

The Role of Information Recovery and Accountability in Advancing Reconciliation

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Introduction

The parties to the Belfast/Good Friday Agreement 1998 expressly recognised the need to acknowledge and address the harms experienced by victims; stating it ‘was a necessary element of reconciliation’. However, the Agreement itself only sparsely addressed how that should be done. Since then there have been numerous official and civil society initiatives have sought to advance reconciliation within Northern Ireland. While many of these projects have made important interventions within communities across Northern Ireland, media reports and academic analyses continue to point to how, 25 years after the Agreement, reconciliation has yet to deliver on the promise of the peace process. At a time when new legislative proposals on reconciliation and information recovery are progressing through Westminster, this paper draws on transitional justice theory and practice to explore how the concept of reconciliation can be understood and related to information recovery and accountability.

The Meaning of Reconciliation

Reconciliation is complex and often controversial. Theologians, sociologists, anthropologists, psychologists and political scientists have developed rich bodies of work examining what reconciliation should mean and what is required to achieve reconciliation. However, these literatures often take different starting points with respect to whether they are discussing reconciliation at a personal, communal,

national or international level, and as a result, there is considerable variation in the ways this term is invoked.

Reconciliation is, however, commonly understood as a process that is intended to improve relationships.¹ This could mean relationships between individual victims and perpetrators, between antagonistic communities, between people and the state, between states, or even some combination thereof. For each level of reconciliation, different types of measures may be necessary to promote and sustain reconciliation.

Variations in approaches may also arise where there are different understandings of reconciliation's end point. For example, a few researchers espouse 'thin' conceptualisations of reconciliation, which envisage future relationships as being characterised by an absence of violence and perhaps some minimal framework for coexistence.² However, such 'thin' notions of reconciliation may have a limited ability to contribute to stable and positive relationships.³

As a result, theorists across multiple disciplines more commonly understand reconciliation in a 'thicker' manner in which the objective is to ensure that future relationships operate on a basis of trust and respect.⁴ These thick conceptions of reconciliation are understood as both backward- and forward-looking, in that work to promote reconciliation is required to identify the ways in which relationships have seriously broken down and the steps that should be taken to redress the harms that

¹ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (United States Institute of Peace Press 1997).

² Martina Fischer, 'Transitional Justice and Reconciliation: Theory and Practice' in Beatrix Austen, Martina Fischer and Hans J Giessmann (eds), *Advancing Conflict Transformation: The Berghof Handbook II* (Berghof Foundation 2011); Lina Strupinskienė, "What Is Reconciliation and Are We There yet?" Different Types and Levels of Reconciliation: A Case Study of Bosnia and Herzegovina' (2017) 16 *Journal of Human Rights* 452.

³ Rosemary Nagy, 'Reconciliation in Post-Commission South Africa: Thick and Thin Accounts of Solidarity' (2002) 35 *Canadian Journal of Political Science/Revue canadienne de science politique* 323.

⁴ Cagla Demirel, 'Re-Conceptualising Competitive Victimhood in Reconciliation Processes: The Case of Northern Ireland' (2023) 11 *Peacebuilding* 45, 47; Stipe Odak, 'Theoretical Perspectives on Reconciliation', *Religion, Conflict, and Peacebuilding: The Role of Religious Leaders in Bosnia and Herzegovina* (Springer 2021); Ernesto Verdeja, *Unchopping a Tree Reconciliation in the Aftermath of Political Violence* (Temple University Press 2009).

resulted and prevent a repetition of violence.⁵ This can entail addressing the structural problems that provoked and were exacerbated by the rupture in relations.⁶

Reconciliation and Transitional Justice

Reconciliation is widely, and at times cynically, invoked as an objective of transitional justice. The term appears in the titles of laws and institutions designed to deal with legacies of past violence. In some instances, these legal mechanisms were premised on genuine, reasoned and transparent understandings of reconciliation. This was evident, for example, in the work of the South African Truth and Reconciliation Commission, which articulated a vision of reconciliation that was informed by the African philosophy of *Ubuntu*, which can be loosely summarised as the understanding that ‘I am human because you are human’.⁷ In other instances, the language of reconciliation has been used to try to legitimise impunity measures by obfuscating their purpose. A notorious example of this is the 1978 Law on National Reconciliation, which was enacted in Chile by the military regime, led by Augusto Pinochet, to grant a broad amnesty to those responsible for serious human rights violations. As a result of measures that have used reconciliation as a cover for impunity, within the transitional justice field, the term is often met with unease and resistance.

In addition, it is increasingly common for the reconciliatory aspirations of transitional justice to be presented in a tempered and cautious manner. Today, it is widely understood that reconciliation is a long-term process,⁸ which can progress or regress in response to political and grassroots interventions as well as shifting political contexts. As a result, transitional justice mechanisms that are established to provide truth, justice and reparations to victims and survivors can at best contribute to

⁵ Yaacov Bar-Siman-Tov (ed), *From Conflict Resolution to Reconciliation* (Oxford University Press 2003).

⁶ Jonathan Evershed, ‘Reconciled to What? ‘Community Relations’ and the Anti-Politics of Reconciliation in Northern Ireland’ in Rachel Kerr, Henry Redwood and James Gow (eds), *Reconciliation after War* (Routledge 2021).

⁷ Hanneke Stuit and Esther Peeren, ‘Ubuntu, the Truth and Reconciliation Commission, and South African National Identity’, *Representation Matters* (Brill 2010).

⁸ Demirel (n 4).

reconciliation as one element of a wider political landscape. No single mechanism should be expected to deliver reconciliation by itself.

Limited or absent reconciliation can have many practical social and political manifestations. In many instances, these are underpinned by the existence of narrow, polarised and exclusionary narratives of the causes, forms and consequences of past violence.⁹ This can include narratives that do not allow space to recognise the suffering of others or do not allow for recognition of culpability for wrongdoing within communities. Experiences from transitional societies around the world suggest that where laws and institutions are created to promote full or partial denial of past actions, or to promote one-sided narratives of the past, they will do little promote reconciliation and may deepen divisions.

Inspired by work within the field of memory studies, transitional justice theory and practice increasingly recognises that no society can create a fully inclusive and comprehensive narrative of the past. However, understandings of reconciliation as rebuilding relationships also make clear that effective processes cannot be premised on a small set of individual narratives. Instead, there must be collective dimensions to the narratives that are conveyed and listened to. This may entail multiple contesting narratives all existing within the public domain. The goal of reconciliation therefore is to find and grow points of overlapping dissensus and to create spaces where individuals, communities and institutions are able to listen to and respect the narratives of others.¹⁰ A genuine reconciliation process should refrain from ensuring that one narrative dominates over others. The connections that are drawn between reconciliation and narratives raise the question of whether and how information recovery could be related to reconciliation.

Conceptualising Reconciliation within Information Recovery Processes

The term 'information recovery' is not commonly used in transitional justice. Instead, it seems to have come into use in policy debates about the legacy of the 'Troubles'

⁹ *ibid* 47; Melinda Sutton, 'Political Reconciliation in Northern Ireland and the Bloody Sunday Inquiry', *Political Reconciliation in Northern Ireland and the Bloody Sunday Inquiry* (transcript Verlag 2013); Duncan Morrow, 'The Rise (and Fall?) Of Reconciliation in Northern Ireland' (2012) 44 *Peace Research* 5.

¹⁰ Odak (n 4); Demirel (n 4).

as alternative to the phrase ‘truth recovery’, which is more commonly used internationally. In part, this local linguistic nuance may reflect some justifiable discomfort with the idea that it is possible to uncover single objective truths about past events. However, it may also reflect a narrowing in the scope of examinations of the past. Internationally, while truth recovery programmes often entail hearing the testimony of individual victims and offenders and may cast light on unsolved cases or expose historical injustices in individual cases, they are generally orientated at investigating societal truths. This can include documenting the structural factors that caused and sustained the violence, analysing how past violence continues to cause harms for victims and society, and to use this information to make recommendations on how to address these harms and prevent their repetition. Information recovery in contrast is much more individually focused. The phrase denotes a process in which family members can request information about individual conflict-related deaths and in which individuals can disclose information about such crimes. The extent to which the information yielded in this type of process could contribute to broader, more collective understandings of the past would depend on how much of the information yielded in the process becomes public and available for more systematic analysis. Given these differences between truth recovery and information recovery, we could legitimately ask whether reconciliation can and should be a goal of information recovery.

If information recovery is to be understood as contributing to reconciliation, the next question to explore is how would reconciliation be conceptualised and operationalised within the process? For example, would an information recovery process be intended to promote reconciliation at an interpersonal level, at a communal level or between people and the state? The level of reconciliation that is selected can have implications for the design of the process. For example, would an information recovery process that is intended to achieve interpersonal reconciliation enable some form of interaction between victims and offenders, either directly or indirectly? Alternatively, if an information recovery process is intended to achieve some form of communal or societal reconciliation, does this necessitate that the process be public facing to some degree?

The experience of the amnesty process of the South African Truth and Reconciliation Commission is instructive in demonstrating how a process structured around individual offenders disclosing information of past criminality can be designed to address different levels of reconciliation. For example, when perpetrators of serious human rights violations applied for amnesty in South Africa, their victims had the right to participate in the hearings to determine if amnesty should be granted. In these hearings the victims could be present during the offenders' testimony; and they could, either directly or through their legal representatives, cross-examine the offenders and make statements explaining how they had been harmed by their crimes. In addition, the hearings to determine whether perpetrators of serious violations should be amnestied were televised and the names of those granted amnesty were published.¹¹

Different conceptualisations of reconciliation could also create expectations of the behaviour of participants in an information recovery process. For example, within many world religions, theories of reconciliation are inherently linked to expectations that wrongdoers repent and atone for their actions and that victims forgive those who harmed them.¹² At times, these ideas have shaped expectations of truth recovery processes. For example, the revered leader of the South African Truth and Reconciliation Commission, Archbishop Desmond Tutu, imbued that process with his own Christian inspired spiritual and moral beliefs. While this approach resonated with many who engaged with the Commission, it was criticised as causing some victims to feel pressured to forgive those who had harmed them, irrespective of whether the perpetrator had engaged with the Commission.¹³

¹¹ Louise Mallinder, 'Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa' (Queen's University Belfast 2009) Working Paper No. 2 From Beyond Legalism: Amnesties, Transition and Conflict Transformation <<https://papers.ssrn.com/abstract=1375046>> accessed 23 February 2021; Antje du Bois-Pedain, *Transitional Amnesty in South Africa* (Cambridge University Press 2007).

¹² Verdeja (n 4).

¹³ Sisonke Msimang, 'You May Free Apartheid Killers but You Can't Force Their Victims to Forgive' *The Guardian* (11 March 2016) <<https://www.theguardian.com/world/2016/mar/11/chris-hani-apartheid-killers-cant-force-victims-to-forgive>> accessed 6 June 2023.

Advancing Reconciliation in the Design of Information Recovery Processes

An information recovery process would only be in a position to advance reconciliation if victims and offenders engage with the process. This means that care should be taken to ensure that the process is perceived as legitimate, that there are safeguards to address concerns that participants could have, and that measures are taken to reach out to and build confidence among with those who would be eligible to participate. Addressing the concerns of participants could include incorporating safeguards into the design of the process to reduce the risks of re-traumatisation for those who participate, to ensure the veracity of recovered information, and to ensure that all participants fully understand how the process would operate and what its legal consequences would be.

In addition, if reconciliation is understood as requiring more than a collection of individual testimonies, this raises the question of how an individualised information recovery process can contribute to identifying areas of overlap within the narratives of different social groups? Clearly, a process in which individual testimonies are gathered and are not made public in any form only has limited potential to contribute to the development of the forms of collective narratives that are generally understood as necessary for communal or societal reconciliation.

In contrast, if an information recovery process leads to the publication of information about the forms of violence that took place, the organisations and institutions that are responsible for the violence, the locations of the violence and the identities of the victims, this could yield information that could reveal themes and patterns in the violence. This type of factual information could be useful for contextualising competing social narratives and countering forms of denial relating to the systematic patterns in the violence. However, it would tell us little about the causes and consequences of that violence.

Alternatively, an information recovery process that was structured to enable more fulsome individual offender narratives to be examined, verified and made public could provide a richer basis for analyses of the causes and consequences of the violence, and for identifying and promoting areas where contested narratives find some common ground.

Reconciliation and Accountability

Truth recovery work is often intended to complement criminal investigations and prosecutions. Within the field of transitional justice, domestic and international criminal justice mechanisms are premised on the principle of individual criminal responsibility and they focus on delivering individualised justice for serious human rights violations. When an individual's crimes are proved beyond reasonable doubt, this can be important for countering denial. However, trials are rarely equipped to deliver the collective narratives that are necessary for communal or societal reconciliation.¹⁴

In addition, after a violent past, criminal justice responses largely focus on the legacies of physical violence. These processes are rarely intended to expose or address structural injustices. However, if accountability is understood more broadly than the criminal justice process this can create space to address structural injustices. Experiences of truth commissions around the world show that where these processes generate evidential bases that inform understandings of the causes, consequences and patterns of the violence, they could inform further policies to advance reconciliation through tackling the causes and ongoing experiences of injustice.

Application to the Northern Ireland Legacy Proposals

Although the term 'reconciliation' appears in the title of Northern Ireland Troubles (Legacy and Reconciliation) Bill and the Commission that it is intended to create, neither the Bill, its explanatory guidance, nor its human rights memorandum provides any clues on how the drafters understand reconciliation or have designed the process to further this objective.

Previous government policy on Northern Ireland has tended to present reconciliation as roughly synonymous with the pursuit of anti-sectarianism and good relations between Northern Ireland's nationalist and unionist communities. However, it is unclear how an information recovery process structured around individual

¹⁴ Janine Natalya Clark, *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia* (Routledge 2014).

disclosures of information, which may or may not contribute to family reports,¹⁵ and containing no further provision for the information provided to become public, would contribute to reducing the contestations over rival narratives of the past in Northern Ireland.

In addition, as policy and legislative proposals on legacy have evolved since the Consultative Group on the Past there has been a gradual reduction in the emphasis on examining themes and patterns, including a move away from requirements that recovered information to be incorporated into thematic analyses.¹⁶ As a result, the Bill only makes limited provision for recovered information to form part of an evidence base for statistical analysis in those instances where the Commission has exercised its discretion to open an review into a case that is the subject of an immunity request or to link an immunity request to an existing review. Furthermore, the Bill only provides for recommendations on reconciliation to be made with respect to memorialisation activities.¹⁷

The information recovery process envisaged in the Bill may yield some new information for individual families. However, it provides only limited space for building *overlapping* understandings of the causes of the violence, its impact on victims, and the ways it continues to shape Northern Irish society. As such, it is difficult to see how the information recovery process can contribute to thicker understandings of reconciliation.

¹⁵ Northern Ireland Troubles (Legacy and Reconciliation) Bill, Clause 12. See the discretion permitted by the use of 'may' in paragraphs 2 and 3.

¹⁶ *Ibid*, clause 46 provides only for reports relating to conflict-related deaths issued by the ICIR to be included in a statistical analysis. As noted above, not all immunity requests may be the subject of a review that results in a report. In addition, this statistical analysis would not include other serious harms that are the subject of ICIR reports. Finally, while a purely statistical analysis could enhance understandings of some of the patterns in the violence, its capacity to contribute to more nuanced narratives would be limited.

¹⁷ *Ibid*, clause 44.



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