearer's assessment of the speaker's intentions; knowledge of the reasons behind the utterance; acceptance of those reasons and the appropriateness of the utterance. His rules of discourse or 'pragmatic presuppositions' are designed to regulate procedures and set out an ethical framework, establishing the conditions under which an ideal speech act can take place. These rules specify: that all subjects who are competent to speak and act are allowed to participate in the discourse; any participant can question any assertion; any participant can introduce any assertion into the discourse; and no speaker may be stopped from exercising these rights either by internal or external coercion.⁶ All of this seems instructive when considering the process of truth recovery, and offers a potential framework against which a truth recovery process could be assessed. We can see formal truth recovery processes function by attempting to provide 'ideal speech situations' for participants. Insofar as they produce new and hidden accounts, truth recovery processes offer the potential to 'complicate' over-simplistic accounts of the past and to add the greyscale to the bifurcated picture produced and maintained during the conflict.

Clearly, this is a difficult aspect of truth recovery for many former combatants, and many are reluctant or unwilling to participate for fear of reprisal, prosecution or the stigma that could follow such disclosures. Yet, for many, trust cannot be built on an incomplete picture of the past, where suspicion remains and where

responsibility has not been acknowledged. An appreciation of the contradictions of the past, and the incorporation of previously unknown or hidden dimensions not only makes for a more-nuanced understanding, but also affords the opportunity for the parties to build a more solid foundation for future relationships of trust and confidence. Without some form of disclosure about the past, and the incorporation of such a disclosure into official accounts, trust and confidence are undermined. The role of individual confessions of responsibility for deeds in the past in any truth recovery process, and whether such confessions are best obtained in private or in public, remains to be determined. There are, *inter alia*, legal considerations about such confessions, in terms of self-incrimination. However, such testimonies can potentially perform a significant function in achieving forgiveness, where this is sought and feasible.

The outcome of 'owning up' by perpetrators in the post-conflict period is shaped by the context in which such 'owning up' might occur. Where there is a risk of self-incrimination and ultimately prosecution, prospects are diminished; where there is little or no such risk they are enhanced. Where retributive models of truth recovery are practised, prospects for such disclosure of responsibility remain poor, whereas a restorative focus on mending broken relationships, perhaps with an added incentive of possible forgiveness, may well provide a more-conducive atmosphere to full disclosure by perpetrators.

One of the goals of the work of recovering the past or auditing the damage done by conflict is to produce new official accounts which all parties to the conflict participate in constructing. In Northern Ireland and South Africa there have been attempts made to construct inclusive accounts of the past, in advance of or alongside formal truth recovery mechanism. The process of such construction has involved the forming of close collaborative relationships between those previously alienated from each other. This has involved constructing the 'artificial' groupings that break the norm of segregation and the avoidance of mixing. Much effort has been devoted to establishing working relationships and trust building. Once established, such groups can work to negotiate versions of the past and interventions in the present that take account of the sensitivities and views of their various constituencies. Work produced by diversely composed teams can enjoy wider credibility. It has the potential to be perceived as fair, inclusive and respectful and it can be 'owned' by both sides.

Such history is deployed in socialising subsequent generations and thus serves to compound an ever-deepening division, thus increasing the chances of further conflict. The production of a new, inclusive history that can be more generally accepted is one of the potential fruits of truth recovery processes. Truth recovery processes offer the opportunity for a more synthetic history to emerge, incorporating aspects of previously competing accounts. Older versions of history are often rewritten to suit the position of the victor in situations of conflict, whereas undertaking a public truth recovery offers the potential, at least, of a more-inclusive approach.

Public education

Broadcast initiatives can bring out a diversity of accounts to public attention. Clearly, the print and broadcast media have played a key role in the conflict, and

this role should properly be part of the review of any truth recovery process, which can offer a structured context in which disclosures are given a formal public meaning, and contribute to a society-wide process. Giddens (1994, p. 245) has pointed out they can consciously or unconsciously facilitate ‘degenerate spirals of communication’ between rival communities. Habermas, too, was concerned with ‘distorted communication’, since ‘undistorted communication’ is posited as a critical tool for human emancipation. According to Habermas, the ideal speech situation has four validity claims: comprehensibility; truth; appropriateness; sincerity, and those who lay claims to these must have a social context in which they justify such claims. In ideal situations, such claims are rationally debated and consensually agreed. However, in reality the unequal power relations and resource distribution prevent this level of rationality and consensus, and this leads to ‘distorted communication’. Alterations in the disposition of the media in the post-conflict period, and their promotion of ideal speech situations is an important aspect of peace-building in the post-conflict period.

Thus, the media, together with other channels of public information can perform a key role during the conflict and their role requires as much critical evaluation as that of any other actor during the conflict. Nonetheless, the media plays a crucial role in disseminating the process and outputs of any truth recovery mechanism in the post-conflict period.

The media can potentially contribute to increased levels of public awareness of the complexities of the past, and place in the public domain a nuanced, complex, diverse and inclusive account of the conflict. (Equally, they can replicate the ‘distorted communication’ that characterised the period of conflict.) Should they adopt the more positive role, the public education process that results can contribute to shifts in levels of public knowledge, changes in public opinion and public awareness of ‘other’ perspectives. It could also model for the policy a public discourse capable of containing diverse accounts paying respect to all sides. Public education is an important part of building a new kind of responsible citizenship, which incorporates a thoughtful analysis of the past. There are dangers however in the kind of piecemeal initiatives and journalistic exposés: for example, the death by suicide of Billy Giles following the broadcast of Peter Taylor’s *Loyalists* in which he was questioned about his involvement in Loyalist paramilitary activity. Equally, as the case of Rwanda illustrates, the media can play powerful roles in fomenting ethnic hatreds. Hence the need for a comprehensive strategy that is designed and coordinated to direct attention to the specific aspects and to support and disseminate this work systematically.

Impunity and the rule of law

Truth recovery is an important part of undermining the sense of impunity that often accompanies the end of armed conflict. The gaps in the justice system, through which many of the events of conflict fall, often leave citizens with a sense of injustice. Victims may be left with a sense that the crimes of the conflict are unaddressed, unpunished, and those responsible for human rights violations or other