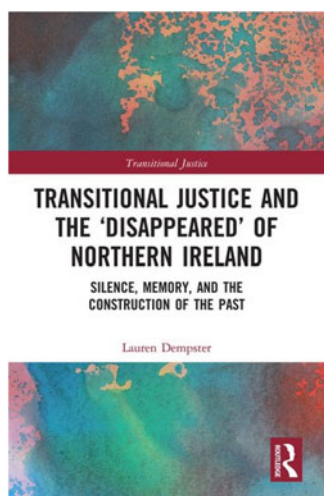


LIBRARIAN'S PICK



Transitional Justice and the “Disappeared” of Northern Ireland: Silence, Memory, and the Construction of the Past

Lauren Dempster*

Book review by Charlotte Mohr, ICRC Reference Librarian for the collections on the ICRC's history and activities.

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In Northern Ireland, as in many other post-conflict contexts, the “disappeared” have become a central issue in the discourse on conflict legacy and reconciliation. Between 1972 and 1985, sixteen people are presumed to have been secretly executed and buried by Republican paramilitary groups.¹ A most insidious form of conflict violence, disappearances are the cause of long-term psychological and social harm. In a post-conflict setting, they represent both an open wound and a remnant of war—a thorny issue for transitional justice to address, at the intersection of the personal and political. In 1998, the signature of the Good Friday Agreement brought an end to “the Troubles”, the three-decade period of

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ICRC Library

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conflict between nationalists and unionists in Northern Ireland. No provision for an overarching truth-finding or reconciliation commission was included. Twenty-two years later, a consensus has yet to be reached on how to address the legacy of those years of violence.³ What has repeatedly been described as a piecemeal approach to transitional justice in Northern Ireland has, however, given birth to the Independent Commission for the Location of Victims’ Remains (ICLVR). This independent, non-judicial investigative body for the disappeared was established via an intergovernmental treaty between the United Kingdom and Ireland in 1999. To date, the remains of thirteen out of the sixteen victims have been recovered.

Twenty years after the creation of the ICLVR, Lauren Dempster provides a first extensive qualitative study of the Commission’s history and impact in her book

- 1 The Provisional Irish Republican Army (IRA) has admitted responsibility for the disappearance of thirteen of the sixteen victims, mostly in one main statement dated 1999, and the Irish National Liberation Army for one additional victim. The Republican discourse on the issue has mainly remained consistent, if less vehement with time: the disappearances have been presented as the result of internal disciplinary measures carried out against informants or individuals accused of stealing IRA weapons.
- 2 The online catalogue is available at: <https://library.icrc.org/library/>. For the most recent publications, see: <https://library.icrc.org/library/search/date>. For more information on the research guides, see: blogs.icrc.org/cross-files/category/research-guide. To subscribe to the IHL Bibliography, email library@icrc.org with “IHL Bibliography subscription” in the subject line.
- 3 The 2014 Stormont House Agreement between the British and Irish governments included a series of measures to deal with legacy issues of the Northern Irish conflict: the creation of a Historical Investigation Unit overseen by the Northern Ireland Policing Board, potentially opening the door to prosecutions for crimes committed during the Troubles; an Independent Commission on Information Retrieval; an Implementation and Reconciliation Group; and an Oral History Archive project. A lack of political consensus has delayed the implementation of these measures of the Agreement since its adoption.

Transitional Justice and the “Disappeared” of Northern Ireland. In its preface, the book purports to “[explore] the response to the ‘disappearances’ that were perpetrated during the Northern Ireland conflict through a transitional justice lens”. Arguably, it is also an exploration of concepts central to the field of transitional justice—such as victimhood, “breaking silence”, and the construction of a common history post-conflict—through the case study of the disappeared of Northern Ireland. The author’s qualitative approach is particularly well suited to this aim. The relatively small number of victims and limited scope of the ICLVR allow for a careful, detailed examination of the Commission’s record. The book is based both on archival research, mostly in news media archives, and on a series of twenty semi-structured interviews with relatives of the disappeared, victim advocates, ex-combatants from the Republican movement, staff members of the ICLVR, academics, journalists, politicians and others.⁴ This methodology is complemented by an interdisciplinary approach, drawing on concepts from transitional justice, socio-legal studies, anthropology, criminology, memory studies and human geography. The back-and-forth between the interrogation of academic concepts and the voices of the people interviewed, regularly quoted in the text, allows the reader not to lose sight of the human stakes of the issue. Most importantly, it guarantees that the book’s examination of key transitional justice notions such as silence, collective memory and reconciliation is rooted in the lived-in reality of a post-conflict situation.

The working process of the ICLVR is touched on, but is not at the centre of the book. Dempster focuses instead on the Commission as a response to the issue of the disappeared, and on the way key actors have responded to the Commission in return. The result is an investigation of the dialogue between a mechanism of transitional justice and the communities it serves. As such, the book is a welcome addition to the literature on truth commissions and other non-judicial forms of transitional justice, which has traditionally relied on empirical fieldwork with a more quantitative approach to evaluate their record. It also fills a gap in the mostly State-centric literature, as a case study on the response to disappearances perpetrated by non-State armed groups.

In post-conflict settings, the issue of the disappeared and the truth commissions aiming to establish their fate has regularly become tied to the tension between the need for justice and the need for peace. The introduction of limited immunity or amnesty-like measures to incentivize participation is a well-known source of controversy.⁵ In Northern Ireland, the ICLVR is bound by guarantees of confidentiality in order to encourage the provision of information by ex-members of paramilitary groups believed to have committed the disappearances. Information given to the Commission cannot be used in criminal

4 A list of interviewees is provided at the end of the book, except for four individuals who wished to remain anonymous.

5 Some scholars have challenged the common assumption of truth commissions as paving the way to impunity, however. See, for example, Priscilla B. Hayner’s highly regarded empirical review of truth commissions, *Unspeakable Truth: Facing the Challenge of Truth Commissions*, New York: Routledge, 2011.

proceedings; forensic testing on remains is limited to establishing a victim's identity. There is one exception to this confidential approach: the ICLVR is allowed, when it receives information about a potential location of a victim's remains, to share that location with the victim's family. Though it is an oversimplification, the justice versus peace opposition nevertheless touches on the diverse and sometimes conflicting needs of victims, families and communities post-conflict—a reality that mechanisms of transitional justice have to negotiate. Dempster points out that there has traditionally been a gulf between theory and practice in the way that such mechanisms have responded to victims' needs. Looking at the proven track record of the ICLVR, she argues that it represents an example of a truly victim-centred form of transitional justice, without hiding the “enormous compromise” at its core.⁶ If the term “success” can seem inappropriate in light of this compromise, the ICLVR is nevertheless argued to have avoided the major pitfalls of truth commissions: becoming politicized, being doomed by a lack of trust in the process by crucial participants, being unable to manage expectations, and alienating or re-traumatizing victims.

Building on the value of “quiet diplomacy” to build trust and relationships, Dempster convincingly attributes this positive outcome to the ICLVR being an example of a form of “quiet transitional justice”. Her analysis points to the confidentiality of the ICLVR's investigations as a key factor in its ability to deliver on its mandate and meet a specific need expressed by the victims' families: the return of the remains of the disappeared for burial. The association between “quiet” and “victim-centred” may appear counterintuitive, when silence is both a common motive behind the disappearances (as a means to silence an alleged informer) and the cause of much of the families' suffering. This is where the multiplicity of voices included in the book and the author's interrogation of classic tropes of transitional justice and post-conflict reconciliation strengthen its central argument. Dempster dives into the motives and rationales of victims' families, communities, political actors and perpetrators to keep or break their silence. She points out how current power relations frame who speaks out and the way collective memory on the issue of the disappeared is shaped. Finally, she highlights how the families' powerful public campaign and the ICLVR's confidentiality guarantees have provided the right incentive structure to spur participation and trust in the process. Here lies part of the value to be found in the case study of the ICLVR: it depicts how a “successful” mechanism of transitional justice addressing the issue of the disappeared integrates the current motivations and needs of the different actors involved.

The book's conclusion turns quite logically to the implications of the ICLVR for a broader effort to address conflict legacy issues in Northern Ireland. The Commission's restricted mandate is both a crucial factor in its success and its most obvious limit, leaving needs beyond the recovery and repatriation of

6 The central implication of this “enormous compromise”, as the author calls it on p. 81, is that the information uncovered by the ICLVR will lead neither to the public identification of perpetrators and of the motives for their crimes, nor to their criminal prosecution.

remains unmet. Dempster’s answer is hopeful but granular. She highlights the potential of the ICLVR’s experience to be replicated to address other issues, but also uncovers factors that might impede such efforts, the grey areas – notably the role of larger communities and institutions in conflict violence – that will emerge. In a perhaps predictable but most appropriate conclusion, the book ends with one last quote from the author’s interview with Eugene McVeigh, brother of Columba McVeigh, one of the disappeared: “I see the movement towards peace – albeit fragile and difficult and all of that – as worthwhile and worthy ... [;] we have a stake in it because we made a sacrifice.”⁷ This final note highlights the importance of affected families and communities’ agency and sense of purpose in “doing transitional justice” and negotiating the “tensions between principle and pragmatism” at its core.⁸

7 *Transitional Justice and the “Disappeared” of Northern Ireland*, p. 235.

8 As synthesized by Kieran McEvoy and Louise Mallinder in “Amnesties in Transition: Punishment, Restoration and the Governance of Mercy”, *Journal of Law and Society*, Vol. 39, No. 3, 2012, p. 412. Quoted in *Transitional Justice and the “Disappeared” of Northern Ireland*, p. 183.