

Corrymeela Submission to the Consultative Group on the Past

Introduction

In Spain the past has been literally dug up as the mass graves of those murdered by Franco's execution squads were disinterred. Villages are having to confront painful issues of internecine conflicts because the Left was also involved in atrocities. And all the range of feelings emerge. In one village one woman says: 'I can never forget what they did. The killers were all from the village. But I can pardon them. If we don't do that, we end up being as bad as they are'. Another man says that younger generations have found it easier to bury the ancient enmities. Some members of the traditional right-wing families in the village has quietly expressed their regrets about the murder of his grandmother. For others in the village the tales of horror, despite the decades, produce rage.¹

Digging up the past – dealing with the past – will stir up a whole range of feelings and emotions. We should not assume there is some tidy, comprehensive process of clearing up the past available to us. There may be no closure available. Instead what we are in the midst of is tragedy, Virgil's 'lacrimae rerum' (the tears of things). This is an issue of real struggle to know what is best to do or even what is possible to do. Members of the Corrymeela Community most affected by the conflict emphasise the huge difficulty of finding constructive ways forward.

Dealing with the past is wider than meeting the needs of victims alone.

Nor should effective trauma counselling and support for victims (as important as they are) be equated with dealing with the past. Dealing with the past is not therapy. The collapse of a society into large scale violence was the responsibility of many people and affected us all – the victims being only the most obvious manifestation. Dealing with the past is at the very least making sense of what happened and a recognition that peace alone is not sufficient. There is unfinished business to be attended to.

The traumas of the past century have led societies to approach their past in different ways: by repression of memory or perhaps less psychologically by drawing a thick line under the past (Japan, Ireland after the civil war and until recently France); by confession (Germany, South Africa); and by institutional ritualization of remembrance (Israel). Criminal prosecution has also been used (the former Yugoslavia).

Repression of Memory or Drawing a Line

It is worth noting that the whole idea that nations should systemically and publicly face up to their difficult past has been commonplace only since 1945. Before that, forgetting was encouraged. European peace treaties from one between Ludwig of Germany, Charles of France and Lothar of Lotharingia in 853 to the Treaty of Lausanne in 1923 solemnly required an act of forgetting

¹ See Giles Tremlett, 'Spain's Civil War Comes Back to Life', *The Guardian*, 8 March 2003.

between former enemies. The argument has been that ‘mankind cannot bear too much reality’ and that merciful oblivion – amnesty and amnesia – is the best approach. We decreasingly take this approach and seek truth and justice. Nevertheless there is a serious argument here. Managing a peaceful transition requires deals to be made, the pursuit very often of a very murky path of compromise, the prevalence of ambiguity, and the loose ends of history to be left dangling. For instance, De Gaulle managed the transition in post-war France by pretending that all French citizens had been outstanding patriots; the sorry history of the Vichy regime and collaboration was swept under the carpet.

What happens in such situations is that the issue of blame is avoided or displaced and the emphasis is put on the present and the future. The consequence is that the difficult moral issues in relation to the past are not publicly talked about.

The Irish historian Tom Garvin speaks about what happened after the Irish Civil War:

... for a long time after the end of the Civil War, a lot of people didn't like talking about it, a sort of conspiracy was entered into be a lot of people – to ensure that the bitterness if the Irish Civil War was not transmitted to a younger and possibly more innocent generation.²

The construction of a State, the rebuilding of society, the need to work with former opponents, the compromises that an end to conflict requires, a realization that no-one has clean hands, fear of stirring up new bitterness, fears about the amount of truth that can be borne, the psychological burden on individuals, a wish that future generations do not bear similar anguish: some or all of these things may seem to require a prudent silence or a determination to let bygones be bygones. Social forgetting (amnesia) is a refusal to reproduce the violence by talking about it publicly.

It may well be that this approach may ‘work’. A generation may ‘background’ its hurt, pain and bitterness and carry them to the grave in order to avoid passing them on to a younger generation. The flow of memory may be turned off; the story not passed on. And thus a conflict may be laid to rest; the wounds healed over, reconciliation achieved by time and forgetting. For instance, some countries – France after the Second World War, Spain after Franco, and Poland under its first post-Solidarity government – sought to draw a ‘thick line’ under the past. In Spain it was called the *pacto de silencio*.³ In

² Tom Garvin, Meath Peace Group Talk, October, 1997.

³ The *pacto de silencio* came under increasing pressure and has now collapsed. A new law on Historical Memory was passed in the autumn of 2007. Designed to recognise and acknowledge the tens of thousands of Republican victims of Franco it has been hugely controversial – opposed by the conservative Popular Party as re-opening old wounds and by the left wing Republicans in Catalonia as not going far enough. It mandates municipal authorities to fund efforts to unearth mass graves. It is clear that over 60 years after the Spanish Civil War there is no consensus on the memory of that conflict.

Mozambique the conviction was that ‘the less we dwell on the past, the more likely reconciliation will be’.⁴

This solution – ultimately a wager that peace and stability and getting along with people do not require telling the truth about the past – may be available in particular situations, although it should be made clear that particular people and groups have carried the burden of making it ‘work’, e.g. victims. In other situations the danger may be that if the demons of the past are not faced the pragmatic and necessary agreements made will be precarious, as present politics are plagued by past demons. There will be a constant danger of agreement breaking down and of the past repeating itself.⁵ Dangerous silences may be created which can break into the bitter voice of mutual recrimination, with the risk of setting off a new round in the cycle of conflict. Thus, the ‘thick line under the past’ approach has its dangers. By repressing the real history of the inter-ethnic carnage between 1941 and 1945 in the former Yugoslavia, the Titoist regime helped to create the conditions for its return.

It is extremely unlikely that either repression of memory or drawing a line under the past is going to work in Northern Ireland. What happened is going to come out, either piecemeal or through some structured process. So issues of dealing with the past are not going to go away and this is one of the key messages that Northern Irish society, and its politicians, must face.

Justice and Criminal Prosecution

Punishment is the punitive aspect of justice. We cannot do without some form of punitive institutionalised response to wrong-doing, no matter how inadequate and imperfect it may be. Punishment of the perpetrator is a statement that the injured person matters, that justice matters. Through the criminal justice system the perpetrators are called to account and held responsible for their misdeeds. The truth of what happened is hopefully revealed and the victim’s story told. Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal at the Hague said this:

For me, it started with the victims, continued for the victims and it ends with them. That is what I have to tell myself – if we have established the record of what happened to the victims then we have achieved something... At the end of all the trials, if we can say that we have established the fact of what happened, that will have been something.⁶

The perpetrator pays for what he/she has done and this is reflected in the seriousness of the sentence. Retribution takes place. Punishment is one way respect is shown to the victims (and their families). And punishment helps restore the moral order of society. So giving up on punishment is not to be

⁴ Quoted in Priscilla B Hayner, *Unspeakable Truths*, Routledge, 2001, p87.

⁵ Some of our members working in Bosnia and Kosovo have found that the mothers and grandmothers ‘hold’ the stories of atrocity and they make sure that these are handed down to the sons so that they ‘know’ and can act when violence breaks out again.

⁶ *The Observer*, 2 December 2007.

lightly done but may be required for the sake of peace and sometimes for truth.

Criminal prosecution and punishment has been one of the important ways of dealing with the past (e.g. the Nuremberg Trials in Germany). Is it going to have a contribution to make in Northern Ireland? Abandoning it is going to be highly controversial. The reality is that there are unlikely to be a large number of successful prosecutions (see the legal opinion commissioned by Healing Through Remembering on the viability of prosecutions based on the work of the Historical Enquiries Team). However, there is still outstanding business here – which the proposed Offences Bill attempted to clear up.

Whatever happens we should go the way of preserving the reality of an offence being committed. We should not go the way of amnesty (in the sense of ignoring or forgetting what happened).

Truth: Exploring the Past and Exploring its Injustices

It has been argued that it is important for a public account to be rendered of what happened and who was responsible. Wrong-doing and injustice are publicly acknowledged. Building a trust-worthy peace, it has been contended, requires honest discourse about the past. Thus, Truth Commissions have been established in such countries as South Africa, Chile, El Salvador and Guatemala.

Of central importance is that these Truth Commissions were official attempts at truth-telling and truth-learning and they have tended to focus, although not exclusively, on the misdeeds of the State. They arise from, or are part of, a peace process and often incorporated political compromises. Thus, in South Africa, amnesty was given to perpetrators in return for public disclosure. The perpetrators were held to account but they were not punished if they disclosed what they had done. Signs of contrition or apologies were not required, even though they did take place on some occasions. The victims were able publicly to tell their story, and for some of the families of victims there was the possibility of finding out what happened to their loved ones. Through these processes the victims and their families were given respect and the possibility of the restoration of personal and civil dignity. A process such as this may be sufficient for many people to put the past behind them. What was given up, however, was the possibility of punitive justice against the perpetrators. This was not uncontroversial. Some victims or their families were totally opposed to the granting of amnesty and challenged this in court.

Truth has many layers. The South African Truth and Reconciliation Commission worked with four notions of truth: factual or forensic truth; personal or narrative; social or ‘dialogue’; healing and restorative.

-*Factual or forensic truth*: legal or scientific information which is factual, accurate and objective and is obtained by impartial procedures. At the individual level this means information about particular events and specific people: what exactly happened to whom, where, when and how. At the societal level, it means recording the context, causes and patterns of

violations: an interpretation of facts that should at least erode any denials about the past. Disinformation once accepted as truth must lose its credibility.

-*Personal and narrative truth* is the integration of the experience of the traumatic events into a person's own narrative: it answers the 'who' question. Traumatic events shatter personal and community narratives. The quest for personal truth aims at rebuilding these narratives and is a vital part of recovery for many people.

-*Social truth*: the truth generated by interaction, discussion, debate or dialogue by the conflicting parties. Conflicting views about the past can be considered and compared. It is the process that matters, rather than the end result.

-*Healing and restorative truth*: the narratives that face the past in order to go forward. Truth as a factual record is not enough: interpretation must be directed towards goals of self-healing, reconciliation and reparation. This requires the acknowledgement that everyone's suffering was real and worthy of attention.⁷

In these four notions of truth both truth-telling and truth-learning are involved. In truth-learning the truth of what has been done is confronted, in particular we confront what we have done. But there is a further, deeper dimension to truth-learning: we confront the reality of (our) wrong-doing. Thus the issue of moral judgement has to be faced. For participants in a bitter and protracted conflict issues of truth-learning and the associated moral judgement are extremely difficult to face. Denial is the easier option.

Truth needs to be publicly established. This is why the creation of Truth Commissions in some situations has been significant. Judicial inquiries and court cases have been important in particular circumstances. However, the difficulties, particularly in contested spaces, need to be understood.

It may be that a public account of what has happened and who was responsible can be rendered although it should not be assumed. However, rendering a public account of what has happened and who was responsible does not free us from conflicting interpretations, clashing memories, etc, about the past, or even disagreement about what the conflict has been about. Focusing on specific events may bring its own distortions and community anger. (Why this event? Why not this one? Etc.) 'Truths' about the past may continue to be disputed. Nor does truth-telling necessarily lead to healing and reconciliation (certainly not at once). Indeed truth can be used as a weapon directed against political opponents and as a means to claim superiority in a political struggle. It can open up old wounds and reinforce division. What may be hoped for by rendering a public account is that the range of permissible 'truths' may be narrowed and that particular lies, silences, fictions, myths and denials are effectively challenged. After the

⁷ Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering*, Polity Press, 2001, pp 227-8.

South African Truth and Reconciliation Commission no one could honestly deny that apartheid was a monstrous crime.

There are a number of ‘structural’ problems with having a truth-recovery commission in Northern Ireland. Such commissions are better able to deal with state-sponsored violence. In Northern Ireland most of the killing was done by paramilitaries. What incentive would ex-paramilitaries have to confess and/or tell the truth? Prisoner release has taken place. Those who have not been convicted of crimes (both paramilitaries and former members of the security forces) risk prosecution. Former government agents face obvious danger. Why risk vulnerability? Truth-telling without inducements are fairly rare. Thus in South Africa ‘amnesty’ was offered for ‘truth’. This then made ‘justice’ impossible to achieve. In the former Yugoslavia the inducement of EU membership has been offered to Serbia and Croatia to deliver suspected war criminals to the International Criminal Court in The Hague. Any truth-recovery commission must be seen by those involved and by the public to be even-handed: a perception that special treatment is being given to one side or the other, or to (former) paramilitaries as opposed to (former) members of the security forces, would only increase the problems in achieving cross-community consensus which is a *sine qua non* of such a process.

Then there are timing issues. A truth-recovery commission in Northern Ireland is almost certainly not possible at this time. The new institutions of government are too fragile and there is not a sufficient enough political and community consensus. That doesn’t mean it might not be possible in the future.

A Patch Work of Possibilities

Up to now we have had

- A variety of judicial inquiries (e.g. the Bloody Sunday Inquiry)
- The Historical Enquiries Team
- Inquiries by the Police Ombudsman
- Storytelling of various sorts

Healing Through Remembering has suggested in addition

- Internal organisation investigation
- Community-based ‘bottom-up’ truth recovery
- A Commission of historical Clarification

Information will also continue to emerge through the media and through books, academic articles, etc.

(a) Judicial Inquiries

Endless inquiries are problematic. They are often hugely expensive (witness the cost of the Bloody Sunday Inquiry) and there is a perception that certain high-profile cases where there is an inquiry are more significant than others. Selective inquiries only produce selective truth.

(b) Internal Organisation Inquiries

It would be helpful if the significant agencies and actors **self-critically** looked at their role in the Troubles: government, political parties, security forces, paramilitaries, churches, trade unions, universities, employers, and so on. At the South African Truth and Reconciliation Commission there were hearings of institutional and professional representatives.

(c) Historical Enquiries Team

The Historical Enquiries Team is a worthwhile experiment. More money would enable the work to be done more quickly. Consideration should be given to making it independent of the PSNI.

(d) Community-based ‘Bottom-Up’ Investigations

The difficulty with such community-based investigations is that there is a danger that they will be in the business of community justification and vindication, rather than self-critical reflection. Nevertheless, individual communities documenting their stories and making them public may have its value in rebuilding communities profoundly traumatised by violence.

(e) Commission of Historical Inquiry

As the violent conflict has wound down the ideological battle about the past has intensified – the past is a contested site. There is very little acknowledgement by the main parties to the conflict that they are guilty of anything – it was always someone else’s fault and violence was always in response to the action of others. Thus the violence was ‘legitimate’. The main parties to the conflict focus on the harm done to them or to ‘their’ community, not on the hurt, pain and suffering that they have inflicted. Nor do the British and Irish states have clean hands either – their role is deeply contested as well.

It can be expected that dealing with the past will be deeply contested because there is no agreement about the causes of the conflict. But we cannot escape this debate, nor the debate about the competing moral evaluations of the use of violence. The idea of a Commission of Historical Clarification is worthy of serious consideration. What we would hope the outcome to be is ‘that the range of permissible “truths” may be narrowed and that particular lies, silences, fictions, myths and denials are effectively challenged’.

(f) Story Telling

It is very important that victims integrate the experience of their traumatic events into their own personal narrative – because these traumatic events shatter personal narratives and memory. Corrymeela has seen the power of storytelling, particularly the positive telling of stories which break silences, help people understand that they are not alone, and enable them to move on. Such narratives are not fixed on the toxic character of past events but rather provide a horizon for the future – a horizon that takes the landscapes of the past into the present. Storytelling needs safe spaces and we have learnt the power of the creative arts to provide an avenue for people to move out of silence. Our work with victims has enabled us to understand how long the

work can take and how important it is that people's only identity is not that of 'victim'.

Therefore, the recording of the stories of victims in a variety of ways is important and we need to think how best that can be done – there are a lot of creative ways. We also need to think about preserving the 'good' stories – the people who were peacemakers and who made significant positive changes in their lives. And we also need to think about the stories of former combatants and what they would be willing to tell (this may raise legal issues).

We Cannot Deal with (all of) this Now

One line of approach is for focus on creating the political (and other) foundations for the future, then turn to dealing with the past. The argument is that you will be better placed to wrestle with the ghosts of the past. It took West German society over 20 years after the Second World War to absorb some of the realities of the Nazi period – the Nuremberg Trials were seen by most Germans at the time as victors' justice. It is certainly true that it takes societies and communities time to absorb what has happened – and new generations will see things in a very different light.

However, to argue that **nothing** can be dealt with now would be profoundly wrong. We need to see dealing with the past as a process rather than a once-and-for-all event, and it is likely to take generations.

We need to be continually testing what is possible at a particular time. Better relationships between people and communities and a different context can bring new possibilities. Therefore, consideration should be given to some sort of continuing oversight mechanism or body that keeps monitoring and exploring what might be possible. This needs to be independent of government.

Memorials

Successful memorials to people who have died in community or national trauma (Yad Vashem in Jerusalem, the Vietnam Wall in Washington or the Oklahoma City memorial) rest on a foundation of shared grief. When this foundation is absent monstrosities emerge such as the Valle de los Caídos outside Madrid that purport to commemorate the dead of the Spanish Civil War but really serve to mark Franco's triumph. Is there enough shared grief to create some common memorial in Northern Ireland. It is doubtful at this point in time.

Day of Reflection

Corrymeela was involved in the Private Day of Reflection at our Centre at Ballycastle. We found a positive response from some local people. They were not themselves victims but had often known someone who was. Because of this a number of people found the experience difficult. The Day was worthwhile and we should consider a move to a wider public day of reflection when the time is right, while acknowledging this is a very sensitive issue. A civic ritual of sorrow, loss and mourning is important.

What do we Tell the Children

How the Troubles are dealt with in our schools is an important issue, given that there is no agreement about their cause. There are two dangers: either silence and evasion or partisan history. In our schools work we have found the materials produced by Facing History valuable (www.facinghistory.org) - it has produced work on the Holocaust, Rwanda, race relations in the USA and on Northern Ireland. We need to encourage young people to enter the world and experience of the 'other' community, to make linkages and be self-critical. So, it is not only 'what' we tell but how we facilitate the learning process with children. The Revised Northern Ireland Curriculum emphasises the importance of passing on to our children thinking skills and capabilities.

Teachers need to become more facilitative of a learning process to help children and young people develop:

- Relevant skills and capabilities;
- Knowledge and understanding of the challenges and opportunities they may encounter in contemporary society and the different values, attitudes, needs and perspectives of their own and other communities;
- The skills, knowledge, attitudes and values necessary for independent thinking, informed decision making and responsible action throughout their lives.

Corrymeela members and staff have also produced valuable materials and resources for dealing with the past. One of our members said 'What I think is important is that new generations accept that something awful happened in our society and that maybe part of our problem was that we had no mutual understanding, no mutual respect and no mutual toleration'.

We also need to recognise that stories of violence and conflict are being told to children and this impacts on them – there is transgenerational trauma. This also needs to be acknowledged and responded to.

What Dealing with the Past can Deliver?

We need to be realistic about what can be achieved. The reality is that after community conflict there is usually little justice and the truth is often obscured, and when it is obtained often inadequate and bitter. The truth of Virgil's 'lacrimae rerum' (the tears of things) is highly relevant. We are in the presence of tragedy. There is no way that we can repair the past. The pain of dealing with this issue and its deep intractability needs to be acknowledged. Nevertheless we need to do what we can.

Summary

- Dealing with the past is wider than meeting the needs of the victims alone
- Drawing a line under the past is not going to work
- The reality is that there are going to be a very limited number of new criminal prosecutions – this giving up on 'justice' will be very painful to many people. Nevertheless we should not follow the path of amnesty but one that recognises the reality of an offence
- A truth-recovery commission is not possible at this time
- Possibilities

- Look at additional funding for the Historical Enquiries Team
- Encourage significant actors to look self-critically at their role
- Look at community-based ‘Bottom-Up’ Investigations but recognise their limitations
- Look seriously at a Commission of Historical Inquiry while recognising that the past is a contested ‘site’.
- Think about how a permanent archive of stories can be created – not only of victims, but of the peacemakers and of former combatants
- We cannot deal with all of this now; but we need to deal with some of this now. Consider some sort of continuing oversight mechanism or body that keeps monitoring and exploring what is possible at any particular time
- Beware physical memorials
- Encourage the Public Day of Reflection when the time is appropriate
- Consider what we tell the children and the educational dimension
- Be realistic about what dealing with the past can deliver. We are in the midst of tragedy
- Continue to support and fund programmes that build good relationships and positive parenting, promote healing and understanding of conflict and provide opportunities for dialogue.

Appendix 1

Different Forms of Remembering

1. Remembering as sorrow, loss and mourning (for lives wasted, cut short, etc. For individuals and communities).
2. Remembering as therapy
(Generally for individuals – hoping that they can ‘move on’ when they have ‘dealt’ with their memories. However, we increasingly apply the metaphor of ‘therapy’ to collectivities. The belief in the healing power of remembering was at the heart of the South African Truth and Reconciliation Commission.)
3. Remembering as fidelity to a community, and particularly its dead
(Telling the community story which is often about community vindication and the ‘glorious’ dead.)
4. Remembering as historical truth
(What happened? Who was responsible? What were the main factors operating? Etc. Historians)
5. Remembering as moral judgement
 - o Criminal prosecutions and punishment (legal guilt)
 - o Acts of repentance and confession (I did this, I am sorry'), political apology ('This state was responsible for... We apologise') and symbolic gestures (the German Chancellor Willy Brandt kneeling at the Warsaw Ghetto Rising monument)
 - o Acts of self-critical reflection ('We could have done better' – individuals and corporate)
 - o Acts of forgiveness ('You did this to me. I forgive you'.)
 - o Acts of reparation (individual and corporate)
All of these assume that an ‘offence’ has been committed.
6. Remembering as education
 - o So that we might learn the ‘lessons’ of the past; so that history might not ‘repeat’ (Holocaust Education). **Remembering for a different future.**
 - o So that the young might walk in the steps of the ‘heroic’ dead (some memorials, some storytelling). **Remembering to continue the past.**
 - o Handling documents and stories critically; entering into the experiences and memories of the ‘other’ community and further reading history in the face of the ‘other’. **Remembering as part of the dialogue with the ‘other’.**

Appendix 2

A Note about Amnesty

1. No Criminal Prosecutions for what has been Done

Amnesty is an attempt to bring ‘to conclusion serious political disorders affecting civil peace’ (Paul Ricoeur). The aim of amnesty is civil peace. But amnesty is also linked to social forgetting (amnesia).

In Articles I and II of the Edict of Nantes which aimed to bring an end to civil war between Protestant and Catholic in 16th century France Henry IV proclaimed that there would be amnesty and there would be forgetting. The memory of what happened will be as if ‘something that has not occurred’.

The past is overcome by forgetting.

The attempt to create social forgetting through amnesty and calling it ‘national reconciliation’ after massive human rights violations in certain South and Central American countries in the 1970s and 1980s caused massive outrage. Some of the amnesties were subsequently revoked.

2. No Criminal Prosecution in Return for Confession/Acknowledgement/Testimony/Truth

This was the approach of the South African Truth and Reconciliation Commission. It is not amnesty in the traditional sense. **And the past is overcome by remembering.** For such an approach to ‘work’ it probably requires forms of repentance and forgiveness.

3. Pardon

People are let off punishment or have a reduction of sentence following a judicial process. **The reality and memory of an offence is preserved.** The British Government’s proposed On-The-Run legislation followed this sort of approach.

Appendix 3

A Note on Was it a War?

Illumination on this question can be found by considering the various strategies that were or could have been adopted.

The War Strategy

It was often argued that if only the security forces could have been freed from the restraints under which they were operating in Northern Ireland and permitted to wage all-out war on the IRA the conflict could have been brought to a rapid and satisfactory conclusion. Some support for this view might have been taken from the fact that the IRA clearly perceived itself to be fighting a war against the British Army. It was a guerrilla war with some limitation of legitimate targets. It was a war nonetheless, in which soldiers, policemen, prison officers and civilians were shot without warning, and in which bombs and incendiaries were used against all kinds of property, both governmental and private.

It was not always made clear what the adoption of a war model by the security forces would have entailed. At the simplest level it would almost certainly have involved a general policy of shooting suspected terrorists on sight, and the indefinite detention of all captured suspects as prisoners of war.

Experience in the Irish Republic in the 1920s and in Malaya in the 1950s suggests that it might also have involved reprisals against communities from which gunmen or bombers emerged or in which they were sheltered. There was also the possibility of hot pursuit raids into the Republic or even the destruction of suspected terrorist training camps or hideouts.

It is extremely doubtful whether the adoption of policies of this kind would have been successful in eliminating the IRA. They would equally likely have caused an escalation in the fighting. The cost in civilian casualties would certainly have been very high. The political consequences for the British Government in the eyes of the rest of the world would have been very grave.

The Detention Strategy

A policy of arresting and detaining suspected terrorists without trial was pursued between 1971 and 1975 – this policy was somewhat short of the full-scale war model.

The implementation of the policy of putting suspected terrorists behind bars during that period involved the regular and systematic ‘screening’ of the population in all areas in which there was thought to be a substantial IRA presence. The process of arresting and questioning large numbers of people, sometimes on a street by street basis, inevitably increased the antagonism between the security forces and innocent members of the nationalist community in which the policy was applied. There is little doubt that it contributed substantially to the flow of recruits to the IRA.

The Criminal Prosecution Strategy

Under a pure criminal prosecution model all suspects, whether they were charged with terrorist or ordinary crimes, are dealt with in ordinary criminal courts and have a right to jury trial in serious cases. In practice, the system of criminal prosecution was substantially modified in Northern Ireland from 1973 by changes in the common law rules on arrest for questioning, and on the admissibility of confessions, and by the suspension of jury trial. But the criminal prosecution model which was maintained from 1975 remained essentially different from the war or detention models in that a suspect could be kept in custody only if he or she was charged with a specific criminal offence and the prosecution was able to prove his or her guilt beyond reasonable doubt.

There are some important consequences of adopting a pure or modified criminal prosecution model. The most important is that some people who are 'known' by the security forces to have committed or organised acts of terrorism will not be put behind bars because there is insufficient evidence to bring them before a court or because a court will not convict them. Relying on criminal prosecution thus makes dealing with suspected terrorists rather like dealing with suspected burglars or pickpockets. No one assumes that all of these will be arrested and imprisoned, or that burglary or pick-pocketing will be completely stamped out. The community accepts this as part of the price to be paid for its commitment to the principle that it is better to allow a guilty suspect to go free than to convict an innocent person.

All policies have their consequences and costs. The criminal prosecution strategy enforced restraint on the security forces. The problem of obtaining evidence was very difficult, if not impossible in many cases. Emphasis was put on undercover work, the use of informers and sophisticated intelligence gathering. With the understandable pressure to get 'results', to lessen or eliminate terrorism, there were strong temptations for the security forces to seek ways round the restraints. The suspicions of confessions being forced out of people in Castlereagh in the late 1970s, the use of supergrasses in the mid-1980s, the events of 1982 investigated by John Stalker and Colin Sampson, events and enquiries since (e.g. the Stevens Inquiry and inquiries by the Police Ombudsman), particularly around alleged collusion, all highlight the dilemma of how to cope with sophisticated and deeply entrenched terrorism in ways which do not corrupt the state, the security forces and society itself – we risk becoming lost in a miasma of lies, deception and moral murk.

The criminal prosecution strategy criminalised people whose motivation is very different from 'ordinary' criminals, because they regarded themselves as being at 'war'. Criminalisation of such people can only work successfully in societies where there is acceptance of the institutions of the state by virtually everyone, a situation which did not exist in Northern Ireland during the Troubles.