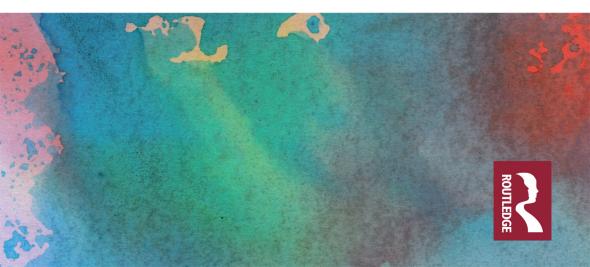# TRANSITIONAL JUSTICE AND THE 'DISAPPEARED' OF NORTHERN IRELAND

SILENCE, MEMORY, AND THE CONSTRUCTION OF THE PAST

Lauren Dempster

Transitional Justice and the 'Disappeared' of Northern Ireland

This book employs a transitional justice lens to address the 'disappearances' that occurred during the Northern Ireland conflict – or 'Troubles' – and the post-conflict response to these 'disappearances.' Despite an extensive literature around 'dealing with the past' in Northern Ireland, as well as a substantial body of scholarship on 'disappearances' in other national contexts, there has been little scholarly scrutiny of 'disappearances' in post-conflict Northern Ireland. Although the Good Friday Agreement brought relative peace to Northern Ireland, no provision was made for the establishment of some form of overarching truth and reconciliation commission aimed at comprehensively addressing the legacy of violence. Nevertheless, a mechanism to recover the remains of the 'disappeared' – the Independent Commission for the Location of Victims' Remains (ICLVR) – was established, and has in fact proven to be quite effective. As a result, the reactions of key constituencies to the 'disappearances' can be used as a prism through which to comprehensively explore issues of relevance to transitional justice scholars and practitioners.

Pursuing an interdisciplinary approach, and based on extensive empirical research, this book provides a multifaceted exploration of the responses of these constituencies to the practice of 'disappearing.' It engages with transitional justice themes including silence, memory, truth, acknowledgement, and apology. Key issues examined include the mobilisation efforts of families of the 'disappeared,' efforts by a (former) non-state armed group to address its legacy of violence, the utility of a limited immunity mechanism to incentivise information provision, and the interplay between silence and memory in the shaping of a collective, societal understanding of the 'disappeared.'

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Silence, Memory, and the Construction of the Past

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Preface

This book explores the response to the 'disappearances' that were perpetrated during the Northern Ireland conflict through a transitional justice lens. The evolution of the response to this phenomenon in the Irish context is explored from the perspectives of a number of key constituencies to the 'disappearances': (i) victims' families, (ii) the Republican Movement (who perpetrated many of these acts), (iii) the communities in which these 'disappearances' took place, and (iv), the state. This book uses an interdisciplinary approach, drawing on a broad disciplinary framework including transitional justice, law, criminology, political science, and anthropology. By drawing on this interdisciplinary framework, the responses to the 'disappeared' are used as a prism through which to comprehensively explore a number of key transitional justice themes. These include silence, memory, truth, acknowledgement, and apology. Key issues examined include the utility of a limited immunity mechanism to incentivise information provision, efforts by a (former) non-state armed group to address its legacy of violence, the mobilisation efforts of families of the 'disappeared,' and the interplay between silence and memory in the shaping of the collective memory of the 'disappeared.'

Acknowledgements

Abbreviations

CAIN	Conflict Archive on the Internet
CAJ	Committee on the Administration of Justice
CGP	Consultative Group on the Past
CONADEP	*Comisión Nacional sobre la Desaparición de Personas* (National Commission on the Disappearance of Persons)
CVS	Commission for Victims and Survivors
DE	Dáil Éireann
DUP	Democratic Unionist Party
ESMA	*Escuela Superior de Mecánica de la Armada* (Navy School of Mechanics)
FARC	*Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia)
GFA	Good Friday Agreement
HC	House of Commons
HIU	Historical Investigations Unit
HL	House of Lords
HTR	Healing Through Remembering
ICC	International Criminal Court
ICIR	Independent Commission on Information Retrieval
ICLVR	Independent Commission for the Location of Victims' Remains
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
INLA	Irish National Liberation Army
IRA	Provisional Irish Republican Army
IRG	Implementation and Reconciliation Group
JVP	*Janatha Vimukthi Peramuna* (People's Liberation Front)
LVR	Location of Victims' Remains legislation
MPTT	Missing Persons Task Team
MRF	Military Reaction Force
NGA	National Graves Association
NGO	Non-Governmental Organisation
NIA	Northern Ireland Assembly
OHA	Oral History Archive

OPONI	Office of the Police Ombudsman for Northern Ireland
OTR	'On The Runs'
PSNI	Police Service of Northern Ireland
RFJ	Relatives for Justice
RUC	Royal Ulster Constabulary
SDLP	Social Democratic and Labour Party
SE	Seanad Éireann
SHA	Stormont House Agreement
SIO	Senior Investigating Officer
TRC	(South African) Truth and Reconciliation Commission
UN	United Nations
UNWGEID	United Nations Working Group on Enforced or Involuntary Disappearances
UUP	Ulster Unionist Party

Introduction

1. 'Disappearances,' Northern Ireland, and 'dealing with' the past

> "Nothing could be worse, for the work of mourning, than confusion or doubt: one has to know who is buried where..."[1]

> "The irreversibility of time means that past injustices both cannot be directly undone and cannot be made to disappear entirely. The past and our memory of it always threatens to resurface."[2]

Between 1972 and 1985, 16 people from Northern Ireland were killed and 'disappeared,' in most cases by the IRA (see footnote 52). In 1998, the signing of the Good Friday Agreement (GFA) brought relative peace to the jurisdiction. That Agreement, however, made no provision for the establishment of some form of overarching truth and reconciliation commission aimed at comprehensively addressing the legacy of violence.[3] In the years since, diverse efforts at truth seeking have been made,[4] all components of what has been described as a 'piecemeal' approach to the past.[5] In 1999, one of these 'pieces,' the Independent Commission for the Location of Victims' Remains (ICLVR) was established to locate the remains of those who had been 'disappeared.'

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1 Jacques Derrida, *Specters of Marx*. Trans. Peggy Kamuf (London: Routledge, 1994), p. 9.
2 James W. Booth, 'The Unforgotten: Memories of Justice,' *American Political Science Review*, 95:4, (2001), 777–791 (p. 785).
3 Colm Campbell and Ita Connolly, 'The Sharp End: Armed Opposition Movements, Transitional Truth Processes and the *Rechtsstaat*,' *International Journal of Transitional Justice*, 6:1, (2012), 11–39; Marie Breen Smyth, *Truth Recovery and Justice After Conflict: Managing Violent Pasts* (London: Routledge, 2007): Kieran McEvoy and Anna Bryson, 'Justice, Truth and Oral History: Legislating the Past "From Below" in Northern Ireland,' *Northern Ireland Legal Quarterly*, 67:1, (2016), 67–90.
4 Cheryl Lawther, *Truth, Denial and Transition: Northern Ireland and the Contested Past* (Abingdon: Routledge, 2014).
5 Kieran McEvoy and Graham Ellison, 'Criminological Discourses in Northern Ireland: Conflict and Conflict Resolution,' in Kieran McEvoy and Tim Newburn (eds) *Criminology, Conflict Resolution and Restorative Justice* (Basingstoke: Palgrave Macmillan, 2003), pp. 45–82 (p. 67).

Perpetrated across the globe[6] – 'disappearances' are often carried out by state forces, such as has been the case in Argentina,[7] Iraq,[8] Syria,[9] and Nepal,[10] to name but a few. In a number of contexts, non-state armed groups are responsible for such acts. This has been the case in, for example, Colombia,[11] Mexico,[12] Sri Lanka,[13] and – as this book examines – Northern Ireland. In 2017, the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) reported 45,120 cases of 'disappearance' across 91 states under 'active consideration.'[14] Despite the ubiquity of this practice, much of the existing body of scholarship on the phenomenon of 'disappearances' remains limited to that which addresses the issue from a doctrinal human rights perspective. There is some scholarship which draws on empirical fieldwork,[15] and some which addresses the issue from the perspective of a particular discipline, such as political science[16] or forensic science.[17]

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6   Amnesty International, *'Disappearances' and Political Killings: Human Rights Crisis of the 1990s – A Manual for Action* (Amsterdam: Amnesty International, 1994); Francisco Ferrándiz and Antonius C. G. M. Robben (eds), *Necropolitics: Mass Graves and Exhumations in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2015); Iosif Kovras, *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared* (Cambridge: Cambridge University Press, 2017); Adam Rosenblatt, *Digging for the Disappeared: Forensic Science after Atrocity* (Stanford: Stanford University Press, 2015).

7   Rita Arditti, *Searching for Life: The Grandmothers of the Plaza de Mayo and the Disappeared Children of Argentina* (California: University of California Press, 1999); Antonius C. G. M. Robben, *Political Violence and Trauma in Argentina* (Philadelphia: University of Pennsylvania Press, 2005); Horacio Verbitsky, *Confessions of an Argentine Dirty Warrior* (New York; London: The New Press, 2005).

8   Eric Stover, William D. Haglund and Margaret Samuels, 'Exhumation of Mass Graves in Iraq,' *Journal of the American Medical Association*, 290:5, (2003), 663–666.

9   Kristen Gillespie, 'Enforced Disappearance a "Continuous Practice of the Assads",' *Syria Direct*, 16 September 2014, http://syriadirect.org/main/36-interviews/1566-enforced-disappearance-a-continuous-practice-of-the-assads [accessed 2 August 2018].

10 Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal,' *International Journal of Transitional Justice*, 5:1, (2011), 75–98.

11 Human Rights Watch, 'Colombia's Zone of Fear,' 26 August 2001, www.hrw.org/news/2001/08/26/colombias-zone-fear-0 [accessed 2 August 2018].

12 Human Rights Watch, 'Mexico's Disappeared,' 20 February 2013, www.hrw.org/reports/2013/02/20/mexicos-disappeared-0 [accessed 2 August 2018]; Human Rights Watch, 'Vanished: The Disappeared of Mexico's Drug War,' 8 January 2014, www.hrw.org/news/2014/01/08/vanished-disappeared-mexicos-drug-war [accessed 2 August 2018].

13 Malathi De Alwis, '"Disappearance" and "Displacement" in Sri Lanka,' *Journal of Refugee Studies*, 22:3, (2009), 378–391.

14 United Nations Working Group on Enforced or Involuntary Disappearances. *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/36/39, 31 July 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/229/15/PDF/G1722915.pdf?OpenElement [accessed 2 August 2018].

15 E.g. Robins, n 10.

16 E.g. Kovras, n 6.

17 E.g. Rosenblatt, n 6.

This book uses the case of 'disappearances' in Northern Ireland to address a range of broader theoretical concerns. It draws upon the literature of transitional justice, socio-legal studies, anthropology, criminology, memory studies, and human geography to explore the evolution of the response to this phenomenon in the Irish context. Key issues examined include the utility of a limited immunity mechanism to incentivise information provision, efforts by a (former) non-state armed group to address its legacy of violence, the mobilisation efforts of families of the 'disappeared,' and the interplay between silence and memory in the shaping of a collective, societal understanding of the 'disappeared.' A transitional justice lens is used to analyse the reactions of a number of key constituencies to the 'disappearances': (i) victims' families, (ii) the Republican Movement (who perpetrated many of these acts), (iii) the communities in which these 'disappearances' took place, and (iv), the state. The structure of the book is as follows.

In Chapter 1, 'disappearances' related to the Northern Ireland conflict are situated within the broader international and historical context of 'disappearing.' I chart the central role of 'disappearances' in the evolution of the field of transitional justice, drawing upon the experiences of Argentina, Colombia, Lebanon, Sri-Lanka, and elsewhere to illustrate how 'disappearances' often become iconic legacy issues to be addressed in the transition from authoritarianism or conflict. I will argue that much of the international literature on 'disappearances' retains a state-centric focus, despite the fact that (as in the case of Northern Ireland) non-state actors also routinely engage in the practice.[18] In addition, I explore the impact of 'disappearing' on those left behind, including the notion of 'ambiguous loss,' 'mummification,' and the diminution of trust in social and political relations.[19] I also examine the intersection between 'disappearances' and different forms of amnesties as an illustration of the classic peace versus justice tension in transitional contexts.[20]

18 E.g. Amnesty International, n 6; International Commission of Jurists, *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction* (Practitioners Guide 9, 2015); Irena Giorgou, 'State Involvement in the Perpetration of Enforced Disappearance and the Rome Statute,' *Journal of International Criminal Justice*, 11, (2013), 1001–1021; Tullio Scovazzi and Gabriella Citroni, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention* (Leiden; Boston: Martinus Nijhoff Publishers, 2007). For notable exceptions to this trend see e.g. De Alwis, n 13 and Kovras, n 6.

19 Pauline Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief* (Massachusetts: Harvard University Press, 1999); Brandon Hamber and Richard A. Wilson, 'Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies,' *Journal of Human Rights*, 1:1, (2002), 35–53; Janine Natalya Clark, 'Missing Persons, Reconciliation and the View from Below: a Case Study of Bosnia-Hercegovina,' *Southeast European and Black Sea Studies*, 10:4, (2010), 425–442; Barbara. A. Misztal, *Trust in Modern Societies* (Cambridge: Polity Press, 1996).

20 See e.g. Payam Akhavan, 'Are International Criminal Tribunals a Disincentive to Peace? Reconciling Judicial Romanticism and Political Realism,' *Human Rights Quarterly*, 31:3, (2009), 624–654; Johanna Herman, Olga Martin-Ortega and Chandra L. Sriram, 'Beyond Justice Versus Peace: Transitional Justice and

Finally I explore the complex relationship between 'disappearances,' silence, and memory.[21]

In Chapter 2, I examine the campaigning and mobilisation work of the families of the 'disappeared' of Northern Ireland as an example of victims 'doing' transitional justice.[22] For many families, their responses to the 'disappearance' of their loved ones during the conflict was characterised by silence. Such silence was shaped by uncertainty and misinformation about the fate of their 'disappeared' relatives, fear of paramilitaries, and for some concerns associated with the stigma connected to the 'disappeared' being labelled as informers.[23] However, after the ceasefires in 1994 the families gradually morphed into a small but effective social movement. Drawing in particular from the social movement literature,[24] I explore the ways in which the families managed to frame their campaign as a humanitarian issue and the ways in which the 'disappeared' illuminate key contests concerning legitimate victimhood, victim hierarchy, and the complexity and multiplicity of victim identities.[25]

Chapter 3 focuses on the Republican Movement, which perpetrated the majority of 'disappearances.' This chapter's examination of the Republican Movement's role in, and response to, 'disappearing' provides a case study of how a (formerly) armed opposition movement attempts to engage with one manifestation of the violence it perpetrated in the past. Drawing in particular on the notion

Peacebuilding Strategies,' in Karin Aggestam and Annika Bjorkdahl (eds) *Rethinking Peacebuilding: The Quest for Justice Peace in the Middle East and the Western Balkans* (Abingdon: Routledge, 2013), pp. 1–46.

21   Kathleen Ireton and Iosif Kovras, 'Non-Apologies and Prolonged Silences in Post-Conflict Settings: The Case of Post-Colonial Cyprus,' *Time and Society*, 21:1, (2012), 71–88; Sylvia Karl, 'Rehumanizing the Disappeared: Spaces of Memory in Mexico and the Liminality of Transitional Justice,' *American Quarterly*, 66:3, (2014), 727–748; Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995); Eviatar Zerubavel, 'The Social Sound of Silence: Toward a Sociology of Denial,' in Efrat Ben-Ze'ev, Ruth Ginio and Jay (eds) *Shadows of War: A Social History of Silence in the Twentieth Century* (Cambridge: Cambridge University Press, 2010), pp. 32–46.

22   Following Kieran McEvoy and Kirsten McConnachie, 'Victims and Transitional Justice: Voice, Agency and Blame,' *Social and Legal Studies*, (2013), 1–25.

23   Ron Dudai, *The IRA and the Shadow of the Informer: Punishment, Governance, and Dealing with the Past* (Unpublished PhD Thesis, Queen's University Belfast, 2012); Ron Dudai, 'Informers and the Transition in Northern Ireland,' *British Journal of Criminology*, 52, (2012), 32–54; WAVE, *The Disappeared of Northern Ireland's 'Troubles'* (Belfast: WAVE Trauma Centre Publications, 2012).

24   Donnatella Della Porta and Mario Diani, *Social Movements: An Introduction* (Oxford: Blackwell, 2006); Francesca Polletta and James M. Jasper, 'Collective Identity and Social Movements,' *Annual Review of Sociology*, 27, (2001), 283–305.

25   Erica Bouris, *Complex Political Victims* (Connecticut: Kumarian, 2007); Nils Christie, 'The Ideal Victim' in Ezzata A. Fattah (ed.) *From Crime Policy to Victim Policy* (London: Macmillan, 1986), pp. 17–30; Erving Goffman, *Frame Analysis: An Analysis on the Organization of Experience* (Harmondsworth: Penguin, 1975); Kieran McEvoy and Kirsten McConnachie, 'Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy,' *European Journal of Criminology*, 9:5, (2012), 527–538; David A. Snow and Robert D. Benford, 'Ideology, Frame Resonance, and Participant Mobilization,' *International Social Movement Research*, 1, (1988), 197–217.

of embarrassment,[26] this chapter examines how the Republican Movement sought to rationalise the practice of 'disappearing,' the timing of the Republican Movement's engagement in the 'disappeared' issue, and the dialectical relationship between military and political leadership in the 'Movement's' response to the 'disappeared.'[27]

In Chapter 4, Cohen's 'atrocity triangle' of victims, perpetrators, and observers or bystanders[28] is drawn upon to explore the complicity of those who 'stood by' while paramilitaries engaged in the practice of 'disappearance.' Focussing on the aftermath of the 'disappearances,' I explore the reaction of both the local communities in which these 'disappearances' took place and the police who were tasked with investigating these crimes. This chapter draws on the seminal work of Knapp[29] and Das,[30] concerning the role and impact of rumour to examine the ways in which disinformation and untruths compounded paramilitary denial and communal silence. These 'disappearances' took place in a vicious political conflict during which violence became euphemised, normalised, and routinised – nourished by what Taussig describes as '…the intermingling of silence and myth.'[31] However, as I make clear, despite the exigencies of conflict and the undoubted power and influence of the Republican Movement, variants of the truth circulated within Republican communities as a result of what Foucault has described as truth being 'a thing of this world.'[32]

Chapter 5 examines the state's response to the issue of the 'disappeared.' The Location of Victims' Remains legislation is based on a limited immunity from prosecution for the provision of information relating to burial site locations. In this chapter the role of amnesty or amnesty-like mechanisms in incentivising truth provision is analysed,[33] and the development of the ICLVR is examined as an

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26 Erving Goffman, 'Embarrassment and Social Organisation,' *American Journal of Sociology*, 62:3, (1956), 264–271; Dacher Keltner and Brenda N. Buswell, 'Embarrassment: Its Distinct Form and Appeasement Functions,' *Psychological Bulletin*, 122:3, (1997), 250–270; June Price Tangney, 'The Self-Conscious Emotions: Shame, Guilt, Embarrassment and Pride,' in Tim Dalgleish and Mick J. Power (eds) *Handbook of Cognition and Emotion* (Chicester: Wiley & Sons Ltd., 1999), pp. 541–568.

27 James MacGregor Burns, *Leadership* (New York: Harper & Row, 1978); Robert Elgie, *Political Leadership in Liberal Democracies* (Basingstoke; London: Macmillan Press Ltd., 1995); Cynthia L. Irvin, *Militant Nationalism: Between Movement and Party in Ireland and the Basque Country* (Minneapolis: University of Minnesota Press, 1999).

28 Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Cambridge: Polity Press, 2001).

29 Robert H. Knapp, 'A Psychology of Rumour,' *Public Opinion Quarterly*, 8:1, (1944), 22–37.

30 Veena Das, 'Specificities: Official Narratives, Rumour, and the Social Production of Hate,' *Social Identities*, 4:1, (1998), 109–130.

31 Michael T. Taussig, *Shamanism, Colonialism, and the Wild Man: A Study in Terror and Healing* (Chicago; London: Chicago University Press, 1986), p. 8.

32 Michel Foucault, 'Truth and Power,' in James D. Faubion (ed.) *Power: Essential Works of Foucault 1954–1984 (vol. 3)* (London: Penguin Books, 1994), p. 131.

33 Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice* (Cambridge: Cambridge University Press, 2009); Louise Mallinder, *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide* (Oxford: Hart Publishing, 2008).

example of what I term 'quiet' transitional justice. I explore the extent to which an amnesty-like measure can in fact be considered as 'victim-centred,' rather than the traditional understanding of amnesties as an instrument of impunity.[34] Drawing upon the political science literature on diplomacy,[35] I use the ICLVR to explore the utility of working 'quietly' on complex and sensitive transitional justice problems. In particular, this chapter is informed by the theoretical literature on trust[36] to explore the quite remarkable relationships which developed between the ICLVR (the public face of which is a retired British police officer) and former IRA members involved in efforts to locate the remains of people killed by that organisation.

In Chapter 6 I explore the broader collective memory of the disappeared in the public consciousness in Ireland and the ways in which this understanding intersects with the politics of the past. Framed within the memory studies literature, the 'threads of narrative'[37] related to the 'disappeared' resonate with key themes in transitional justice including apology, acknowledgement, and truth recovery. The work of Andrieu,[38] Celermajer,[39] Meier,[40] and others[41] is drawn on to analyse the effectiveness of, and reactions to, the apology statements issued by the Republican Movement in relation to 'disappearances.' The value of the 'Movement's' major acknowledgement of involvement in 'disappearing' is explored as an

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34 Kris Brown and Fionnuala Ní Aoláin, 'Through the Looking Glass: Transitional Justice Futures Through the Lens of Nationalism, Feminism and Transformative Change,' *International Journal of Transitional Justice*, 9, (2014), 127–149; Vasuki Nesiah, 'Overcoming Tensions Between Family and Judicial Procedures,' *International Review of the Red Cross*, 84:848, (2002), 823–844; Robins, n 10.

35 Michael Johns, 'Quiet Diplomacy, the European Union and Conflict Prevention: Learning from the HCNM on Issues of Social Cohesion,' *International Journal on Minority and Group Rights*, 19, (2012), 243–265; Niall Ó Dochartaigh, 'Together in the Middle: Back-Channel Negotiation in the Irish Peace Process,' *Journal of Peace Research*, 48:6, (2011), 767–780; Anthony Wanis-St. John, 'Back-Channel Negotiation: International Bargaining in the Shadows,' *Negotiation Journal*, 22:2, (2006), 119–144.

36 Morton Deutsch, 'Trust and Suspicion,' *Journal of Conflict Resolution*, 2:4, (1958), 265–279; Geoffrey Hosking, *Trust: A History* (Oxford: Oxford University Press, 2014); Misztal, n 19.

37 Michael Lambek and Paul Antze, 'Introduction: Forecasting Memory,' in Paul Antze and Michael Lambek (eds) *Tense Past* (New York: Routledge, 1996), pp. xi–xxxviii, (xvii).

38 Kora Andrieu, '"Sorry for the Genocide": How Public Apologies Can Help Promote National Reconciliation,' *Millennium: Journal of International Studies*, 38:1, (2009), 3–23.

39 Danielle Celermajer, 'Mere Ritual? Displacing the Myth of Sincerity in Transitional Rituals,' *International Journal of Transitional Justice*, 7, (2013), 286–305.

40 A. J. Meier, 'Conflict and the Power of Apologies,' *Philologie im Netz*, 30, (2004), 1–17.

41 Zohar Kampf and Nava Löwenheim, 'Rituals of Apology in the Global Arena,' *Security Dialogue*, 43:1, (2012), 43–60; Walter Shapiro and Kathleen Adams, 'Mama Mia, That's a Mea Culpa,' *Time*, 146: 26, (1997), 18; Sandra Harris, Karen Grainger and Louise Mullany, 'The Pragmatics of Political Apologies,' *Discourse and Society*, 17:6, (2006), 715–737.

act that speaks to a commitment to a 'new era' of relations,[42] while simultaneously continuing to justify the original killings (but not the 'disappearances') as a legitimate response to informing. I also examine how the collective memory of the disappeared is informed by different types of truth including 'narrow' truth related to the location of the remains,[43] 'geographical' truth relating to past wrongs literally buried in the Irish countryside,[44] and communal truths about shared complicity and silence.[45]

The final chapter locates the issue of the disappeared within the ongoing debates on dealing with the past more broadly in Northern Ireland and elsewhere. In particular I argue that forms of limited immunity are a crucial component of transitional justice and can, in some circumstances, be viewed as a victim-centred approach to dealing with the past. I contend that the importance of building trust manifests itself in several ways: the need to manage expectations, the value of robust guarantees of limited immunity, and the need to allow time for trust to develop between parties. I propose that effective leadership is a central element of the successful functioning of transitional mechanisms, and consideration should be given to the qualities required of those invited to lead legacy institutions. Important also is the role of context and timing in efforts to address past harms – in particular the presence of a sense of momentum or willingness to make change. I argue for the benefits of 'doing' transitional justice quietly, and suggest that there can be a pragmatic value to designing transitional mechanisms 'behind the scenes.' Finally, I emphasise the importance of the spirit in which legacy issues are addressed. The experience of the ICLVR has shown that pragmatism and generosity are essential to progress.

Before exploring efforts to 'deal with' the past in Northern Ireland more closely, in the following section I offer some background detail on 'disappearances' in Northern Ireland. In the final section of this Introduction I outline the methods used in this research.

2. 'Disappearance' in Northern Ireland

> We – my parents missed him from the house … they were concerned about him and … after a given period, I raised concerns with the Gardaí.[46] I mean I actually

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42 Michel-Rolph Trouillot, 'Abortive Rituals: Historical Apologies in the Global Era,' *Interventions: International Journal of Postcolonial Studies*, 2:2, (2000), 171–186, (p. 174).

43 Iosif Kovras, 'Explaining Prolonged Silences in Transitional Justice: The Disappeared in Cyprus and Spain,' *Comparative Political Studies*, 20:10, (2012), 1–27; Iosif Kovras, *Truth Recovery and Transitional Justice: Deferring Human Rights Abuses* (London: Routledge, 2014).

44 Derek Gregory, *Geographical Imaginations* (Oxford: Blackwell, 1994); Mark Phelan, 'Not So Innocent Landscapes: Remembrance, Representation and the Disappeared,' in Patrick Anderson and Jisha Menon (eds) *Violence Performed: Local Roots and Global Routes of Conflict* (Palgrave, 2009), pp. 285–316.

45 Stanley Cohen, 'State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past,' *Law and Social Inquiry*, 20:1, (1995), 7–50; Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001).

46 *An Garda Síochána* – the Republic of Ireland's police force.

thought he had … maybe, just gone off somewhere … just, you know, when I say 'disappeared' I mean 'disappeared' in a different way … like young people do. And there wasn't the same social media outlets, there was no Twitter, no Facebook … phones were phone boxes … So you couldn't even think that everybody would have … a means of communication … I went to the Gardaí in Dublin about it at the behest of my parents, to reassure them or to bring them back some information. But they had no information at that time obviously.[47]

Eugene McVeigh, brother of Columba McVeigh

On the Saturday … he'd been in the town in the morning with my Mum and … then was going on up to Twinbrook where he lived with his wife … when he got in … there was 8 or 9 people waiting for him … he was taken away and they said to his wife, 'don't be telling the police, he's going to be back.' And, obviously as we know … he didn't come back. So eventually it was reported to the police and there was a media moment on TV, we made an appeal … But, back to the late '70s … communication was a lot slower and, at the time we always thought that he would be coming back. And, it might have been a couple of days, you thought, or at the week, a couple of months, then … his daughter getting born in October – and then Christmas time we thought definitely he'd come back but it never happened.[48]

Kieran Megraw, brother of Brendan Megraw

Columba McVeigh and Brendan Megraw were both 'disappeared' during the conflict or 'Troubles' in Northern Ireland. Columba McVeigh was from Donaghmore in County Tyrone, Northern Ireland. In November 1975 he was living in Dublin, from where he was 'disappeared.' In April 1978, Brendan Megraw was abducted as he returned to his home in Belfast from a shopping trip. In 1999, the Provisional Irish Republican Army (the IRA) admitted to 'disappearing' McVeigh, Megraw, and seven other individuals. In October 2014, Brendan Megraw's remains were recovered from bogland in Oristown, County Meath, by the Independent Commission for the Location of Victims' Remains (ICLVR/the Commission). The following month, his funeral was held in Belfast, 36 years after his 'disappearance.'[49] A number of searches have taken place for Columba McVeigh's remains in bogland at Bragan, County Monaghan, Republic of Ireland. At the time of writing, his remains are yet to be found.[50]

Sixteen individuals were 'disappeared' between 1972 and 1985.[51] Joe Lynskey, Kevin McKee, and Seamus Wright were 'disappeared' in 1972; Peter Wilson was

47   Interview, Eugene McVeigh, August 2015.
48   Interview, Kieran Megraw, October 2015.
49   'IRA Investigation Locates Grave Sites,' *An Phoblacht*, 1 April 1999; WAVE, n 23; Gerry Moriarty, 'Funeral Held for IRA Murder Victim Brendan Megraw,' *The Irish Times*, 14 November 2014.
50   Tom Brady, 'Hunt for Bodies of Northern Ireland's Remaining Disappeared Intensifies,' *Belfast Telegraph*, 25 June 2018; WAVE, n 23.
51   It should be noted that there are two individuals, Gareth O'Connor and Lisa Dorrian, who are not included in this list and who have 'disappeared' in suspicious circumstances in which paramilitary involvement is suspected. These cases occurred after the

'disappeared' in 1973; and Eamonn Molloy in 1975. Robert Nairac was 'disappeared' in 1977. In 1978, John McClory and Brian McKinney were 'disappeared.' Gerry Evans was 'disappeared' in 1979; and Charlie Armstrong, Danny McIlhone, and Eugene Simons were 'disappeared' in 1981. The only woman to be 'disappeared' – Jean McConville – was abducted from her home in west Belfast in 1972. In most of these cases, the IRA has admitted responsibility.[52] In the majority of cases, the 'disappeared' were abducted from Northern Ireland, and buried in the Republic of Ireland. Seamus Ruddy was 'disappeared' in France by the Irish National Liberation Army (INLA – a smaller Republican armed group) in 1985.[53] To date, the remains of 13 of the 'disappeared'

April 1998 cut-off date, and thus do not fall under the Commission's remit (see e.g. *BBC News* [online], 'Timeline: The Disappearance of Lisa Dorrian,' 28 February 2017, www.bbc.co.uk/news/uk-northern-ireland-39116502 [accessed 11 September 2018]; WAVE, n 23). This book focuses on those cases which come under the remit of the ICLVR.

52 The IRA has released statements acknowledging responsibility for the 'disappearances' of Joe Lynskey, Kevin McKee, Seamus Wright, Jean McConville, Eamonn Molloy, Columba McVeigh, Robert Nairac, Brendan Megraw, John McClory, Brian McKinney, and Danny McIlhone ('Investigation Confirms 1972 Disappearance,' *An Phoblacht*, 11 February 2010; 'IRA Investigation Locates Grave Sites' supra n 49; 'SAS Captain Executed,' *Republican News*, 21 May 1977). Although media speculation linked the IRA to Peter Wilson's 'disappearance' (e.g. Allison Morris, 'Exclusive – "Secret" IRA Victim on Disappeared List,' *The Irish News*, 30 October 2009) and Gerry Adams confirmed his death to the family (account of Patricia Wilson in WAVE, n 23), an IRA spokesperson denied IRA involvement in a statement issued to journalist Brian Rowan (Brian Rowan, 'Move to Distance IRA from Missing West Belfast Man,' *Belfast Telegraph*, 2 November 2009). With regards to Eugene Simons, although news reports linked the IRA to his 'disappearance' (e.g. 'Body Found in Bog Identified,' *The Irish Times*, 23 May 1984), I have found no statements of responsibility from any organisation. I have also found no statements of responsibility for the 'disappearances' of Gerry Evans or Charlie Armstrong. An IRA source told reporter Suzanne Breen that the IRA was responsible in these cases, however Gerry Adams has stated that the IRA has said it is not responsible for either of these two cases (Suzanne Breen, 'Put That Family Out of its Misery,' *Sunday Tribune*, 18 January 2009; Noel McAdam, 'Pressure Steps Up On Disappeared,' *Belfast Telegraph*, 4 August 2006). In 2013, Gerry Adams referred to 13 cases for which the IRA had acknowledged involvement; however I have found statements of acknowledgement for only the 11 cases listed earlier ('Gerry Adams Appeals for Information on Victims Secretly Buried by the IRA,' *An Phoblacht*, 21 June 2013).

53 As noted, Columba McVeigh was abducted from Dublin. The remains of Peter Wilson were found on a beach in County Antrim, Northern Ireland. In all other cases (with the exception of Seamus Ruddy), remains have been found, or are believed to be buried, in the Republic of Ireland. In 1995, a spokesperson for the Irish Republican Socialist Party, the political wing of the INLA (Irish National Liberation Army), stated that they 'accepted' that Ruddy was dead and would assist in efforts to locate his remains (Suzanne Breen, 'IRSP "accepts" that Former Member Dead,' *The Irish Times*, 19 December 1995. See also BBC Radio Foyle, Willie Gallagher in Interview, BBC Radio Foyle, 8 May 1999. Available at http://rfe123.org/willie-gallagher-bbc-radio-foyle-interview-transcript-8-may-2017 [accessed 30 June 2018] and WAVE, n 23).

have been recovered.[54] The remains of Joe Lynskey, Columba McVeigh, and Robert Nairac are yet to be found.

3. Dealing with the past in Northern Ireland

As mentioned earlier, the GFA made only limited mention of addressing the needs of victims and did not include any overarching mechanism aimed at comprehensively 'dealing with' the past – such as a truth and reconciliation commission.[55] Where such processes have occurred it has been on an *ad hoc*[56] or 'piecemeal' basis,[57] via, for example, public inquiries, the coronial inquest system, the Office of the Police Ombudsman, the Historical Enquiries Team, the Criminal Cases Review Commission, civil actions, and various 'bottom up' initiatives.[58]

There have been four major attempts to develop an overarching mechanism or series of mechanisms to respond to the legacy of the 'Troubles.'[59] In 2006 the NGO, *Healing Through Remembering*, produced a report detailing a range of options aimed at practically responding to the effects of the conflict.[60] This report is said to have 'directly informed' the subsequent attempt at 'dealing with' the past: that made by the Consultative Group on the Past (CGP), which published its report in 2009.[61] Chaired by former Church of Ireland primate, Lord Eames, and former vice-chairman of the Policing Board, Denis Bradley, the CGP was established by the British government in 2007.[62] Central to the proposals made by the CGP was the creation of a Legacy Commission, chaired by an International Commissioner and mandated with assisting societal reconciliation, reviewing and investigating historical cases, conducting an information recovery process and examining linked cases or themes emerging from the conflict. These proposals were overshadowed by one recommendation – that a £12,000 'recognition payment' be made to the nearest relative of a person killed as a result of the conflict. Tied into more widespread controversy over who could be termed a 'victim' (see Chapter 2), this recommendation resulted in angry protests at the Report's

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54   See 'The Disappeared' at www.iclvr.ie/en/iclvr/pages/thedisappeared [accessed 2 August 2018]. The remains of Eugene Simons were found in 1984, prior to the establishment of the ICLVR.

55   Campbell and Connolly, n 3; Smyth, n 3; McEvoy and Bryson, n 3.

56   Aoife Duffy, 'A Truth Commission for Northern Ireland?' *International Journal of Transitional Justice*, 4:1, (2010), 26–46.

57   McEvoy and Ellison, n 5.

58   See e.g. Campbell and Connolly, n 3; Healing Through Remembering, *Dealing with the Past? An Overview of Legal and Political Approaches Relating to the Conflict in and about Northern Ireland* (Belfast: Healing Through Remembering, 2013); Kieran McEvoy, *Making Peace with the Past: Options for Truth Recovery Regarding the Conflict in and about Northern Ireland* (Belfast: Healing Through Remembering, 2006); McEvoy and Bryson, n 3.

59   McEvoy and Bryson, n 3.

60   McEvoy, n 58; Healing Through Remembering, n 58.

61   Healing Through Remembering, n 58 at 3.

62   Patricia Lundy, 'Can the Past be Policed? Lessons from the Historical Enquiries Team Northern Ireland,' *Journal of Law and Social Challenges*, 11, (2009), 109–156.

launch, negatively impacted upon public attitudes to the Report as a whole, and resulted in the Report's rejection by the Conservative-led Coalition government which took power in 2010.[63] In 2013, Northern Ireland's political parties failed to reach agreement on proposals developed during a series of talks chaired by US diplomat Richard Haass and academic Meghan O'Sullivan, aimed at addressing the issues of flags, parades, and the past.[64] Haass and O'Sullivan's draft proposals for 'contending with the past' comprised three structures: an Historical Investigations Unit (HIU), an Independent Commission on Information Retrieval (ICIR), and an archive for oral histories, documents, and other conflict-related materials.[65] More recently, all-party talks held at Stormont House in 2014 resulted in the Stormont House Agreement (SHA). This document also proposes an HIU and an ICIR, together with an Oral History Archive (OHA) and an Implementation and Reconciliation Group.[66] At the time of writing, a period of public consultation on these proposals, launched by the Secretary of State for Northern Ireland, is ongoing.[67]

Against this backdrop of a lack of consensus on how to deal with the past, and the continued absence of an overarching series of transitional mechanisms,[68] a process was put in place to locate the remains of the 'disappeared.' In 1999 the ICLVR was established via an intergovernmental treaty between the British and Irish governments and legislation passed in each of these jurisdictions.[69] As the Northern Ireland (Location of Victims' Remains) Act 1999 states, the ICLVR was tasked with 'locating the remains of persons killed before 10th April 1998 as a result of unlawful acts of violence committed on behalf of, or in connection with, proscribed organisations; and for connected purposes.'[70]

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63 Healing Through Remembering, n 58; McEvoy and Bryson, n 3.
64 Mark Devenport, 'Richard Haass Talks: Back at a Crossroads,' *BBC News* [online], 31 December 2013, www.bbc.co.uk/news/uk-northern-ireland-25563061 [accessed 14 August 2018]; McEvoy and Bryson, n 3.
65 Richard Haass, 'An Agreement Among the Parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protests; Flags and Emblems; and Contending with the Past,' Proposed Agreement 31 December 2013, http://cain.ulst. ac.uk/events/peace/haass-talks/haass_2013-12-31.pdf> [accessed 2 August 2018].
66 Stormont House Agreement, www.gov.uk/government/publications/the-storm ont-house-agreement [accessed 16 August 2018].
67 Northern Ireland Office and The Rt Hon Karen Bradley MP, 'Press Release,' 11 May 2018, www.gov.uk/government/news/secretary-of-state-launches-public-consultatio n-on-proposals-to-address-the-legacy-of-northern-irelands-past [accessed 16 June 2018]. See McEvoy and Bryson, n 3, for further details of events following the agreement of the SHA in 2014.
68 Healing Through Remembering, n. 58; Cheryl Lawther, 'Unionism, Truth Recovery and the Fearful Past,' *Irish Political Studies*, 26:3, (2011), 361–382; McEvoy and Bryson, n 3; Bill Rolston, 'Dealing with the Past: Pro-State Paramilitaries, Truth and Transition in Northern Ireland,' *Human Rights Quarterly*, 28:3, (2006), 652–675.
69 Criminal Justice (Location of Victims' Remains) Act 1999; Northern Ireland (Location of Victims' Remains) Act 1999.
70 Northern Ireland (Location of Victims' Remains) Act 1999. 10 April 1998 is the date the GFA was agreed.

The ICLVR has two commissioners, one appointed by each of the two governments. As will be examined in greater detail in Chapter 5, information given to the ICLVR cannot be used in criminal proceedings and forensic testing on human remains found is restricted to that required for confirming the identity of the deceased, establishing – for the purposes of an inquest – how, when, and where that person died, and to ensure that remains can be moved safely.[71] The Commission can therefore serve as a confidential conduit for information relating to the burial locations of the 'disappeared.' Those with information can provide it to the Commission without fear that this engagement would result in their prosecution, and the Commission can use that information to search for the burial sites of the 'disappeared.' As I will argue in this book, the process facilitated by the ICLVR has been relatively effective and lessons can be learned from this approach that are relevant for both dealing with the past in Northern Ireland and for transitional justice more broadly.

4. Methods

This book uses archival (mainly news media archives) and qualitative interview-based research. Interviews were conducted between 2012 and 2015. In selecting interviewees, I sought to represent a range of perspectives on the 'disappeared' issue, including those of three of the key actors examined in this book: the families of the 'disappeared,' the Republican Movement, and the state. Twenty semi-structured interviews were conducted with relatives of the 'disappeared,' victim advocates and representatives of victim support organisations, Republican ex-combatants, staff of the ICLVR, academics, journalists, politicians, and others with experience of conflict legacy issues in the context of Northern Ireland.

Although this is a relatively small sample size, it includes key actors and has, in my view, facilitated the provision of in-depth, informed viewpoints. Purposive, or targeted sampling[72] was used to select interviewees who represent a variety of perspectives in relation to the 'disappeared.' In qualitative research, small samples can be effective as even a single interview can produce useful information.[73] 'Improved understanding of complex human issues'[74] and diversity in participants[75] are argued to be more important than generalisability of results. Thus, small-scale interviews, rather than an extensive sample size, can produce conceptual depth in research.[76] For Patton, 'The validity, meaningfulness, and insights

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71   Ibid.
72   Ibid.
73   Johnny Blair, Frederick Conrad, Allison Castellano Ackermann and Greg Claxton, 'The Effect of Sample Size on Cognitive Interview Findings,' *Proceedings of the American Statistical Association, Section on Survey Research Methods*, (2006), 4041–4046.
74   Martin N. Marshall, 'Sampling for Qualitative Research,' *Family Practice*, 13:6, (1996), 522–525, (p. 524).
75   Nigel King and Christine Horrocks, *Interviews in Qualitative Research* (London: SAGE Publications Ltd., 2010).
76   Mira Crouch and Heather McKenzie, 'The Logic of Small Samples in Interview-Based Qualitative Research,' *Social Science Information*, 45:4, (2006), 483–499

generated from qualitative inquiry have more to do with the information richness of the cases selected and the observational/analytical capabilities of the researcher than with sample size.'[77]

In using a small sample of interviewees, 'all the emerging material can be kept in the researcher's mind as a totality under investigation.'[78] In this regard, Crouch and McKenzie argue, small-scale interviews can be 'conceptually generative.'[79] This has been evidenced in the writing of this book. Being able to keep in mind much of the material collected in interviews as I developed my arguments has been valuable, and the interviews conducted have significantly shaped the arguments made.

Ethical approval was obtained from my institution prior to beginning fieldwork. Of course, the consideration of ethical issues is not limited to the passing of an application by an institution but is something that should be taken into account at all stages of research.[80] Thought had to be given throughout fieldwork to the sensitive nature of the topic under discussion.

When researching sensitive topics, areas of potential concern include issues of harm, consent, deception, privacy, and confidentiality. One of the most efficient and direct ways to allay any concerns of this nature is to be open with interviewees and to elucidate all aspects of the interview process with them, explaining clearly your role as researcher and the purposes of your research.[81] For this research, interviewees were provided with an overview of the purposes of the research, reasons for wanting to speak with them, what an interview would entail, and what would happen to the information they provided in my first communication (either email or letter). At the time of the interview, this information was clarified again in a Research Information Document which included information about me and my research, why the interviewee had been chosen, who else would be taking part (in terms of the broad categories into which interviewees fit, rather than named persons), and what the interviewee's involvement would consist of. Informed consent was obtained from all participants. All interviewees were offered anonymity. Where interviewees wished to remain anonymous, their views have of course been respected. The majority of interviewees were happy to be named and have been so. A brief description of each interviewee is included the first time they are referred to in each chapter, and listed in Appendix 1.

Aware of the potentially particular sensitivity of interviewing relatives of victims, these interviewees were not 'cold called,' rather contact was made first via other

77   Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (3rd ed.) (London: SAGE, 2002), p. 245.
78   Crouch and McKenzie, n 76 at 495.
79   Ibid. at 492.
80   Joan E. Sieber and Barbara Stanley, 'Ethical and Professional Dimensions of Socially Sensitive Research,' *American Psychologist*, 43:1, (1988), 49–55; Rose Wiles, *What are Qualitative Research Ethics?* (Bloomsbury Publishing, 2012).
81   Uwe Flick, *An Introduction to Qualitative Research* (4th ed.) (London: SAGE Publications Ltd., 2009). See also Anna Bryson and Sean McConville, *The Routledge Guide to Interviewing* (Abingdon: Routledge, 2014).

interviewees who had existing relationships with them. As Bryson and McConville advise, interviewees were provided with an overview of the research and the interview process, and given some time to consider the invitation.[82] The questions in the Research Instrument were designed in such a way so as not to focus on the details of specific cases of 'disappearance' (although, as evidenced by the quotes earlier, some of this information was shared during the interviews). Rather the questions were thematised according to the responses to the issue of 'disappearing' by Republicans, by families, by the state, and the local community. Questions were also asked on the intersection between the issue of the 'disappeared' and key transitional justice themes of apology, acknowledgement, truth recovery, the role of amnesty, and memory. As Wiles advises,[83] it was made clear to participants that their participation was voluntary, and they could decline to answer any questions they wished. Questions asked were open-ended, so that participants could give as much, or as little information as they liked.

This is a topic of extreme sensitivity for the Republican Movement. While of course not unaware of the horror of the practice of 'disappearing,' I was nevertheless cognisant that an academic work is not the place to mete out condemnation. Rather I was keen to engage with Republicans in a version of what Matza has described as an appreciative stance. This is one which seeks to engage with and comprehend the subjectivity, diversity, and complexity of human behaviour, rather than a critical or 'correctional' stance which focuses solely on problems.[84] Following Liebling et al.'s use of the appreciative inquiry method as part of a 'search for understanding and explanation,' I approached interviewees from a place of interest, rather than condemnation or judgment.[85] Questions asked of interviewees covered the responses of all the groups analysed in this book, in order to allow me to engage in informed, measured, and critical scholarly reflection on the actions and reactions of all parties. The first of these groups analysed will be the families of the 'disappeared' (Chapter 2). Prior to examining the families' response to the 'disappearances,' Chapter 1 explores the international context of 'disappearing.'

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82   Bryson and McConville, ibid.
83   Wiles, n 80.
84   Alison Liebling, David Price and Charles Elliott, 'Appreciative Inquiry and Relationships in Prison,' *Punishment and Society*, 1:1, (1999), 71–98; David Matza, *Becoming Deviant* (New Jersey: Prentice Hall, 1969).
85   Liebling et al., n 75.

1 'Disappearing' in international context
Memory, silence, and the law

1. Introduction

This chapter will introduce the concept of 'disappearing' by giving a brief historical overview of the use of the practice, examining how the act is defined in legal terms and analysing the impact on those left behind. The 'rationales' presented for 'disappearing' in various international contexts will then be examined. Subsequently, some of the literature on silence and memory will be introduced, as these are two themes that underlie all stages of a 'disappearance,' from the perpetration of the abduction through to campaigns by victims' families to uncover the truth. Finally, international efforts to recover the 'disappeared' will be briefly outlined, and the case of Northern Ireland situated against this backdrop.

2. 'Disappearing': origins and international context

To analyse the 'disappearances' that occurred during the conflict in Northern Ireland, it is useful to begin by situating 'disappearing' in its historical and international context. One of the earliest twentieth century manifestations of the practice discussed in the literature is the Nazi *Nacht und Nebel Erlass* (Night and Fog Decree) of December 1941. This policy ordered the secret removal of those people in occupied territories who were believed to be a security threat and their return to Germany. No information was to be provided to the individual's family or loved ones.[1] These people were effectively, "made to disappear."[2] The term *desaparecido* or 'disappeared' subsequently came into regular parlance in the 1960s

1   Reed Brody and Felipe González, 'Nunca Más: An Analysis of International Instruments on "Disappearances,"' *Human Rights Quarterly*, 19:2, (1997), 365–405; United Nations Commission on Human Rights (UNCHR), *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions, Report Submitted by Mr Manfred Nowak, Independent Expert Charged with Examining the Existing International Criminal and Human Rights Framework for the Protection of Persons from Enforced or Involuntary Disappearances*, E/CN.4/2002/71 (8 January 2002), www.icaed.org/fileadmin/user_upload/G0210026.pdf [accessed 2 August 2018].
2   Testimony of Wilhelm Keitel, Nuremberg Trial Proceedings Volume 10, 4 April 1946 (Morning Session), http://avalon.law.yale.edu/imt/04-04-46.asp#keitel2 [accessed 20 June 2018].

to refer to the abduction and assassination of anti-government forces in Guatemala by so-called 'death squads.'[3] Such practices became widespread across Latin America in the 1970s and 1980s,[4] though it is perhaps with the thousands of alleged 'subversives' who were 'disappeared' during Argentina's 'dirty war' that the term became most commonly associated.[5]

Between 10,000 and 30,000 individuals were 'disappeared' in Argentina between 1976 and 1983.[6] Abducted by state forces and held in secret detention centres, these people were often tortured before being executed and their bodies cremated or buried in mass graves. In some cases, they were taken on what was known as a 'death flight,' where individuals were sedated and thrown from planes into the sea. During this time and for years afterwards, state agents not only denied victims' families information on their whereabouts, but in most cases denied having had these individuals in their custody.[7] Following the 1983 election of Raúl Alfonsín, the National Commission on the Disappearance of Persons (*Comisión Nacional sobre la Desaparición de Personas –* CONADEP) was set up to investigate these 'disappearances.' Although the term 'truth commission' was not adopted until a decade later, this Commission was one of the first of many such institutions established to catalogue and investigate human rights abuses in post-conflict contexts.[8]

Political 'disappearances' have become a much-discussed human rights issue and a significant literature now exists on 'disappearances' across the globe.[9] The campaign of the *Madres* of the Plaza de Mayo – the mothers of those 'disappeared' by the Argentinian junta – is perhaps one of the best known of such mobilisation

3   Maureen R. Berman and Roger S. Clark, 'State Terrorism: Disappearances,' *Rutgers Law Journal*, 13, (1981), 531–558 (p. 531).
4   Tullio Scovazzi and Gabriella Citroni, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention* (Leiden; Boston: Martinus Nijhoff Publishers, 2007).
5   Rita Arditti, *Searching for Life: The Grandmothers of the Plaza de Mayo* (California: University of California Press, 1999), p. 7.
6   Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed.) (New York; Oxon: Routledge, 2011).
7   Uki Goñi, 'Argentina "Death Flight" Pilots Sentenced for Deaths Including Pope's Friend,' *The Guardian*, 29 November 2017; Antonius C. G. M. Robben, *Political Violence and Trauma in Argentina* (Philadelphia: University of Pennsylvania Press, 2005); Horacio Verbitsky, *Confessions of an Argentine Dirty Warrior* (New York; London: The New Press, 2005).
8   Hayner, n 6.
9   For accounts of 'disappearances' in a range of contexts see e.g. Amnesty International, *'Disappearances' and Political Killings: Human Rights Crisis of the 1990s – A Manual for Action* (Amsterdam: Amnesty International, 1994); Francisco Ferrándiz and Antonius C. G. M. Robben (eds) *Necropolitics: Mass Graves and Exhumations in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2015); Iosif Kovras, *Grassroots Activism and the Evolution of Transitional Justice: The Families of the Disappeared* (Cambridge: Cambridge University Press, 2017); Adam Rosenblatt, *Digging for the Disappeared: Forensic Science after Atrocity* (Stanford: Stanford University Press, 2015).

efforts.[10] 'Disappearances' have occurred elsewhere in Latin America,[11] as well as in Africa,[12] Asia,[13] and Europe.[14] In 2017, 45,120 cases across 91 states were reported to be under 'active consideration' by the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID).[15] As the next section will examine, despite the prevalence and diversity of the practice, the definition of a 'disappearance' retains a state-centric focus that does not fit comfortably with the notion of 'disappearing' as experienced in Northern Ireland.

3. Defining 'disappearances'

Although there are some exceptions (see below), one of the features of the international literature on 'disappearances' is that, historically at least, much of the discussion has been based on the premise that it was primarily states which were responsible for such activities. This state-centricity is illustrated by some of the historical commentary on the phenomenon by influential human rights

10 Arditti, n 5; Emilio Crenzel, *Memory of the Argentina Disappearances: The Political History of Nunca Más* (New York: Routledge, 2011); Emilio Crenzel, 'Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice,' *International Journal of Transitional Justice*, 2:2, (2008), 173–191; Antonius C.G.M. Robben, 'Disappearance and Reburial in Argentina,' in Jeffrey A. Sluka (ed.) *Death Squad: The Anthropology of State Terror*, (Philadelphia: University of Pennsylvania Press, 2000), pp. 93–113; Robben, n 7; Jennifer G. Schirmer, '"Those Who Die for Life Cannot be Called Dead": Women and Human Rights Protest in Latin America,' *Feminist Review*, 32, (1989), 3–29 (p. 5).

11 See e.g. Jo-Marie Burt, 'Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations,' *International Journal of Transitional Justice*, 3:3, (2009), 384–405; Crenzel (2011), n 10.; Hayner, n 6; Ralph Rozema, 'Forced Disappearance in an Era of Globalization: Biopolitics, Shadow Networks, and Imagined Worlds,' *American Anthropologist*, 113:4, (2011), 582–593.

12 Amnesty International, n 9; Joost Fontein, 'Between Tortured Bodies and Resurfacing Bones: The Politics of the Dead in Zimbabwe,' *Journal of Material Culture*, 15:3, (2010), 423–448; Human Rights Watch, 'Time for Reckoning: Enforced Disappearances and Abductions in Algeria' (February 2003), www.hrw.org/reports/2003/algeria0203/algeria0203.pdf [accessed 2 August 2018].

13 Malathi De Alwis, '"Disappearance" and "Displacement" in Sri Lanka,' *Journal of Refugee Studies*, 22:3, (2009), 378–391; Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal,' *International Journal of Transitional Justice*, 5:1, (2011), 75–98; Eric Stover, William D. Haglund and Margaret Samuels, 'Exhumation of Mass Graves in Iraq,' *JAMA: the Journal of the American Medical Association*, 290:5, (2003), 663–666; Michael Young, 'The Sneer of Memory: Lebanon's Disappeared and Postwar Culture,' *Middle East Report*, 217, (2000), 42–45.

14 Kovras n 9; Layla Renshaw, *Exhuming Loss: Memory, Materiality and Mass Graves of the Spanish Civil War* (California: Left Coast Press, 2011).

15 United Nations Working Group on Enforced or Involuntary Disappearances. *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/36/39 (31 July 2017), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/229/15/PDF/G1722915.pdf?OpenElement [accessed 2 August 2018].