

Whose Justice? Rethinking Transitional Justice from the Bottom Up

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This paper argues that transitional justice needs to adopt a participatory approach to achieve longer-term sustainability, shifting away from the top-down 'one-size-fits-all' approach to allow 'voices from below' to be heard and heeded. It critiques dominant interpretations of key transitional justice concepts, and links them to the difficulties of post-conflict transitional justice in a range of violently divided societies. Popular participation and local agency, it is argued, is necessary to achieve ends identified in much transitional justice discourse, and to embed mechanisms for the creation of sustainable peace. A Northern Ireland initiative (the Ardoyne Commemoration Project) will be explored in-depth, illustrating how a bottom-up 'truth-telling' process can make a significant contribution to transitional justice and casting doubt on the validity of the deference to legal dominance in current policy and practice. The paper recommends that knowledge available in development studies and participatory theory be applied more clearly in debates and approaches in transitional justice.

INTRODUCTION

What has been coined the 'post-conflict agenda' has its roots in the peace framework developed in the United Nation's Secretary General Boutros Boutros-Ghali's 'Agenda for Peace' 1992.¹ In this paper we advance the

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1 *An Agenda for Peace: Prevention Diplomacy, Peacemaking and Peacekeeping* (1992) 17 UN Doc. A/47/277-S/24111.

view that a grassroots approach to transitional justice should be regarded as an intrinsic part of this agenda. The international community has recently prioritized justice issues and is financing and supporting the implementation of a plethora of legal initiatives. As one commentator noted, development co-operation has been reformulated in legal terms and more and more international effort has gone into building courts, writing laws, punishing perpetrators of human rights abuses, supporting human rights NGOs, and generally promoting the rule of law abroad.² (Re-)establishing the rule of law is now regarded as a prerequisite for the emergence of stable and peaceful societies and justice packages are frequently part of negotiated peace agreements. However, there is a growing debate about the appropriate model and level (for example, the global, national, local/community) at which transitional justice measures should be adopted, and whether these are complementary or viable alternative processes.³ Critics have argued that law is increasingly seen by the international community as one of the safest ways in which to engage with, or intervene, in other countries. Such attempts to 'influence the rules of the game' evidence the fact that international justice and rule of law initiatives are not politically neutral.⁴ In particular, the tendency to exclude local communities as active participants in transitional justice measures is a primary flaw, raising fundamental questions of legitimacy, local ownership, and participation. Simply involving local people at the implementation stage of these initiatives is not enough. For a fully participatory process (we will argue) they should also take part at every stage in the process including; conception, design, decision making, and management.

The aim of this paper is to examine critically some of these issues, and while mindful of the dangers of over-eulogizing a participatory approach, explore the value of participation and local agency for transitional justice theory, policy, and practice. It is structured in six parts. First, it briefly examines the origins of transitional justice and its application in post-conflict societies. This is followed by a brief assessment of some of the key

2 C. Mokhiber, *Local Perspectives: Foreign Aid to the Justice Sector* (2000) 1–16.

3 A. Betts, 'Should Approaches to Post-conflict Justice and Reconciliation be Determined Globally, Nationally or Locally?' (2005) 17 *European J. of Development Research* 735–52; L. Bickford, 'Unofficial Truth Projects', unpublished paper on file with authors (2006); P. Gready, 'Reconceptualizing transitional justice: embedded and distanced justice' (2005) 5 *Conflict, Security & Development* 3–21; P. Lundy and M. McGovern, 'The Dialogues Within: Memory, Community and Post-Conflict Transition in a Nationalist Community in the North of Ireland', paper presented to 'Cultures of Political Transition: Memory, Identity and Voice', 13–17 September 2000; P. Lundy and M. McGovern, 'Participation, Truth and Partiality: Participatory Action Research, Community-based Truth-telling and Post-conflict Transition in Northern Ireland' (2006) 40 *Sociology* 71–88.

4 J. Hearn, 'Aiding democracy? Donors and civil society in South Africa' (2000) 21 *Third World Q.* 815–30; B. Oomen, 'Donor Driven Justice and its Discontents: The Case of Rwanda' (2005) 36 *Development and Change* 887–910.

principles invoked in dominant versions of transitional discourse: transition, democracy, and justice. Third, drawing predominantly on insights from the field of international development studies, the ideological assumptions of transitional interventions are analysed in the context of a wider 'post-conflict agenda'. Fourth, the paper explores evidence suggesting that a move toward a greater emphasis on participation is emerging in transitional debates. Fifth, the roots of participatory principles in radical development theory and the strengths and weaknesses in such an approach are examined. A cautious note is raised, however, about the claims that can be made for the potential merits of a participatory approach. Finally, using a case study of the Ardoyne Commemoration Project, a bottom-up 'truth-telling' project in Northern Ireland in which the authors were involved, the paper will discuss and explore the contribution of grassroots 'truth-telling' processes to transitional justice,⁵ and make some general suggestions as to how these might be translated into values underpinning transitional justice practice. The aim is therefore to make a positive contribution to the debate on the future direction of transitional justice and, at a practical level, of discussions and policy initiatives on 'bottom-up' approaches.

THE ROOTS AND RISE OF TRANSITIONAL JUSTICE

Transitional justice is a field of inquiry and practice that is concerned with 'the various judicial and non-judicial approaches to dealing with ... the legacy of human rights violations in societies emerging from conflict and/or an era of authoritarian rule'.⁶ These approaches involve a 'set of inter-related principles and processes' centred around the imagined role of law and law-making 'in constituting transition' toward a range of goals and ends.⁷ These goals and ends can include, amongst others: the restoration of the 'rule of law'; judicial retribution designed to counter a culture of impunity; recompense and the restoration of dignity to victims; reform of institutions; social and political 'reconciliation'; 'nation-building' and the re-constitution of the past on the basis of a 'shared narrative'. While often complimentary, these goals can often be in tension with each other and the various means employed to pursue them (whether in terms of war crimes trials, truth commissions or some form of reparation) may prioritize some at the expense of others. Indeed, one of the key questions that needs to be explored is how to avoid the potential problem of denying or limiting real engagement and agency with such mechanisms to a population that has been subject to years

5 Ardoyne Commemoration Project, *Ardoyne: The Untold Truth* (2002); P. Lundy and M. McGovern, *Community, 'Truth-telling' and Conflict Resolution* (2005) 1–89.

6 See <<http://www.gsdrc.org/go/topic-guides/justice/transitional-justice>>.

7 R.G. Teitel, *Transitional Justice* (2000) 12.

of violent conflict. Nevertheless, in charting the difficult path (as Martha Minow put it) between ‘too much memory and too much forgetting’, these various approaches and ends of transitional justice share a common feature in that they ‘depart from doing nothing’ in dealing with the aftermath of mass violence.⁸

But when, why, and how has this idea of no longer ‘doing nothing’ about the legacy of atrocity and wholesale human rights violations emerged? While Jon Elster persuasively argues that transitional justice can be dated back to the birth (in classical Athens) of democracy itself, modern conceptions of transitional justice emerge with the concerted efforts to enshrine international law at the heart of inter-state relations in the wake of the Second World War.⁹ As Ruti Teitel argues, the heyday of post-war transitional justice was marked by an ‘exceptional and international’ approach. This was most evident in the proliferation of key international treaties, such as the Genocide Convention (1948), the Universal Declaration of Human Rights (1948), and the Geneva Convention on Laws of War (1949), and the early attempts to instigate a regime of international criminal accountability in the war trials held in Nuremburg and Tokyo. However, it was only following the end of the Cold War, driven first by nation-building political transitions, then by globalization and the growing importance given to conflict resolution strategies, that ‘transitional justice moves from the exception to the norm to become a paradigm of rule of law’.¹⁰ In similar vein, Priscilla Hayner has highlighted two key factors that have stimulated this more recent growth of interest in transitional justice. First, the circumstances of transitional societies themselves and, second, the increased public interest and international expectation that accountability is due after atrocity.¹¹ The result has been a greater focus on the issues facing societies emerging from violent conflict undertaken by a wide range of international actors, including regional and non-governmental organizations (NGOs), international financial and other institutions and, of course, the United Nations. In this process, legal theories, practices, and institutions have come to be viewed as increasingly central in facilitating and shaping transition, often themselves framed by what are conceived as ‘universal’ conceptions of justice.

Certainly the international community (and specifically the United Nations) has increasingly embraced and employed transitional justice discourses and mechanisms in its interventions in ‘post-conflict’ situations.

8 M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (1998) 4.

9 J. Elster, *Closing the Books: Transitional Justice in Historical Perspective* (2004); R.G. Teitel, ‘Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights J.* 69–94.

10 Teitel, *id.*, p. 71.

11 P. Hayner, ‘Justice in Transition: Challenges and Opportunities’, presentation to 55th Annual DPI/NGO Conference, ‘Rebuilding Societies Emerging from Conflict: A Shared Responsibility’ (2002) 1–10.

The Secretary General of the United Nations, Kofi Annan, in his report to the Security Council in August 2004, acknowledged that there had been an increased focus by the United Nations on questions of justice, transitional justice, and the rule of law in conflict and post-conflict societies.¹² He notes that direct UN involvement in post-conflict societies has been characterized by the importation of transitional justice apparatus, for example, in Kosovo and Timor-Leste, where the UN has been directly involved in the administration of judiciaries, police, and prison services. In other countries (such as El Salvador, Guatemala, Cote d'Ivoire, Liberia, and Haiti) key rule of law components have been devised by United Nations 'experts'.¹³ Indeed, in his report, the Secretary General provides a definition of transitional justice that emphasizes the expansive role envisaged for transitional justice ideas, approaches, and models.¹⁴ United Nations rule of law and transitional justice operations have worked to strengthen domestic law enforcement and justice institutions, facilitate national consultations on justice reform, coordinate international rule of law assistance, monitor and report on court proceedings, train national justice sector officials, support local judicial reform bodies, and advise host-country rule of law institutions. They have assisted in vetting and selecting national police, judges, and prosecutors, drafting new constitutions, revising legislation, developing ombudsman institutions and human rights commissions, building criminal defence lawyers' networks, establishing legal aid, and setting up legal training institutes. Most notably, missions have assisted host countries to address past human rights abuses by establishing tribunals, truth and reconciliation mechanisms, and victim reparation programmes.¹⁵ In recent years the initiatives have expanded even further to include methods for reintegration of displaced civilians and rehabilitation of former combatants; legal education training and support for the organization of the legal community; legal aid; indigenous and informal traditions for administering justice or settling disputes and facilitating reconciliation.¹⁶

To assist in this endeavour, transitional codes, guidelines, and rule of law policy tools have been devised. The Office of the UN High Commissioner for Human Rights (OHCHR) recently released *Rule-of-law Tools for Post-*

12 UN Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies* (2004) UN Doc. S/2004/616, at 4.

13 *id.*, at pp. 5–6.

14 Transitional justice is defined as comprising (*id.*, at p. 4):

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

15 *id.*, at pp. 5–6.

16 *id.*, at p. 12.

conflict States.¹⁷ These guidelines are the first in a series of published materials designed to help United Nations field missions and administrations emerging from conflict to establish law and to address truth and reconciliation issues. The tools will be distributed to United Nations missions around the world and include materials such as guides, manuals, and handbooks for indigenous peoples, minorities, professional groups, educational institutions, and even paramilitary groups. In addition, the United Nations is developing an international roster of ‘experts’ who can be drawn upon to provide assistance in post-conflict countries to establish transitional justice processes, restore shattered justice systems, and rebuild the rule of law.

By far the most popular transitional justice mechanism has been truth commissions. Since the early 1970s there has been a proliferation of truth commissions varying in remit and style in countries as diverse as Uganda, Argentina, Guatemala, South Africa, Ghana, East Timor, and Morocco, to mention but a few.¹⁸ The rationale for initiating truth commissions stems from a desire within post-conflict society to uncover ‘the truth’ about past injustices and wrongdoing that in many cases has been deliberately ‘silenced’. This is often, but not always, linked to authoritarian regimes where there has been a breakdown in the rule of law and where human rights abuses have been carried out with impunity. Generally, truth commissions are officially sanctioned processes usually initiated by an incoming new regime seeking to make a ‘fresh start’ and break with the past. A growing number of commentators are of the opinion that drawing a line under the past is not a viable option for such countries and argue that truth commissions can bring positive benefits including ‘closure’, ‘healing’, ‘reconciliation’ and may assist society in general to move forward by working through a violent past. Underpinning this is the centrality of ‘giving voice’ or enabling victims to ‘tell their story’, coupled with the practical issue of providing reparations for victims and a restorative rather than retributive conception of justice.¹⁹

There are also numerous criticisms of truth commissions not least that they reopen old wounds and may generate further polarization; ‘the truth’ delivered is often partial and limited; their ‘top-down’ nature can margin-

17 OHCHR, *Rule-of-law Tools for Post-conflict States* (2006).

18 P. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (2002); N. Kritz (ed.), *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*, vol. 2 (1995).

19 The literature on the pros and cons of truth commissions is vast; see, for example, N. Biggar (ed.), *Burying the Past: Making Peace and Doing Justice after Civil Conflict* (2003); Hayner, id.; N. Kritz, ‘Where we are and how we got here: An Overview of Developments in the Search for Justice and Reconciliation’ in *The Legacy of Abuse: Confronting the Past, Facing the Future*, ed. A.H. Henkin (2002); R. Mani, *Beyond Retribution: Seeking Justice in the Shadow of War* (2002); UN Secretary-General, op. cit., n. 12; P. Seils, ‘Reconciliation in Guatemala: the role of intelligent justice’ (2002) 44 *Race and Class* 33–59; R.A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (2001).

alize victims, and there are often unpalatable trade offs between truth and justice on the one hand and stability and pragmatic politics on the other. Moreover, they tend to have a narrow focus dwelling upon individual violations resulting in the exclusion of a range of socio-economic injustices.²⁰ More recently attention has tended to focus on the community dimension of conflict and the confined and delimited nature of local ownership and participation in ‘top-down’ processes. Increasingly policy makers, academics, and practitioners are questioning the problematic nature of the ‘one-size fits all’ approach and are conscious of the value of and need to listen to and heed local people in order to develop locally owned processes.²¹

Clearly there have been many instances where ‘official truth-telling’ has been critical in ‘giving voice’ to victims, unearthed past abuses, brought perpetrators to justice, and promoted real progressive social change. However, there is not universal agreement on the merits and outcomes of such processes. For example, while recognizing its many strengths and benefits, critics of aspects of the South Africa Truth and Reconciliation Commission have illustrated how both the Christian-inspired ethos of ‘reconciliation’ and that of ‘rainbow nation-building’ precluded certain things being said by the relatives of victims and those who had been tortured by the apartheid regime, particularly in the public hearings.²² Some have argued that this led to a form of ‘second-order traumatising’, probably doing more individual harm than good.²³

The key question is, how can mechanisms of transitional justice and ‘truth-telling’ be framed in order to avoid such an outcome and ensure, in more general terms, that real political engagement and agency is not denied to a population that has been subject to years of violent conflict and/or authoritarianism? A community-based approach to ‘truth-telling’ is understood in this article as one in which decision-making over the design, remit, conduct, character, and outcomes of the ‘truth-telling’ process is organized in, with, and by members of a given community. It should be informed by research methodology paradigms from both participatory action research (PAR) and collaborative oral history models. However, theorists and practitioners should be mindful that the virtues of such an approach are matched by potential problems.²⁴ It is in this context that an analysis of the

20 Mani, id.

21 Betts, op. cit., n. 3.

22 B. Hamber, ‘Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland’ (2003) 26 *Fordham International Law J.* 1074–94; Wilson, op. cit., n. 19.

23 C. Van der Walt, V. Franchi, and G. Stevens, ‘The South African Truth and Reconciliation Commission: “Race”, historical compromise and transitional democracy’ (2003) 27 *International J. of Intercultural Relations* 251–67.

24 P. Lundy and M. McGovern, ‘A Trojan Horse? Trust and Unionist Attitudes to Truth Recovery Processes in Northern Ireland’ (2007) *International J. of Transitional Justice* doi:10.1093/ijtj/ijm029; Lundy and McGovern, op. cit. (2006), n. 3; Lundy and McGovern, op. cit., n. 5.

possible role of community-based ‘truth-telling’ should be placed. In Central and South America, participatory action research projects such as PhotoVoice have provided an opportunity for communities, groups, and individuals to create a ‘public testimony’ of their experiences.²⁵ Here a ‘storytelling’ process has had two main aims. The first is to instigate an appropriate ‘context for grieving’. The second is to allow victims of state violence to ‘create a shared story’ around violent events that had previously been ‘silenced’.²⁶ Such projects have combined with wider ‘truth-telling’ initiatives (such as the Church-sponsored REHMI Report and the subsequent state-sponsored Guatemalan Historical Clarification Commission) and other forms of *testimonio* work.²⁷

Perhaps the most well-regarded and comprehensive localized or community post-conflict justice-making initiative is the ‘customary courts’ of the *Gacaca* in Rwanda. For many, it has had a range of positive benefits and provided useful lessons for elsewhere.²⁸ The 1994 genocide left an apparently insurmountable and devastating legacy in its wake. The sheer scale of what had taken place, with around a million dead, and the commitment to achieve some form of accountability in relation to all those involved as perpetrators (which could amount to as much as a third of the adult population) placed an impossible burden on the established Rwandan judicial system and the newly instituted International Criminal Tribunal.²⁹ It was within this context that the *Gacaca* courts, inspired by ‘traditional dispute resolution mechanisms’, have been set up.³⁰ As William Schabas notes, in attempting to overthrow ‘decades of impunity’ with a commitment to ‘leaving no serious crime unpunished’, Rwanda is adopting a ‘very decentralised system of justice administered by non-professionals at the local level’ that could ‘stand as an example for others who claim, in the post-conflict environment, that large-scale prosecution is impossible’.³¹ Yet, even here, criticisms remain. However bold this experiment in mass accountability may be, there are concerns that popular participation and the needs of

25 M.B. Lykes, ‘Activist Participatory Research among the Maya of Guatemala: constructing meanings from situated knowledge’ (1997) 53 *J. of Social Issues* 725–46.

26 M.B. Lykes, ‘Creative arts and photography in Participatory Action Research’ in *Handbook of Action Research: Participative Inquiry and Practice*, eds. P. Reason and H. Bradbury (2001) 366.

27 G. Gugelberger, *The Real Thing: Testimonial Discourse and Latin America* (1996); P. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (2001); Recovery of Historical Memory Project (REHMI), *Guatemala, Never Again!: The Official Report of the Human Rights Office, Archdiocese of Guatemala* (1999).

28 See for example, W. Schabas, ‘Genocide Trials and Gacaca Courts’ (2005) 3 *J. of International Criminal Justice* 879–95.

29 *id.*

30 C. Kirkby, ‘Rwanda’s Gacaca Courts: A Preliminary Critique’ (2006) 50 *J. of African Law* 94–117.

31 Schabas, *op. cit.*, n. 28, p. 895.

victims are far less a priority than may first appear.³² Perhaps more worryingly, it has been suggested that elite political interests have been ‘pervasive at every level of operation of Rwanda’s transitional justice system’ resulting in a process designed to ‘legitimate Tutsi dominance [that] has undermined justice’.³³ Others have expressed concern that this use of *Gacaca* as a vehicle to consolidate government power also reinforces unequal power relations and accentuates the silencing of the most vulnerable in society.³⁴ While there may therefore be much that can be learnt from the *Gacaca* model, in what is an unquestionably difficult context in which to establish a new regime of rights and participation, the lessons it holds for grassroots approaches to transitional justice may not only be the result of its apparent positive potential, but of its problems too.

TRANSITION AND JUSTICE

For many, recent years have seen the increased appropriation of the language of ‘human rights’ and ‘transition’ as part of an essentially unilateralist global project of ‘democracy promotion’. The dominant paradigm for understanding democratization within the international community embraced the assumption that the move away from dictatorial rule (evident in many parts of the world in the past 25 years) taken as the essence of transitional societies, invariably involves democratization. ‘Transition’, as normally conceived within transitional justice theory, tends to involve a particular and limited conception of democratization and democracy based on liberal and essentially Western formulations of democracy. Moreover, the assumption that ‘transition’ implies a move away from dictatorship and to democracy ignores the problem that human rights abuses may continue to take place in circumstances where, in theory at least, the norms of liberal democratic accountability prevail.³⁵ It also therefore permits a radical critique of implicit liberal versions of transition that may otherwise struggle to deal with the subversion of the rule of law, under the guise of law itself, in ostensibly liberal democratic states.

The definition of justice too tends to be narrowly conceived and limited to the legal sphere. As Heyzer has noted, ‘justice is addressed in a skewed, partial and piecemeal manner, as much by practitioners as by scholars, and

32 Kirkby, *op. cit.*, n. 30; Betts, *op. cit.*, n. 3.

33 Betts, *id.*, at p. 749.

34 Oomen, *op. cit.*, n. 4; P. Uvin, ‘Difficult Choices in the New Post-Conflict Agenda: the International Community in Rwanda after the Genocide’ (2001) 22 *Third World Q.* 177–189.

35 C. Bell, C. Campbell, and F. Ní Aoláin, ‘Justice Discourse in Transition’ (2004) 13 *Social and Legal Studies* 305–28; F. Ní Aoláin and C. Campbell, ‘The Paradox of Transition in Conflicted Democracies’ (2005) 27 *Human Rights Q.* 175–213.

the attempt to marry peace and justice after conflict remains largely incomplete.³⁶ Rama Mani argues that there are severe philosophical and conceptual shortcomings to the way justice tends to be understood by transitional policymakers and practitioners, with significant practical consequences. National and international ‘peace-builders’, it is suggested, fail to recognize and respond to the complexities of restoring the multi-faceted dimensions of justice in low-income, war-torn societies. The overriding focus on redressing direct injustices against individuals (in the form of human rights abuses, war crimes, and crimes against humanity) tends to leave the injustices that caused the conflict untouched.

Rather, Mani proposes an alternative, holistic, and integrated approach to conceptualizing justice in transition, with three distinct, but interrelated dimensions: legal, rectificatory, and distributive.³⁷ While the first of these is concerned with the restoration of the rule of law, and the second with direct human rights abuses suffered by individuals, the third is designed to address structural and systematic injustices resulting from political and economic discrimination and inequalities of resource distribution. For Mani, the focus on the rectificatory, in particular, can lead to a neglect of the other dimensions of justice.

The point here is not to suggest that human rights or democracy do not matter. Rather, that the agenda being set for transitional justice, as it is currently constituted, tends to marginalize issues, questions, and approaches that might either challenge the forms and norms of Western governance, or implicate dominant global economic relations in the causes of conflict, rather than its solution. Marginalizing economic justice, as with the desire to determine the forms and limits of democratization, might then be understood as part and parcel of a wider ‘ideological battle’.³⁸ This also, of course, raises the even thornier ‘universalism vs. relativism’ debate in the conceptualization of human rights and justice, to say nothing of that over sovereignty and the just basis for international intervention. These issues cannot be dealt with substantially here. However, what can be said is that the attempt to apply values uniformly across cultures and societies, where the possibilities for peoples in those societies to participate, influence, and impact upon that process are confined and delimited, is in essence a negation of those values by the very means of their supposed implementation. Put another way, the values and ideas informing justice may need to be articulated within and by each community, based on its specific realities and needs, for both conceptual and, indeed, practical reasons. In terms of the latter, for example, as Mani points out:

36 N. Heyzer, ‘Women, War and Peace: Mobilizing for Security and Justice in the 21st Century’, UNIFEM, the Dag Hammarskjöld Lecture, 22 September 2004, 1–4, at 4.

37 Mani, *op. cit.*, n. 19.

38 Hearn, *op. cit.*, n. 4, p. 820.

if ideas and institutions about as fundamental and personal a value as justice are imposed from outside without an internal resonance, they may flounder, notwithstanding their assertion of universality.³⁹

That non-Western scholars, living and working in resource-poor and war-torn societies, have little voice in Western dominated and generated academic theories and debates, may itself be seen as an injustice impacting upon the study and practice of transitional justice making. The narrow focus on questions of law, evident in much transitional justice theory, creates problems for understanding the issues at stake and the consequences of transitional processes by removing them from a wider structural social, political, and economic context.

CRITIQUING THE 'POST-CONFLICT AGENDA'?

The problem of a potential 'democratic deficit' lies at the heart of a critique of hegemonic international approaches to 'democracy promotion' in post-conflict situations. What is essentially at issue is the question of agency, of who engenders and controls change, within what has been termed the 'post-conflict agenda'.⁴⁰ This raises fundamental questions about power relations and the legitimation of dominant interests. As already noted, justice has become a key feature of international foreign policy and cooperation and is one of the main ways in which the international community has come to engage with countries in the late 1990s. The 'judicialization of international relations' is apparent in a wide range of internationally driven peace-building, reconciliation, development, democratization, good governance, nation-building, and rule of law initiatives.⁴¹ Through such interventions, international actors are getting deeply involved in political and social matters that they avoided until recently.

The problem again, as numerous commentators have argued, is that such initiatives tend to be donor-driven, rather than responsive to the needs or wants of people themselves. From the 1990s onward, a new approach to post-conflict development has emerged with aid, primarily from the North to the South, being viewed as a tool of political engineering.⁴² The shift toward

39 Mani, op. cit., n. 19, p. 49.

40 The term 'post-conflict agenda' refers in this paper to the many and varied peace-building, conflict-management, 'good governance', democratization, and rule of law and justice interventions sponsored by the international community.

41 Hearn, op. cit., n. 4; Oomen op. cit., n. 4; Uvin, op. cit., n. 34.

42 Hearn, id.; G. Knaus and F. Martin, "'Travails of the European Raj'" Lessons from Bosnia Herzegovina' (2003) 14(3) *J. of Democracy* 60–74; Oomen id.; W. Robinson, *Promoting Polyarchy: Globalisation, US Intervention, and Hegemony* (1996); Mani, op. cit., n. 19; R. Paris, 'International Peacebuilding and the "Mission Civilisatrice"' (2002) 28 *Rev. of International Studies* 637–56; M. Pugh (ed.), *Regeneration of War-Torn Societies* (2000); Uvin, id.

'human rights' and 'legal and judicial development' projects has been central to this process. Certainly there has been a proliferation of such programmes. For example, aid from the Organisation for Economic Co-operation and Development (OECD) to 'transitional' countries for legal, judicial and human rights initiatives grew from less than US\$500,000 in 1988 to a staggering US\$581 million in 2002.⁴³ The number of such projects increased from one in 1988 to 1,836 in 2002. However, of equal significance is the nature of such work. For many critics these projects are primarily donor-driven. For example, in Rwanda the number of OECD-funded legal and 'judicial development' and 'human rights' projects rose from zero to 35 during the 1990s, at an estimated cost of US\$30 million. Yet, as has already been touched upon, the extent to which such work impacts on the lives of ordinary Rwandans is extremely limited. In another instance, in Sierra Leone, the annual budget of the Special Tribunal has been calculated at over US\$58 million, while the national judicial infrastructure, with only two judges and 12 lawyers, stands in ruins.⁴⁴

As already noted, the vast majority of countries emerging from conflicts are poor and therefore highly dependent on international financial institutions (IFIs) such as the World Bank and the International Monetary Fund (IMF) for reconstruction aid. IFIs act as catalysts and guarantors for bilateral donors. As a result, poorer countries are dependent on (and often have no option but to agree to) such imposed conditionality. While, in theory, there may be positive political outcomes of such arrangements in practice the external leverage resulting from conditionality has provoked considerable criticism. Indeed, several commentators have argued that the 'urge to engineer' evident in such policies is concerned, at a strategic level, to make way for the integration of war-torn societies into the world economy. Even in countries without debilitating conflict, the role of aid and its efficiency is disputed. Uvin argues that the ethical and strategic challenges encountered in post-conflict situations are an extreme example of those posed in relation to *all* development aid, and the ideological and operational foundations upon which it rests.⁴⁵ The core critique is that such strategies promote a pattern of development determined by the dominant ideology of neo-liberal economic modernization that imbues the IFIs. In other words, wider geo-political and economic interests too often shape what tend to be represented as politically and economically neutral post-conflict and transitional justice initiatives. Far from being neutral, technocratic, and

43 Oomen, *id.*, p. 891.

44 *id.*

45 See, for example, J. Ferguson, *The Anti-politics Machine: 'Development', Depoliticisation, and Bureaucratic Power in Lesotho* (1994); D. Dollar and I. Pritchett, *Assessing Aid: What Works, What Doesn't and Why* (1998); M. Anderson, *Do No Harm: How Aid Can Support Peace or War* (1999); N. Middleton and P. O'Keefe, *Disaster and Development: The Politics of Humanitarian Aid* (1998).

a-political, as proponents would claim, it is argued, rather, that they are directed at reconstituting post-conflict societies in the image of Western liberal democracies, establishing such models as the ideal type and setting externally defined limits to the field of permissible action.⁴⁶ Indeed this has been likened to a new form of neo-colonialism, resting ultimately on a theory and system of subjugation underwritten by a romanticized vision of the West, held by the West itself, who then also constitute ‘the other’ as racially and culturally inferior.⁴⁷ There is a danger that transitional justice strategies can, as a consequence, be implicated in this process.

This is clearly closely tied to fundamental changes in international relations revolving around a reconceptualization of notions of national sovereignty.⁴⁸ The international mission in Bosnia-Herzegovina, regarded as ‘government by international experts’ that not only shapes but sets and imposes a political agenda, is an obvious case in point.⁴⁹ UN transitional administrations in places such as East Timor and Kosovo, often referred to by terms such as ‘trusteeship’ or ‘protectorate’, involve locally unaccountable agencies in drawing up and implementing laws.⁵⁰ In Afghanistan, Iraq, and Liberia, prefabricated ‘justice packages’ are similarly being readied for introduction.⁵¹ These include a wide range of legal activities formerly considered the remit of national states.

Yet this rise in interventionism, based on Western conceptions of justice, has also been paralleled by reluctance on the part of many rule of law experts to acknowledge the political dimensions of such activities. Expressing transitional justice questions as a series of technical issues offsets this potentially troubling recognition.⁵² Indeed critics have argued that the new ‘post-conflict agenda’ poses deep, and unresolved, ethical questions for donors and others that are simply not acknowledged or addressed in the literature.⁵³

PUSHING AN OPEN DOOR? MOVING TOWARD PARTICIPATION

Notwithstanding the criticisms discussed above, there does appear to be a growing recognition, on paper at least, within the international community

46 Knaus and Martin, *op. cit.*, n. 42; Uvin, *op. cit.*, n. 34.

47 Hearn, *op. cit.*, n. 4; Knaus and Martin, *id.*; Oomen, *op. cit.*, n. 4; Paris, *op. cit.*, n. 42; Uvin, *id.*

48 Oomen, *id.*, p. 892.

49 Knaus and Martin, *op. cit.*, n. 42.

50 M. Berdal and R. Caplan, ‘The Politics of International Administration: Introduction’ (2004) 10 *Global Governance* (Special Issue) 1–6.

51 Oomen, *op. cit.*, n. 4, p. 891.

52 A. Hurwitz and K. Studdard, *Rule of Law Programs in Peace Operations*, International Peace Academy, working paper (2005) 4.

53 Oomen, *op. cit.*, n. 4, pp. 890–2; Uvin, *op. cit.*, n. 46, p. 177.

that conceptually and operationally the ‘justice enterprise’ needs rethinking. Thus, for example, a 2003 UN report on gender, equity, and peace agreements endorses a participatory approach.⁵⁴ Failure to embrace locals’ lived experiences and opinions, it is argued, can lead to a poor understanding of peace transformation. The answer, therefore, is to view local people (in this instance, women) as stakeholders in, and active agents of change. That local ownership of conflict transformation is a ‘sensitive’ and ‘overlooked’ issue has also recently been recognized in the UN Secretary-General’s Report on the *Rule of Law and Transitional Justice*. Decrying ‘one-size-fits-all formulas and the importation of foreign models’ of transitional justice, the report advocates instead an approach based on ‘national assessments, national participation and national needs and aspirations’. UN norms and standards, it suggests, need to be married to ‘respect and support [for] local ownership, local leadership and a local constituency for reform.’⁵⁵

Such official UN responses have followed on from a growing chorus of critical voices raising concerns over the lack of local ownership in transitional processes. Pugh is critical of external actor misconceptions, highlighting their tendency to view entire post-war populations either as traumatized victims, lacking the ability to make decisions about the future, or as people driven by a destructive psychosis that renders them incapable or morally unworthy of positive contributions to peace-building.⁵⁶ The ‘other’ of peoples in violently divided societies are thus denied their potential contribution to conflict transformation in donor thinking.⁵⁷ In similar vein, Hurwitz and Studdard argue that precluding national ownership of legal reform, and the concentration on changes to rigid legal structures is unlikely to assist states and populations, creating a ‘potentially explosive’ problem.⁵⁸ As a number of critics have also suggested, initiatives such as the ICTR have largely failed to engender local engagement. As a result, they tend to remain institutions of, in and seemingly for the international community, with the development of international criminal law perceived as their chief aim. Echoing the UN report, Hurwitz and Studdard caution against a romantic, unconditional endorsement of indigenous systems and solutions that might perpetuate discriminatory practices against vulnerable groups, but at the same time call for informal mechanisms with a relevance to local populations.

54 C. Chinkin, ‘Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women’ (2003) UN, Division for the Advancement of Women, Expert Meeting on Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women – A Framework of Model Provision EGM/PEACE/2003/BP.1.

55 UN Secretary-General, op. cit., n. 1, p. 17; see, also, UN Security Council 5052nd Meeting, S/PV.5052; International Peace Academy (IPA), ‘Rule of Law Programs in Peace Operations: Toward a Conflict-Sensitive Perspective’, concept paper (2004).

56 Pugh, op. cit., n. 43, p. 123.

57 R. Gordon and J.H. Sylvester, ‘Deconstructing Development’, Villanova University School of Law working paper (2004).

58 Hurwitz and Studdard, op. cit., n. 52, p. 4.

There is, then, a growing awareness that the UN and international actors need to seize the opportunity of developing a ‘second generation of rule of law policies’.⁵⁹ If this is so, it is primarily because the creation of an enduring peace still seems, in far too many instances, an elusive end. Over 40 per cent of post-conflict societies return to conflict within a span of five years.⁶⁰ Despite substantial investment in top-down blueprints, projects, and mechanisms, the most common outcome of a civil war is another war. Institutionalizing and sustaining peace, it is increasingly being suggested, may require placing issues of ownership and participation at the centre of long-term post-conflict justice.

However, if there is now a growing rhetorical recognition of such issues, has this been translated into the reality of policy and practice? Here the evidence is less easy to find. Despite being identified as key issues in international reports and development circles for many years, the virtues of local ownership, empowerment, and participatory approaches have tended only to be implemented in a vague, weak, and ad hoc manner.⁶¹ It seems that many of these arguments have not been translated across in a comprehensive manner into transitional justice theory and practice.

LEARNING ABOUT A BOTTOM-UP, PARTICIPATORY APPROACH

It is beyond the scope of this paper to offer a definitive answer to what the principles of a bottom-up, participatory approach look like. However, something of their nature might be sketched out by first giving a brief overview of how bottom-up approaches to development emerged, what key concepts have underwritten this process, and some of the problems and issues that have arisen with their implementation. A participatory conceptual framework and methodology underpinned the work of the Ardoyne Commemoration Project and is discussed in detail in the case study below.

The roots of radical, ‘bottom-up’ participatory approaches can be traced to the social struggles, popular unrest, and growth of grassroots movements in the South during the late 1960s and 1970s. From their origin, therefore, participatory approaches have formed part of the critique, emerging from the underdeveloped world, of the perceived failure of North-inspired and directed centralized, top-down or ‘blueprint’ approaches to development.⁶² Often closely tied to ‘third-world’ national liberation campaigns and left-

59 IPA, op. cit., n. 55, p. 1.

60 E. Mobekk, ‘Conference Report’ in *After Intervention: Public Security Management in Post-Conflict Societies – From Intervention to Sustainable Local Ownership*, eds. A.H. Ebnöther and P.H. Fluri (2005) at 382.

61 id.

62 N. Uphoff, ‘Grassroots Organisations and NGOs in Rural Development: Opportunities with Diminishing States and Expanding Markets’ (1993) 21 *World Development* 607–22.

emancipatory struggles, these strategies, designed specifically to challenge dominant paradigms of knowledge control and production, were developed by academic-activists operating in South America, Sub-Saharan Africa, and the Asian sub-continent.⁶³ For Paulo Freire, for example, popular education programmes were designed to create ‘conscientization’, a critical state of consciousness rooted in popular experience and people’s knowledge of their own structural conditions of oppression. This rests upon a fundamental philosophical proposition that, in order to overcome the reproduction of conditions of alienation and oppression, it is necessary for people to identify these themselves and then to conceive of collective actions, based on that knowledge, to overcome them. Agency is therefore placed at the centre of the platform of change.

In many ways this parallels the conception of knowledge and activism evident within radical democratic theory. For example, echoing a Gramscian perspective on the ‘praxis’ of the ‘organic intellectual’, Anisur Rahman contends that participatory approaches constitute a political practice challenging not only the idea of oppression through the control of material production, but also forms of domination resulting from control over the ‘means of knowledge production [including] the social power to determine what is valid or useful knowledge’.⁶⁴ It was in this vein that Orlanda Fals Borda described the aim of Participatory Action Research (PAR) as the legitimation of popular knowledge and Budd Hall suggested (*à la* Foucault) that PAR is designed to ‘gain a place at the knowledge-creating table’ for those generally excluded from such processes.⁶⁵ Participatory action can be summed up as a process that facilitates the permanent ability to identify and analyse problems, formulate and plan solutions, mobilize resources and implement them, to gain control over the processes that affect peoples’ lives.

These key concepts of participation, empowerment, and community-based processes became buzzwords in the 1970s and 1980s within international development circles. Essentially, participation is the means to empowerment. It concerns the ability of local people to define local obstacles or problems, conceptualize, initiate, design, and implement programmes to address these problems. The aim is for local actors to be empowered in order for them to generate and ‘do’ their own ‘development’ that will therefore also be sustainable after foreign donors leave. The key element is ownership and control: who is consulted, who makes decisions, in whose interests and why. The fundamental change such an approach

63 O. Fals-Borda and M.A. Rahman (eds.), *Action and Knowledge: Breaking the Monopoly with Participatory Action Research* (1991); P. Freire, *The Pedagogy of the Oppressed* (1970).

64 M.A. Rahman, *People’s Self-Development: Perspectives on Participatory Action Research: A Journey Through Experience* (1993) 83.

65 B. Hall, ‘I Wish This Were a Poem of Practices of Participatory Research’ in Reason and Bradury, op. cit., n. 26, p. 176.

advocates is therefore a ‘transfer of power’ from the dominant, decision-making people and institutions to those who are subordinated during the process.⁶⁶ The manner in which a given process is initiated, designed, conducted, and disseminated is itself intended to form part of a wider emancipatory project by challenging the way in which knowledge is constituted and validated. ‘Democratizing’ the process is umbilically tied to the ‘legitimation’ of the knowledge produced (or publicly aired) by it. Real participation has therefore to involve what has been termed ‘co-generative dialogue’; where local people not only ‘advise’ on the shape and direction of the process but must also have the opportunity to be collaboratively involved in decision-making’.⁶⁷ Community members should not only ‘advise’ on the shape and direction of the research but must have the opportunity to ‘at least’ collaboratively control. It relies on a conception of human rights promotion that understands control over decision-making as itself key to the achievement of those rights. Or, as Kenny has recently argued:

the right to participate in decisions which affect one’s life is both an element of human dignity and the key to empowerment – the basis on which change can be achieved. As such, it is both a means to the enjoyment of human rights, and a human rights goal in itself.⁶⁸

Such perspectives have undoubtedly influenced researchers and activists working on relatively small-scale and community-orientated transitional justice projects in many violently divided societies. This has perhaps been most obvious in parts of Latin America. That participatory theory has been so concerned with processes of ‘collective research’, the ‘critical recovery of history’, and the ‘diffusion of [such] knowledge’ undoubtedly proved to be an influence on the *Nunca Mas* (Never Again) and *testimonio* initiatives that were such a key feature of human rights transitional activism throughout the continent in the 1980s and 1990s.⁶⁹ As discussed below, participatory theory undoubtedly influenced the work of the Ardoyne Commemoration Project (ACP), as did the Guatemalan *Nunca Mas* initiative.⁷⁰ While local know-

66 R. Chambers, ‘Paradigm Shifts and the Practice of Participatory Research and Development’, Institute of Development Studies working paper (1994) 1.

67 K. Fear and P. Edwards, ‘Building a Democratic Learning Community Within PDS’ (1995) 7(2) *Teaching Education* 7–18.

68 K. Kenny, ‘The Right to Participate in International Human Rights Fieldwork’ (2000) *International Human Rights Network* 18

69 Fals-Borda and Rahman, op. cit., n. 63; see, also, Gugelberger, op. cit., n. 27; G. Gugelberger, ‘Voices of the Voiceless in Testimonial Literature’ Part 1 (1991) 18(3) *Latin American Perspectives* 1–128; Part 2 18(4) *Latin American Perspectives* 1–118; REHMI, op. cit., n. 27.

70 In 1999 Roberto Tepaz Lopez, a member of the REMHI project, visited Ardoyne and gave a talk as part of the launch and tour of *Guatemala: Nunca Mas*. In May 2000 three members of the ACP committee travelled to Guatemala, met with and interviewed activists and individuals involved in the Historical Clarification Commission (CEH), REMHI project, and Centre for Human Rights Legal Action. The ACP committee seriously considered adopting the Never Again title for the book it

ledge and experience were the foundation upon which the project proceeded, insights from the sort of theoretical perspectives outlined above, and inspiration of activists in places as distant as Guatemala helped shape and sustain the work.

If transitional justice can learn from the participatory discourse and theory then it also may need to do so from aspects of experience in the development field; in particular, the potential problem of co-option. For example, whatever its radical underpinnings, bottom-up or participatory discourse began to be embraced by mainstream development agencies, and adopted by institutions including the World Bank.⁷¹ It is now a commonplace in the field of mainstream development theory and practice and is regarded as an essential in good practice. This 'shift' came about due to the disappointment with and realization of the 'failed' top-down development orthodoxy.⁷²

However, the apparently positive move toward the adoption of participatory approaches in mainstream development in general has been subject to severe criticism.⁷³ International institutions, it is argued, tend to engage in a problematic co-option of civil society and appropriate participatory discourse. The move towards participation strategies by the World Bank has been seen as a political move to neutralize resistance to Structural Adjustment Policies, such a feature of neo-liberal economic philosophy. In many underdeveloped countries this has involved drastic reductions in expenditure on social welfare provision and services in favour of the private sector, with devastating consequences for the most vulnerable groups in society.⁷⁴ One critic has pointed to the way in which international donors have been successful in influencing the current version of civil society in a number of African countries (for example, Ghana, South Africa, and Uganda). In such situations a vocal, well-funded section of civil society, it is suggested, intervenes on key issues of national development strategy and acts not as a force for challenging the status quo, but for building societal consensus in its maintenance.⁷⁵ Others have argued that donors often bypass grass-roots NGOs in favour of 'professionalized' NGOs, usually found in urban centres and capital cities. Human rights activists in Sri Lanka have referred disparagingly to such NGOs as 'grant eaters' and suggest that they represent a highly professionalized 'peace industry' that responds to donor agendas.⁷⁶

produced. The Ardoyne book is similar in style, focus and content to the *Nunca Mas* (Never Again!) publications.

71 World Bank, *The World Bank Participation Sourcebook* (1996).

72 M. Rahman, 'Participatory Action Research: The Last Temptation of Saint Development' (1990) 15 *Alternatives* 199–226.

73 J. Hearn, 'The "Uses and Abuses" of Civil Society in Africa' (2001) 28 *Rev. of African Political Economy* 43–53.

74 Mani, op. cit., n. 19, pp. 126–60.

75 Hearn, op. cit., n. 4.

76 F. Haniffa, 'In Pursuit of Democracy in Post Colonial Sri Lanka: Local Human Rights Approaches to Transitional Justice', copy of paper with authors (2006) 20.

This, they argue, results in scarce resources being diverted away from worthy home-grown, bottom-up projects that are considered important by local organizations. Reporting on the situation in Bosnia, one major report on civil society building argued that the same 100-200 professionalized ‘elite’ NGOs, removed from the ‘grassroots’ problems and social reality, produce and attend hundreds of round tables and workshops. As a result, one receives a fictitious view of local participation, which results in what is described as a ‘virtual civil society’.⁷⁷ The same report goes on to say, ‘it is a question whether these [NGOs] represent anyone else in addition to those who work in them’.⁷⁸ The legitimacy and credibility of such NGOs and the unintended results of marginalizing public participation are serious issues that donors need to reflect on. Certainly such critiques have raised questions about the actual meaning of ‘participation’ and ‘empowerment’ as concepts when applied in such circumstances. It is crucial that advocates of participatory approaches within the field of transitional justice directly address and seek to overcome such issues in the development and design of such strategies.

There is also a substantial body of literature in development studies that cautions against romanticizing participatory approaches and draws attention to potential abuses and what they might conceal.⁷⁹ While participation has the potential to challenge patterns of dominance, it may also be the means through which existing power relations are entrenched and reproduced.⁸⁰ For example, who are the ‘locals’ whose voices need to be heard and heeded and how does a locally-empowering process overcome hierarchal differences (for example, of gender) within a local community that can otherwise preclude giving agency to the most marginalized?⁸¹ As Mohan has argued the rhetoric of participation often serves to conceal the operation of powerful interests *within* communities.⁸² Such criticisms raise important points about the impact of international aid and intervention in general and the debate about who bears the cost of error.

77 Ž. Papić, ‘The General Situation in Bosnia-Herzegovina and International Support Policies’ (2001) in *International Support Policies to South East European Countries – Lessons (Not) Learned in Bosnia-Herzegovina*, ed. Ž. Papić (2001) 15.

78 S. Sali-Terzic, ‘Civil Society’ in Papić (ed.), id., p. 153.

79 J. Gaventa, ‘Participatory Development or Participatory Democracy? Linking Participatory Approaches to Policy and Governance’ (2004) no. 50 *Participatory Learning and Action* 150–9; S. White, ‘Depoliticising Development: The Uses and Abuses of Participation’ (1996) 6 *Development in Practice* 6–15; Institute of Development Studies (IDS), Participation Group: <www.ids.ac.uk/ids/particip>.

80 White, id., p. 6.

81 Mobekk, op. cit., n. 60, p. 384.

82 G. Mohan, ‘Not so Distant, Not so Strange: the Personal and the Political in Participatory Research’ (1999) 2 *Ethics, Place and the Environment* 41–54, at 46.

THE ARDOYNE COMMEMORATION PROJECT: A CASE STUDY OF BOTTOM-UP TRANSITIONAL JUSTICE

1. *The context, methodology, and nature of the project*

These critiques of participatory approaches to development, post-conflict transition, and justice-making are clearly significant and should inform policy making and practice. Nevertheless, given the apparent issues already examined that arise from ‘top-down’ mechanisms, there still appears to be a pressing need for the creation of genuine dialogue and grassroots ownership of transitional justice processes that will allow local people to be listened to and heeded. The adoption of bottom-up approaches designed to encourage participation and positive social change is directed to precisely this end. In order to illustrate the potential values (and limitations) of such perspectives and practices we will now focus on an example of an initiative with which the authors were closely involved in Northern Ireland. This was the Ardoyne Commemoration Project (ACP).⁸³

The ACP was a grassroots ‘single identity truth recovery’ project set up in the Ardoyne area of North Belfast. Ardoyne is a small, Catholic, working-class, republican community with a population of approximately 7,500. It is an enclave area, surrounded on three sides by neighboring Protestant working-class communities, with which it shares a series of ‘interfaces’. As a whole, North Belfast was the site for roughly 20 per cent of all conflict-related deaths and between 1969 and 1998, 99 people from Ardoyne were killed by the various parties to the conflict, one of the highest rates of fatalities of any community in the North.⁸⁴ Many of the deaths occurred in highly contentious circumstances; some involved state forces and remain unresolved.

In Ardoyne, as elsewhere, political developments in the late 1990s ensured that the memory of such experiences would come to the fore and provided the context for the setting-up of the ACP. The Irish peace process resulted in the signing of the Good Friday Agreement in April 1998. The emergence of this partial and uneasy ‘peace’ created a space for people to start to reflect and contemplate, possibly for the first time, what they had lived through and endured over the past thirty years of conflict. Yet, such

83 Ardoyne Commemoration Project, *op. cit.*, n. 5.

84 Lundy and McGovern, *op. cit.*, n. 5, at v; Ardoyne Commemoration Project, *id.*, p. 6–7. Of these, 50 were killed by loyalist paramilitaries, 26 by members of the security forces (British army and Royal Ulster Constabulary), and 13 by various Irish republican groups. Another six were members of the Irish Republican Army (IRA), killed inadvertently while on active service, one died accidentally, and in three cases it is unclear who was responsible. The youngest victim was a young boy aged 12, and the oldest a woman aged 76, both shot dead by the British army. The total of 99 deaths represents over 10 times the Northern Ireland conflict-related death rate average.

reflection was also taking place while little attention was being given to mechanisms to deal with the past within the formal political process.

Key to understanding what shapes and informs the transitional justice mechanisms adopted in any given situation are the specific political power dynamics at play. A focus on community-based approaches to transitional justice may, for example, be the result of a lack of interest amongst dominant political actors in developing formal mechanisms to deal with the legacy of the past as part of post-conflict transition. This was certainly an important factor in Northern Ireland. The Good Friday agreement was a complex, multi-faceted document dealing with a wide range of issues. However, while the agreement noted that there might be a need for a recognition and acknowledgement of the position of victims, it made no mention of what form this might take or any mechanism for dealing with the past.⁸⁵ This reflected the virtual absence of truth recovery as an issue in the talks leading up to the signing of the agreement and the political premium placed upon avoiding the potential divisiveness of ‘dealing with the past’.

Certain transitional justice concerns (such as the reform of policing, aspects of the judicial system, and the release of prisoners) were disaggregated from each other and the peace deal. Victims’ issues were initially dealt with in the report of a Victims Commissioner, retired senior civil servant Kenneth Bloomfield.⁸⁶ However, for many nationalists and the relatives of victims of state violence, the Bloomfield Report represented a reinforcement of what they saw as a ‘hierarchy of victimhood’, in which the lives and experiences of certain victims were privileged over and above others. In addition, Bloomfield was primarily concerned with the creation of an administrative infrastructure for the delivery of practical services for victims while deferring any discussion of justice issues. That said, there had already been some steps towards the creation of past-focused judicial processes. However, these were charged with examining particular incidents or facets of the conflict (for example, the Saville Inquiry set up in 1997 to re-examine the events of Bloody Sunday, January 1972). At the same time, public debate on these inquiries, victims, and ‘dealing with the past’ had also become embroiled with the proposed early release of conflict-related prisoners, and the highly vocal opposition of a number of newly created (mainly Unionist) victims groups to the same.

It was against this backdrop that an ad hoc group in Ardoyne of victims’ relatives, interested individuals, and community activists decided, after a series of public meetings, to produce a book that would contain the testimonies of the relatives, friends, and eyewitnesses of the area’s victims. This was designed to provide recognition to those who had been killed and (particularly in terms the victims of state violence) to challenge what was

85 Agreement reached in the multi-party negotiations, 10 April 1998.

86 K. Bloomfield, *We will Remember them: Report of the Northern Ireland Victims Commissioner* (1997) 20.

seen as a 'hierarchy of victims'. All (except one) of the committee members were from Ardoyne. From the outset the ACP was therefore an entirely community-inspired initiative. Literally dozens of Ardoyne people contributed to the project's work through their involvement with interviews, database collation, transcribing, returning edited interviews, proof reading, and various other tasks. This created many difficulties but the advantages (that is, of skills development and in gaining access) far outweighed these problems.

The Ardoyne Commemoration Project can be characterized as an example of Participatory Action Research (PAR), as discussed in detail in the section above. In part this is because such perspectives directly influenced the workings of the group. However, the relationship between the PAR and the ACP is even more apparent when viewing the project with the benefit of hindsight. At its most straightforward PAR is defined by two key interconnected elements: it is 'action research that is participatory and participatory research that unites with action'.⁸⁷ The adoption of PAR strategies and methodologies was central to the work of the ACP. Indeed, the principle of participation, defined by the 'embedded' character of the project, was the ACP's core concept. The experience of the research therefore provides insights on the role of PAR in resolving such generic research issues as access, 'open-ness', and use. The issue of participation is particularly relevant (and potentially problematic) in a divided society like Northern Ireland. The article argues that, while 'inter-community' work may be appropriate in many circumstances, there are also a number of methodological problems with such an approach. In dealing with certain issues in certain areas, it will be suggested, there are positive outcomes in undertaking (what has been described as) 'single-identity' work.

The issue of participation is also particularly significant in the area of post-conflict 'truth-telling' work. By placing 'participation' at the heart of its approach, the ACP contested a number of ideas that are currently highly influential concerning the purpose and conduct of post-conflict 'truth telling'. The 'community-based' nature of the ACP can be contrasted to more institutionalized, 'top-down' truth-telling mechanisms. In particular, the stress on 'participation' promoted an explicitly 'victim-centred' agenda. This approach challenged the possible relegation of the interests of 'victims' and participants to such wider social goals as 'nation-building' and 'reconciliation'. Obviously these ends may be highly desirable. However, the article argues that, for researchers working in this field, there is a need to maintain a very clear focus on the question of whom (and what) 'truth-telling' is primarily for? It is suggested that a PAR-informed approach to all stages of the research process can help to promote just such a focus. In turn, this may ensure that 'community-based truth-telling', by 'giving voice' and

87 Rahman, *op. cit.*, n. 64, p. 75.

aiding the ‘restoration of dignity’ can advance real progressive social change.⁸⁸

In fact community participation was always seen as the defining feature of the ACP. The idea of embeddedness underpinned the philosophy and process to ensure that the community in effect took ‘ownership’ and control of the design, research process, editing, return phase, and production of the book. In practical terms the grassroots nature of the project was crucial in order to gain trust, enable access, and establish an empathetic relationship with the interviewees. The ACP saw itself as providing a means for individuals and community to express itself and to place previously unrecorded experiences into the public domain. Local control was therefore seen as an absolute requirement for this to be achieved. This was particularly important because of the deep-seated distrust of ‘outsiders’ resulting from the long years of conflict and surveillance. To be an ‘insider’ in a place like Ardoyne meant that individuals had to have the full complement of credentials and/or life experiences (local background, family and friendship links, specific political history, and so on) to achieve insider status.⁸⁹ The nature of the ACP allowed it access to groups, voices, and knowledge that would otherwise have been inaccessible or ‘out-of-bounds’ for an ‘outsider’. Overwhelmingly, respondents felt that the sensitivities of the project necessitated the use of ‘insiders’ and individuals that were respected and rooted in the community. In a community that has experienced decades of surveillance, suspicion of outsiders asking questions is a reality. For respondents this was closely associated with the issue of access and trust. The use of ‘insiders’ should to be balanced against possible negative impacts. It might be the case that for a variety of reasons locals may be reticent about ‘opening up’ to an ‘insider’ which could lead to partial accounts. Being close to the subject matter might also produce an inability to ‘see’ the validity of competing arguments or to question certain accounts. Those involved in this type of work need to be mindful of such ‘hidden’ tensions, or possible unequal power relations and reflect upon their practice at every stage of the process.

Alongside local participation and control, inclusivity was seen as a key principle of the project’s ethos. The criterion for inclusion in the book was that the victim had to have been a resident of Ardoyne for at least some point in their life. A far less challenging approach for the project would have been to focus exclusively on deaths resulting from state and loyalist actions and to ignore those cases that involved republican killings. Members of the project regarded their remit as an inclusive approach to ‘truth-telling’ in that it did not preclude anyone on the basis of their ethnic/religious identity, political affiliation, and/or status as a victim. This in many ways was the strength of the project.

88 For a more detailed discussion of the conceptual and methodological approach of the ACP, read Lundy and McGovern, *op. cit.* (2006), n. 3.

89 Lundy and McGovern, *op. cit.*, n. 5, pp. 78–9.

2. *Doing transitional justice from the bottom-up*

The work of the project took four years and resulted in the publication of a book (*Ardayne: The Untold Truth*) in 2002 that was based around the edited testimonies of interviewees. Over 300 interviews were carried out. The list of interviewees was arrived at in consultation with the families, and usually included a family member, close friend and, where possible, an eyewitness. All the interviews carried out for the project were recorded, transcribed, and edited. The initial edited version was then handed back to and discussed with the interviewee. They were given a period of time to talk this over with members of their family and to alter their testimony in any way they felt necessary. This handing-back phase added unforeseen years to the workload of the project but was regarded as a key element of its working process. It ensured that interviewees had a sense of control and ownership over what was written. Participants were also given pre-publication access to the *complete* case study that included interviews with other family members, friends, and eyewitnesses. Changes could only be made to one's own testimony but participants were encouraged to bring to the attention of the ACP any inaccuracies or issues of concern in the content of other testimonies. Families and friends often discussed these issues at great length amongst themselves and with members of the project. The ACP took great care to discuss and assess the likely impact of any new information contained in testimonies. They sought advice from key individuals close to the family in question and local victims' groups about ways in which to prepare relatives for this news. Providing a conduit of contact was often key to resolving differences of opinion. The work was undoubtedly difficult and challenging for all involved. Providing the full case study to the family of the victim provided an opportunity for families to learn about the circumstances surrounding their case and helped ensure that any problems or issues could be resolved prior to publication. Given the highly personal and sensitive nature of the work this was crucial.

There were also occasions when people sought further clarification about the incident, or from other groups or organizations in relation to the death, such as the republican movement. An obvious limitation of such a project, as discussed below, is that it does not have access to official records and all combatant groups involved in the conflict. Notwithstanding this, the ACP made every effort to get answers to questions and to resolve outstanding issues whenever possible. For this, the local character of the project was essential. Generating local agency as a means to empowering participants was a central aim in this; it was truth recovery being played out at its most intimate level. That said, the problem of romanticizing such notions as 'community' and 'empowerment' should always be kept in mind in order to counter the potential of manipulation and abuse masking marginalization and exclusion. Otherwise, apparent

'participation' can entrench and reproduce rather than challenge power relations.⁹⁰

Several community forums and public meetings were also organized, to which victims' relatives always received personal invitations. The meetings (generally well-attended by as many as 300 people) allowed people to be updated on the ACP's work but, perhaps more importantly, they were designed to create a public space for open dialogue about highly sensitive issues that in the past had been 'unspoken or taboo' subjects. For example, 13 local people had been killed by various republican organizations, some as alleged informers. These were among the most challenging cases the ACP had to deal with and feelings ran high when such issues were discussed. There is no doubt the subject matter was challenging for the ACP and community alike, stirring painful memories for many. For others it provoked much soul searching and reflection. The goals of the ACP and the process it generated were therefore clearly more complex and deeper than collecting interviews for a book. By pushing the boundaries of what was 'acceptable' to articulate, the process was in many ways laying the foundation for a community driven 'truth-telling' process.

3. Strengths and limitations

The authors carried out a follow-up study when the project ended to find out what was regarded as its strengths and weaknesses.⁹¹ The discussion that follows draws upon the evaluation findings and provides insights into some of the ways in which engaging in the project impacted upon individuals, their families, and the wider Ardoyne community and beyond. As noted in the introductory paragraph, this case study illustrates the ways in which a bottom-up 'truth-telling' process can make a significant contribution to transitional justice.

Recognition and acknowledgement were cited as an important outcome of the ACP. The process offered a space for individuals to tell their story and for previously excluded or marginalized voices to become part of public discourse. The restoration of dignity, through recognition and acknowledgement in the book, particularly to the families of alleged informers, was regarded as a significant outcome of the project. The relatives of victims of state violence were also provided the opportunity to challenge what they perceived as the 'denial of truth' in official accounts and given public

90 White, *op. cit.*, n. 79, p. 6.

91 Lundy and McGovern, *op. cit.*, n. 5. The research set out to critically assess the impact, value, and limits of the work of the ACP as an example of community 'truth-telling'. A series of 52 in-depth interviews were carried out, designed to elicit the views and experiences of a sample of key respondent groups including those who had participated in the project (gave testimony), residents of Ardoyne (non-participants), and the broader nationalist and Unionist communities.

recognition in the book, although the lack of state acknowledgment was a crucial limitation. However, the bottom-up approach of the ACP helped ensure that the process of gaining recognition and acknowledgement was one in which victims' and relatives felt themselves to be active participants, rather than passive recipients of 'truth-telling'.

Community participation stood out as the single most important aspect of the ACP process for the majority of participants interviewed and indeed the wider community. The method of handing back edited testimonies created a sense of individual and collective ownership and was regarded as a fundamental strength and positive outcome of the project. It is in gaining direct control of the knowledge produced through such work that empowerment takes place. In just the same way, a victim-centered 'truth-telling' process needs to place the bearer of testimony at the heart of the decision-making process. Overwhelmingly it was felt that the sensitivities of the project necessitated the use of 'insiders' and individuals that were respected and rooted in the community. A key issue of concern when doing such sensitive work is the issue of trust. Undertaking work with 'insiders' trusted by local people created far greater possibilities and produced the sort of knowledge often 'hidden' from 'outsiders'. Any process devising wider strategies to deal with the legacy of the past needs to be conscious of the problems of accessing such experiences. The use of 'insiders' could just as conceivably exclude certain 'voices' and lead to guarded and partial accounts and self-censorship. It is therefore imperative that those involved in such work are conscious of this tension and are fully reflective in their practice throughout.⁹²

Intra-community conflict resolution was the most frequently mentioned positive outcomes of the ACP process. A significant contribution of bottom-up participatory 'truth-telling' is its capacity to get to the nitty-gritty of intra-community conflict, understand the dynamics, and be able to resolve certain unresolved issues. Ardoyne is not a homogenous community and there are very real and long-standing divisions, some of which are a by-product of the political conflict. The project created a process or mechanism to deal with difficult internal conflict-related issues and promoted resolution of what were often seen as 'taboo subjects' at a number of different levels. The experience of the ACP would suggest that a bottom-up participatory approach can make a significant contribution to creating dialogue at the community level.

One of the most serious limitations of unofficial bottom-up processes in general is their inability to uncover previously unknown information from outside agencies, obtaining some form of official recognition or recompense, or in pursuing accountability. That said, official truth-recovery initiatives can themselves face huge problems in this regard, not least through the continued opposition and lack of cooperation of state agencies to finding ways of

92 Lundy and McGovern, *op. cit.*, n. 5, pp. 53–7.

dealing with past injustice.⁹³ Bottom-up unofficial processes can be more adept at uncovering previously ‘hidden truths’ that can lead on to other things. They can be highly effective in building a ‘case to answer’, playing a vital role in documenting human rights abuses and patterns of violations that make it increasingly difficult for the state to continue to deny culpability.

For some interviewees ‘truth-telling’ was regarded as part of, but not a substitute for, seeking justice. There was a sense for some in which the recognition derived from their involvement in the project was itself a (sufficient) form of justice. In these circumstances, ‘truth’ is used to denounce or challenge a perceived injustice. For others this was not the case and they saw a need for legal and judicial avenues to be pursued as thoroughly as possible. Finally, perhaps the most significant limitation of all for the ACP concerned the difficulties of conducting such sensitive research ‘across the divide’. This certainly proved to be an issue for the ACP. Projects with a single identity focus call into question the validity of the ‘untold truths’ they are able to tell, though again, such criticisms can also be levelled at state-led processes.⁹⁴

CONCLUSION

What we have sought to argue here is that the current dominant conceptions of transition, justice, and democracy, within the context of the prevailing post-conflict agenda, tend to delimit the potential of social and political change in post-conflict societies. In so doing they can act to deny the genuine exercise of rights and the promotion of active political agency on the part of their populations. This is a practical as well as a theoretical issue. Sustainability is key to the long-term success of any post-conflict justice programme. Those conceived and imposed from the top down that do not have local ownership and genuine participation, are far less likely to have legitimacy, be effective, and therefore sustainable after the sponsors leave. We are not suggesting that bottom-up initiatives represent an alternative to the existing top-down approaches. What we are arguing, and have sought to illustrate with the Ardoyne case study, is that a bottom-up, participatory ‘truth-telling’ approach has particular strengths and much to offer transitional justice strategies and conflict transformation in the long-term. A bottom-up, participatory approach puts communities and those on the front line and receiving end of violent conflict at the very centre of transitional justice. As argued, a significant contribution of such an approach is its capacity to get to the nitty-gritty of intra-community conflict, understand the

93 See, for example, B. Rolston and P. Scraton, ‘In the Full Glare of English Politics’ (2005) 45 *Brit. J. of Crim.* 547–64, at 558.

94 L. Stanley, ‘Truth Commissions and the Recognition of State Crime’ (2005) 45 *Brit. J. of Crim.* 582–97.

local dynamics, create dialogue, and be context-specific. Given appropriate resources, such initiatives have the potential to stimulate society-wide dialogue, something which is usually attributed to official ‘truth-telling’ processes. In general, however, transitional justice discourse has tended to undervalue a bottom-up, participatory approach and it remains largely under-theorized and under-researched.

There are undeniably a range of difficult challenges involved in attempting to promote and establish locally owned participatory transitional justice approaches. There are valid questions around who the locals are, who speaks for whom, and what exactly does local ownership and participation mean? Nor is the wholesale valorization of ‘insiders’ to the exclusion of ‘outsiders’ either a sustainable or desirable approach. How, too, can proponents of participatory approaches ensure that they do not become mere window dressing, or a means to inculcate external ideological projects under the guise of local control? The conundrum ultimately is one common to a range of other fields; how to combine the potentially laudable ends of a global human rights culture without the means of their introduction acting as the negation of those very rights.

Nevertheless, as the sphere of transitional justice appear to move ever more widely out into the realm of engendering social and political change, then the privileging of official agencies, international institutions, the law and legal ‘expertise’ over and above locally generated embedded initiatives must be brought increasingly into question. An obvious source to inform such a rethink, as we discovered ourselves in carrying out work in Northern Ireland, is readily available. If transitional justice is to take participation seriously then perhaps a good starting place is to identify some of the key guiding principles that have been signalled in the substantial literature, experience, and stock of knowledge derived from development and participatory theory and practice. There is a need to foster agency by thinking imaginatively outside the ‘prevailing transitional justice box’. However, the first step to developing strategies is to create spaces for people to determine, shape, and develop solutions for themselves.