

Transitional Justice and the Consultative Group: Facing the Past or Forcing the Future?

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ABSTRACT In January 2009 the Consultative Group on the Past released its report of recommendations for Northern Ireland to address its legacy of conflict. The two main recommendations were the Legacy Commission, designed to investigate and uncover information on some of the most high-profile incidents of the Troubles, and the recommendation that families of those who lost their lives to sectarian violence be awarded a recognition payment of £12,000. The proposals, especially the payment, created a firestorm of controversy and much acrimony. This paper examines whether the role of procedural justice can help to determine why the efforts of the Consultative Group have generated such controversy and whether this latest attempt to address transitional justice in Northern Ireland has any chance of success.

The £12,000 Firestorm

On 22 June 2007 then Secretary of State for Northern Ireland Peter Hain announced the formation of Consultative Group on the Past, to be chaired by Lord Robin Eames, retired Church of Ireland Archbishop of Armagh, and Denis Bradley, former vice-chair of the Northern Ireland Policing Board, who once served as a priest in Derry/Londonderry's Catholic Bogside during the early days of the Troubles. The mandate given to the Consultative Group was 'to seek a consensus on the best way to deal with the legacy of the past' 30 years of conflict. The Consultative Group then spent the next 18 months collecting 290 solicitations from interested individuals and organizations and conducting 141 private meetings with many of the same organizations, ranging from non-governmental organizations (NGOs) to academics, victims' groups, political parties and members of some paramilitary groups. Following these individual consultations, the group also held seven public meetings across the province and then produced a 192-page report (CGPNI, 2009). That report, released on 23 January 2009, resulted in a firestorm of criticism from across the political spectrum. The criticism was largely centered on the recommendation that the government make a one-time 'recognition' payment of £12,000 to the nearest living relative of anyone

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who died as a result of the conflict (CGPNI, 2009, p. 16). The controversy stemmed largely from the Group's use of a legal definition of victim that focused on the acts of violence themselves without differentiating whether those who died were targets of paramilitary groups or state security forces. Alongside this firestorm regarding the recognition payments, many of the Group's other recommendations have been sidelined or even ignored, with some suggesting that no official truth recovery process may be possible for the foreseeable future.

The questions that this paper seeks to understand are: What went wrong? Were the outcomes of the consultative process—the recommendations—wrongheaded and misinformed? Were the Consultative Group and the processes it used considered to be unfair and biased? Or was it simply the case that it is still too soon for Northern Ireland to begin addressing the violence of its past?

Numerous authors have examined the possibility of truth recovery mechanisms for Northern Ireland.¹ Others have not just written about and researched the process; they have also taken concrete steps to assist in finding solutions.² Given the plethora of research and activism surrounding the subject of truth recovery in Northern Ireland, what is the role for this analysis and what is the value of examining the issues surrounding the Consultative Group's report so soon after the release of the report? The answer to this is partly the fact that the Consultative Group represents only the latest iteration of consultation on truth recovery that has taken place in Northern Ireland, so there is much to be learned in terms of understanding why its recommendations have been rejected so soundly. The second part of the answer is the nature of my analysis. Rather than examining just the recommendations made within the context of Northern Irish society, I shall apply the principles of procedural justice in order to determine whether it was the recommendations made by the Group's report or the manner in which the consultation was undertaken and the report prepared that created the most opposition. Before introducing concepts of procedural justice, it is necessary to place the work of the Consultative Group within the larger context of truth recovery following the end of the conflict.

The creation of the Consultative Group was not the first attempt, either official or unofficial, to ascertain how to best address the past. Barring those initiatives that took place before the Good Friday Agreement of 1998, the first major attempt to address the past as a whole was a 1999 visit to Northern Ireland by Alex Boraine, then Deputy Chair of the South African Truth and Reconciliation Commission (TRC). His visit was sponsored by Victim Support of Northern Ireland and the Northern Ireland Association for the Care and Resettlement of Offenders, resulting in a report entitled 'All Truth is Bitter', which was designed to provide some lessons for Northern Ireland from South Africa's experience. This was followed-up by the creation of the Healing through Remembering (HTR) project in 2001. HTR was designed to take the lessons imparted by 'All Truth is Bitter' and apply them to Northern Ireland, first by producing a report highlighting recommendations for governmental approaches for dealing with the past, and second by initiating a number of its own projects at the grass-roots level to assist in addressing the past.³

In addition to NGO efforts, the British and Northern Ireland governments have attempted to address various aspects of the conflict, including investigations into a few high-profile events like the Bloody Sunday shootings, the creation of a Historical Enquiries Team (HET) within the Police Service of Northern Ireland (PSNI), and the ongoing work of the Police Ombudsman's office. Two attempts of note include the 2003 report by Lord Stevens, former head of the London Metropolitan Police, investigating police collusion with paramilitaries and the 2005 inquiry report by the Northern Ireland Affairs

Committee (NIAC). The former is notable for the fact that Lord Stevens reported that there were instances of collusion by British intelligence services with loyalist paramilitaries as well as with republican agents. These allegations are quoted as ‘reported’ because the British government decided not to release the full findings of his report.⁴ The NIAC is a standing committee of the Westminster Parliament, charged with overseeing affairs in Northern Ireland. From November 2004 to March 2005 the committee took evidence and conducted hearings into possible approaches to addressing the past in Northern Ireland. Although the inquiry was truncated due to an early call for elections in May 2005 it did manage to produce a report, which essentially said that it was too soon to institute a formal truth recovery process because of the fragility of Northern Ireland’s peace (NIAC, 2005, p. 26). However, as will be noted below, Smyth argues that the processes of the NIAC were skewed in favor of academics and those from the Protestant communities, with those who accused the security services of wrongdoing being given less time and a less receptive welcome (Smyth, 2007).

Procedural Essence of Transitional Justice

When one typically thinks about justice, it is recognized that there are three distinct and interconnected elements that go into whether a particular ‘judicial’ situation is perceived as being fair. The first two have to do with outcomes and are labeled ‘retributive justice’ and ‘distributive justice’. Retributive justice seeks to explain the extent to which particular outcomes are perceived to sanction adequately those who have transgressed against socially accepted rules of behavior, whereas distributive justice seeks to explain whether certain outcomes satisfy perceptions of fairness, typically in the allocation of resources. Procedural justice, by contrast, seeks to explain the perceived fairness of how decisions are made (Tyler & Smith, 1998).

Research in procedural justice has shown that people are often more concerned with how they are treated—how fairly they perceive processes to be—than they are concerned about outcomes. In other words, individuals are more likely to accept suboptimal outcomes if they believe that the processes used to achieve those outcomes were fair (Tyler, 2000). In the psychological realm procedural justice is characterized by the study of the extent to which individuals have control over or an impact on judicial processes—especially in terms of the presentation of evidence—and the extent and nature of control over decisions made in the judicial context (Thibaut & Walker, 1975). Psychologist Tom Tyler, who has authored many books and articles focusing on issues of procedural justice and trust and is widely recognized as an expert in these areas, has outlined four elements of procedural justice as the neutrality of the forum, the trustworthiness of the authorities, being treated with dignity and respect, and the opportunity for participation or voice (Tyler, 2000). Neutrality of the forum refers to the extent to which people make ‘judgments about the honesty, impartiality, and objectivity of the authorities’ with which they are dealing, indicating that people believe that those in positions of authority should not be swayed by personal values and biases (Tyler, 2000, p. 122). People judge trustworthiness of authorities by ‘whether the person is benevolent and caring, is concerned about their situation and their concerns and needs, considers their arguments, tries to do what is right for them and tries to be fair’ (Tyler, 2000, p. 122). The definition of treatment with dignity and respect seems quite simple and straightforward. According to Tyler, it means that when dealing with authorities, people feel that ‘their dignity as

people and members of society is recognized and acknowledged'. Tyler further notes that as being treated politely and with respect are essentially unrelated to outcomes, this aspect of procedural justice is 'especially relevant' because it affirms an individual's status in a manner that does not rely on a positive outcome to have a positive effect on perceptions of fairness (Tyler, 2000, p. 122). Tyler describes the opportunity for voice or participation as a key element of procedural justice. Individuals 'feel more fairly treated if they are allowed to participate ... by presenting their suggestions about what should be done' (Tyler, 2000, p. 121). This power is the key that motivates alternative dispute resolution processes such as mediation, but is not limited to arenas where individuals believe that their process participation will affect outcome. In cases where influence is not instrumental, Tyler indicates that the impact of being able to give voice and be listened to attentively reinforces an individual's sense of self-worth (Tyler, 1987, p. 313). These are the four criteria that I examine in attempting to determine whether the process of consultation or the outcomes of the report generated the most dissention and what impact the hostility to this report might have on the possible methods and likelihood of truth recovery in Northern Ireland.

The application of procedural justice to instances of transitional justice is new in the sense that much of the literature on procedural justice has been confined to examinations of regular processes within advanced industrial states and much of the transitional justice literature has focused on the theoretical tension between truth and justice or the creation and outcomes of mechanisms without applying a procedural justice lens.⁵ As such, this paper is a very early attempt to ascertain whether the tenets of procedural justice usually applied to regular courts, police–citizen interactions or entire justice systems can be used to examine a single institutional process with defined boundaries and a limited operational lifespan. In addition, this work is singular in the sense that it is essentially examining a process that was designed to create another process, the outcome of the Consultative Group (CG) report being recommendations for creating a number of venues and processes for bringing transitional justice to the north of Ireland.

For my analysis I have relied on narrative statements made by members of the Consultative Group, British government members including MPs and officials of the Northern Ireland Office (NIO), members of Northern Ireland's devolved government including MLAs (Members of Legislative Assembly) of the Stormont Parliament, members of civil society from across the political spectrum, academics and members of the press. These statements were drawn from more than 550 documents from the 22 June 2007 announcement of the Group's formation by Peter Hain to late 2009, following the publication of the NIAC report on the Group's recommendations. I subjected my data to two forms of analysis in order to test the proposition that failures in procedural justice may have been more important than the failure of the CG report to deliver the outcomes that each constituency had demanded. The procedural justice analysis was more of a top-down affair, requiring a thorough reading of all data sources in order to match narratives and statements to Tyler's four criteria. The outcome analysis was far less predetermined, using the constant comparative method to generate themes based on which subjects were deemed most important by those commenting or reporting on them. The constant comparative method involves a four-step process of: (1) inductive coding and simultaneous comparison; (2) refinement of categories; (3) exploration of relationships; and (4) integration of data, all designed to yield an understanding of the phenomena being studied (Maykut & Morehouse, 1994, p. 135).

In addition, each narrative was coded along two axes, one for content—whether based on Tyler’s criteria or on emergent themes—and another to identify the source of the content, by government organization, newspaper, political party or NGO group. Matrices were generated to determine the extent to which individual groups spoke out on specific issues or procedural justice criteria. The matrices were designed to assist in understanding the extent to which procedural or outcome elements were more important in the rejection of the CG’s report, but also had the effect of showing the difficulty in disentangling the threads between the two and provided a cautionary note regarding the use of a procedural justice analysis in a transitional justice context. Finally, 5% of all codes from both analyses were subjected to cross-coding, achieving a mean of 88% agreement between coders and providing a high level of robustness.⁶

Accordingly, my analysis is broken into two main segments, one for each of these approaches. This is followed by comparing the results of each to assist in determining the importance of the Consultative Group’s procedures as opposed to its recommendations in garnering the high levels of dissatisfaction with its report, with a final segment attempting to place the activities of the Consultative Group within the larger context of transitional justice efforts in Northern Ireland and speculating on what might be done next.

Process Analysis

Neutrality of the Forum

According to Tyler, people seek a level playing field in which no one is at a disadvantage and that if they ‘believe that the authorities are following impartial rules and making factual, objective decisions, they think procedures are fairer’ (Tyler, 2000, p. 122). This presupposes that decisions are made based on facts and rules rather than personal interests, values or biases. Although the question of the motivation of authorities is generally part of the next category, trustworthiness, indications of a lack of trust in the British government are appropriately placed here to differentiate them from perceptions of trustworthiness directed at the members of the CG themselves. This is due to the fact that the main themes surrounding the question of whether the CG was seen as a neutral forum largely have to do with perceived motivations on the part of the British government in creating the CG and the amount of real or perceived independence of the CG from British government direction or interference.

For the most part criticism of the CG’s neutrality and independence during its operation was muted, at least as far as academics, moderate unionists and nationalists, and most news sources were concerned. Most of the initial criticism of the CG’s neutrality stemmed from the republican community, ranging from victims’ groups that saw themselves as largely republican or serving republican clientele, the main republican political party, Sinn Féin, and some minor comments from the IRA itself.⁷ Many of these comments centered around the same issue, namely the fact that the CG had been formed by the British government and, therefore, its motives were suspect. For example, when the CG initiative was announced, three nationalist-oriented victims’ groups published an open letter in the *Irish News*, which, among other things, called into question the neutrality of the proposed forum:

We have serious concerns about this NIO initiative, the principal one being that it has been designed by one of the parties to the conflict, the British Government. The process is based on the premise that the British Government was/is a neutral

broker, which is reinforced by Hain's reference to his own role as that of 'an outsider'. This is clearly an attempt to distance the British Government from any responsibility to join with others in a truth recovery process and to portray the conflict as one between two warring tribes. The British Government was an active combatant and cannot be regarded as an outsider in terms of state violence and collusion. There is a real fear that this initiative may be intended to result in 'death by consultation'. Any attempt to 'draw a line in the sand' and deny families their right to truth and acknowledgment will frustrate any hope of genuine reconciliation between the people of these islands. (Urwin *et al.*, 2007)

Sinn Féin's statements reflected the same position regarding the role of the British government in the group's creation and the fact that they viewed the British as a party to the conflict rather than as a neutral arbiter who could help to resolve it. Typical statements from Sinn Féin's spokesperson, Francie Molloy, referred to 'the fact that the British State are protagonists in this conflict and not innocent onlookers' and noted that 'serious concerns do and will arise from the fact that the group is appointed by the British Government and will report back to the British Government which will have the final say on any recommendations' (Sinn Féin, 2007). This lack of confidence was reiterated each time Sinn Féin commented on any aspect of the CG's operation or its report. Often the notation was made in the context of Sinn Féin meeting with the body or taking its proposals seriously 'despite' the concern that the CG had been formed by the British government and that government was accepting its report.

Unsurprisingly, the IRA echoed these sentiments when it indicated that it would not meet with the CG in reports released by both the *Belfast Telegraph* and the *Irish Times* on 26 February 2008. The *Telegraph* reported that IRA sources had said:

The body was appointed by the British Government. Its terms of reference were set by the British Government. It's reporting back to the British Government. In that context they (the IRA) don't have any confidence in the body. (Rowan, 2008)

On the unionist/loyalist side of the spectrum the only groups that castigated the Consultative Group during its operation were victims and some of the organized victims' groups. In January 2008 a number of groups responded to rumors (or leaks) that indicated the CG was planning to recommend granting amnesty for ex-paramilitary forces.⁸ In noting that this move would represent 'more than an insult' to the families of those killed by these people, some loyalists expressed doubts about the neutrality of the CG, with statements ranging from more neutral statements such as:

At one point, I thought this group was independent of the NIO, but now I have grave doubts about that. (McBride, 2008)

to more pointed statements such as the following from Hazlett Lynch, spokesperson for the loyalist victims' group West Tyrone Voice (WTV):

Protestant victims have lost all confidence in this group on the past because of those leaks ... They come with a Government policy agenda and we know where it's going. (Dempster, 2008)

WTV expounded on this theme more fully in their written submission to the CG, which was also made in January 2008. In their submission, they lumped the CG in with several other reports on reconciliation and victims made by academics, government agencies and NGOs such as HTR, indicating that all of these reports ‘dovetail neatly with prevailing government policy’ and that the goal of that policy is not to help victims recover, but is ‘about finding ways of enabling terrorists [to] live with their demonic past’ (West Tyrone Voice, 2008, pp. 10, 25).

In an apparent push back against rumors of an interim report or the allegations that the Group was engaged in facilitating a government agenda, Bradley and Eames released a 16 January 2008 opinion piece in the *Belfast Telegraph*, which stated unequivocally that:

Any suggestions that ‘an interim report’ has been written or that the Group is adopting a particular political agenda, or that decisions have already been made, are completely untrue. Our real work will begin once the consultation is over.

The actual agenda for our work is being set by the people—not by any sectional interest, political philosophy or government department. We are determined to maintain our integrity as far as is humanly possible and in that we ask simply for the understanding of this community in the massive task we face. (Bradley & Eames, 2008)

Overall, what we can see are indications that, right from the start, there were segments of Northern Irish society who felt that the remit of the Consultative Group and the fact that it was a unilateral creation of the British government was problematic in terms of perceiving the group as procedurally neutral authorities empowered to investigate the best way to address the past.

Trustworthiness of the Authorities

The second criterion for procedural justice is the extent to which the authorities themselves are seen as trustworthy. Here the key element is the extent to which the motivations of the members of the authoritative group are seen as not coloring their implementation of the formal procedures adopted. Tyler goes on to indicate that ‘judgements about the trustworthiness of the authorities are the primary factors shaping’ perceived procedural fairness and that the ability of authorities to gain deference to their decisions is a factor in shifting from a ‘neutral’ base of applying rules through formal procedures to a ‘trust’ base that gives those authorities a little more latitude and discretion in formulating and applying procedures (Tyler, 2000, p. 122).

There were many elements of Northern Irish society that had a high level of trustworthiness for the CG, particular in their trusting of the personal motivations of its co-chairs, Lord Eames and Mr Bradley. In response to the criticism of the CG’s report and, in particular, some of the more personal attacks, three bishops from the Church of Ireland paid tribute to Archbishop, and Lord, Eames’s decades of service, adding that they ‘deplore what we regard as a disgraceful personal attack’ on him (*Church of Ireland Gazette*, 2009). Others also rose to the CG’s defense, most notably several of the mainstream newspapers as well as some in the more moderate political parties, the Social Democratic and Labor Party (SDLP) and the Ulster Unionist Party (UUP). Many of these statements focused on the personal integrity of the CG members as well as the difficulty, or

impossibility, of the task they faced in fashioning a way forward acceptable to all parties. A few sources remarked that they were brave for going ahead and taking the risk of angering different groups by opening the past to scrutiny rather than just closing it down. In particular, Susan McKay noted in an op-ed in the *Irish Times* that the state of inquiries into the Troubles was poor and that:

Into this muddle, the British, without consultation, threw Eames and Bradley. Their team was oddly assorted and lacked visible expertise. But they have worked hard, and there is much about this report which is imaginative and courageous. They put up with belligerent behaviour from certain bullies who followed them around from public meeting to public meeting loudly declaring that their victims were the only innocent ones. They have studied a plethora of books and reports. They have listened to some of the more constructive of the far too many victims groups. They have dared to say that some victims groups are little political fiefdoms. (McKay, 2009)

Despite this support, most comments commending the hard work and honorable nature of the CG membership indicated that they thought the decision to suggest the £12,000 payment was misguided at best and the product of ignorance at worst. However, the at times tepid characterization of CG members was far more positive than many of the comments they received from those angered by the suggestion that all relatives of those killed—whether the deceased was a civilian or a member of a paramilitary group—should receive the ‘acknowledgement’ payment.

Nationalist victims’ groups’ lack of trust in the CG started with the fact that it was created by the British government, as detailed above, but did not end there. Initial reactions from a coalition of these groups’ leaders noted that their trust in the CG was undermined because even before the announcement of the group:

a number of individuals and organisations have been arguing forcefully that it is too expensive, or too dangerous, or impossible to deal with the past. The less than subtle message that has been given is that those who have lost loved ones should dry their proverbial eyes and ‘move on’. (Urwin *et al.*, 2007)

Criticism of the group continued, with the father of one young victim accusing the NIO of appointing members who ‘would not rock the boat’ because of their ties to the establishment (Keenan, 2008, p. 8). However, one interview subject from a nationalist-affiliated victims’ group indicated that his initial mistrust of the CG’s members had been reduced by what he felt were their ‘sincere’ efforts to listen to both sides and willingness to tackle difficult issues.

Unionist victims’ groups were more pointed in their personal criticisms of CG members, focusing mostly on Eames and Bradley themselves as co-chairs. One man, whose father had been ‘kidnapped and tortured by republican terrorists’, personally castigated Eames and the CG for suggesting the possibility that some would receive amnesty for such acts. This man, Jim Elliott:

called on Lord Eames to reject any proposal to let his father’s killers escape justice because it would ‘go against the Biblical message’. (McBride, 2008)

In their submission to the CG, the WTV were highly skeptical of Eames when he noted that it was not clear whether the group was bounded by Britain's Official Secrets Act, arguing:

Many officials have signed the Official Secrets Act, so are bound by its requirements. Indeed, it appears that your Group is also bound by some such 'gagging order,' although the GAA member claims that they can disclose everything, while Robin Eames said otherwise. (West Tyrone Voice, 2008, p. 13)

One of the most strident critics of the CG's report, Families Acting for Innocent Relatives (FAIR), responded in a similar manner, predicting that the report would be a whitewash and that:

[T]he imminent launch of the Eames Bradley Report will be yet another false dawn. Our research into the origins, personalities and practice of the group to date lead to the inexorable conclusion that this is simply another front to appease terrorism. It is clear that those involved have little empathy with victims and their that their purpose is not to Deal with the Past but to Cut a Deal on the Past. (FAIR, 2009a)

FAIR's personal attacks on the credibility of Archbishop Eames escalated in February 2009, when they released a commentary on their website entitled 'One thing we can all learn from is the past'. In it they continued to castigate aspects of the report and personally reproached Eames stating that:

Mr Eames didn't write this report, he hasn't even read it, it's obvious as it is so heavily weighted towards Irish republican thinking, if he has then he simply doesn't understand it or its implementations. He is a man who has brought much distress to the Protestant community he claims to be representing in this unelected government body and a man who doesn't even seem to realise what he has done wrong.

It's more than clear to us that he has spent so much time over the last 18 months attempting to befriend Irish Republicans that he has lost sight of an morals [*sic*] sense of duty. We would ask him to step aside and let someone who really cares about victims, truth and justice take his place, someone who isn't all interested to appeasing terrorists to keep the peace at all costs. (FAIR 2009c)

FAIR's Willie Frazer went on to attack Eames and Bradley for earning approximately £680 per day while serving on the Group, indicating that 'the amount of money being paid here is ridiculous' and noting that people in their position should have 'been willing to give of their time without having to be paid a fortune' (Anon., 2009d).

Many of the political parties were just as skeptical about the trustworthiness of the CG, even if they used less pointed language in their commentary. Most of those impugning the trustworthiness of the CG came from the unionist end of the spectrum, with the preponderance of negative statements coming from members of the Democratic Unionist Party (DUP) and UUP. During a campaign stop for the European Parliament on 4 March 2009, DUP candidate Diane Dodds remarked on the £12,000 payment proposal, stating that it had:

[U]ndermined public confidence in the Eames–Bradley process to such an extent that the Democratic Unionist Party Officers have decided to urge the Government to bin the entire document. (DUP, 2009)

On 3 February 2009, DUP MLA David Simpson tabled a motion at the Stormont parliament calling for rejection of the payout plan and, personally indicating a lack of trust in the CG membership; directly asking questions such as ‘where have the members of the consultative group been living?’ And suggesting they were out of touch by asking ‘On what planet did they draw up this report?’ (Anon., 2009a).

The UUP, for their part, attempted to flavor their comments with less anger and bitterness than their colleagues in the DUP. However, some of their criticisms were just as pointed, noting that while Eames and Bradley had ‘hitherto [been] men who commanded respect’, their adoption of the payout scheme had ‘done untold damage to their reputations’, with some UUP members expressing surprise at the ‘naivety’ of the CG and others excoriating the ‘sheer cack-handedness’ with which the payout scheme had been handled.

One of the most personal attacks, however, came from a traditional political party, Labour, when former cabinet minister Frank Field called for Eames and Bradley to be ‘brought into the streets and shamed’, declaring that they had ‘taken leave of their senses’ (Lister, 2009, p. 8).

Overall, what we can detect here are two strains, the first from the point of view of the victims’ groups, most notably the unionist groups, who were suspicious of Lord Eames and Mr Bradley from the outset and whose mistrust only deepened following the publication of the final report. On the other hand, while members of some political parties generated some of the most volatile and damning personal critiques, most of their comments came after the report had been issued, which may indicate more dissatisfaction with the distributive rather than the procedural elements of the Consultative Group.

Treatment with Dignity and Respect

Tyler defines this criterion as the extent to which people feel that authorities recognize their ‘dignity as people and as members of society’ (Tyler, 2000, p. 122). Tyler further states that since the degree of politeness and respect an individual receives is generally unrelated to the outcome of their interaction, the degree to which their status is affirmed and respected is ‘especially relevant to conflict resolution’ (Tyler, 2000, p. 122). Determining whether individuals who met with the CG were treated with dignity and respect is difficult because most of their meetings were private ones with individuals or groups who had made submissions and only seven meetings were held in public, with a combined total of approximately 500 attendees.

In an attempt to ascertain perceptions of treatment by the Consultative Group, I conducted two preliminary interviews with representatives of victims’ groups, one from each tradition, noting that two interviews cannot fully reflect the attitudes and preferences of all victims and survivors;⁹ and even though these interviews cannot be considered indicative of the manner in which all respondents were treated, the inclusion of data from one of the more outspoken sectors of civil society may illuminate parts of the process as well as some of the difficulties inherent in pursuing transitional justice in Northern Ireland.

It appears that both groups felt that they were listened to attentively by members of the CG during the testimony. However, the unionist representative expressed some dissatisfaction with what he termed was an 'almost clinical detachment' from the panel members that his group found 'a bit distressing and hard to deal with at times'. This sense resulted in a feeling that the CG members were not able to empathize with the group, which was partly attributed to the CG's desire to appear neutral, perhaps overly neutral, and partly to what my respondent termed the 'considerable capacity gap' between his community and the pro-nationalist community, who were able to portray themselves as 'pure downtrodden' victims of 70 or 80 years of state discrimination and violence and, thus, were more listened to.

By contrast, the nationalist representative admitted that while he felt at the onset that the CG would be predisposed not to deal with issues of concern for his community, his interactions with the members led him to reassess his evaluation. He notes that after meeting and interacting with the CG, he began to 'believe that they were people of some integrity ... who were making judgments based on the consultation', leading to his 'strong view that they [the CG] changed quite radically during the course' of the process. Overall, his impression of the committee 'went up' over the course of his engagement with them and he 'felt they were actually listening to people and going out there and trying to do their best'.

Although the nationalist interviewee appeared before the CG as a member of an advocacy group, he felt that he was listened to and that his group's presentation 'provoked discussion' and that the members of the CG 'were open to' their ideas. By contrast, the unionist member felt, although he was treated respectfully, that there was a certain level of pre-judging going on and that while it is difficult to say with certainty whether his dissatisfactions were based more on his actual experience of the process or by expectations that the outcomes would not meet the needs of his group. It is worth noting that in his opinion the 'panel appeared to be driven by an agenda, or dogma-driven, rather than data-driven', meaning that he felt that the motives of the CG, whether promulgated by the NIO or the panel members themselves, were suspect.

The sense of fair treatment, which was felt—at least to a certain extent—by both parties, can be contrasted with work done by Smyth on an earlier investigation into possible venues for truth recovery by the NIAC at Westminster, where it conducted a series of interviews with individual victims, advocacy organizations, NGOs and academics from November 2004 to March 2005. In a sentiment echoed by my nationalist interviewee, Smyth notes that nationalist victims and prisoners groups were required to give their evidence together and that former loyalist paramilitaries were treated more gently than those who came forward with claims of killings by the security forces. For the latter, Smyth indicated that the chair attempted to downplay their stories as being 'pretty rare' occurrences (Smyth, 2007, pp. 111–112). The nationalist interviewee agreed, noting that his treatment by the two panels was 'completely different' and that the openness of the CG compared favorably with the value judgements of British Conservative members of the NIAC who felt that the idea that 'there was great pain across the board' felt by widows of all stripes was 'a very controversial proposal', adding that, in his opinion, the NIAC was incapable of 'engaging public opinion' owing to its political nature while the CGNI were 'very brave' for openly addressing issues that might lead to state culpability.

Most of the evidence publically available concentrates on responses of various individuals and groups to the CG's report. The very few who were supportive of the CG's

treatment of groups in Northern Ireland, most notably victims' groups, focused on the motivations of the CG and their reported concern for the pain and suffering of the victims and their families. Northern Ireland Victims' Commissioner Patricia McBride, writing in the *Belfast Telegraph*, focused on the impact of a mother's tears, which created a common thread for Eames and Bradley as they conducted their consultations and deliberations, indicating that the Group 'found unity in that single act of human mourning and based their recommendations ... upon that starting point' (McBride, 2009). The second indication of treatment with dignity comes from the *Irish Times*, where Dan Keenan and Gerry Moriarty reported on 12 November 2008 that the Group's report would, again, be delayed until January 2009 because 'victims and bereaved say Christmas is the worst time for them'.

Despite these sentiments, once again the unionist victims' groups took the CG to task for its recommendations regarding the recognition payment and the desire to avoid creating a hierarchy of victims. West Tyrone Voice indicated that the report had the effect of telling victims that they just do not count and asking '[h]ow can a process that re-traumatises victims help resolve past grievances' (West Tyrone Voice, 2008). FAIR concurred, noting that the payment proposal flew in the face of the 'simple and genuine plea' that victims made to the Group and that '[t]o ignore the simple and genuine plea from victims is the most obvious example of how little Eames and Bradley care' (FAIR, 2009b). Ian Paisley of the DUP also felt that the recognition payment was 'a studied insult', going so far as to say that there was 'no sense of the victims being treated as individuals' and that 'the sense of treading underfoot those who have suffered ... is palpable' (Paisley, 2009).

Overall, while it is difficult to draw out perceptions surrounding the actual process as opposed to those associated with the report itself, we can see that some in the unionist community felt that the outcome must have reflected a process that was inherently lacking in dignity and respect for the victims, while others felt that the report's recommendations were made precisely because the Group desired to treat the victims with dignity and respect.

Opportunity for Participation/Voice

The ability to participate or have one's voice heard is, in Tyler's estimation, the key criterion for the perception of a fair procedure. Tyler notes that diverse studies have shown that 'people feel more fairly treated when they are given an opportunity to make arguments about what should be done to resolve a problem or conflict' (Tyler, 2000, p. 121). This sense of satisfaction does not depend on having an instrumental effect or actual control over outcomes. Instead, as Tyler puts it:

People are primarily interested in sharing the discussion over the issues involved in their problem or conflict, not in controlling decisions about how to handle it. (Tyler, 2000, p. 122)

In other words, people expect to have input and to be taken seriously, but they do not automatically expect to have control over decisions that are taken. As we approach the data for this section, I shall be examining the extent to which different groups in society have argued that the process was inclusive of many stakeholders and the extent to which they believe that it was not.

There were a number of parties throughout Northern Irish society who felt that the CG process offered ample opportunity for participation and voice. Among these were two mainstream newspapers, the *Belfast Telegraph* and the *Irish Times*. The *Telegraph* was more supportive, noting just before the release of the CG's report that the Group had 'consulted widely on how best to secure a new future for Northern Ireland', having had access to sensitive documents and also meeting with 'former and current members of paramilitary groups' as a sign of its inclusiveness (Anon., 2009c). Following the firestorm of accusations regarding the recognition payment, the *Telegraph* went further, asking readers to consider the work that had gone into the report, including the private meetings, the thousands of letters and submissions and the public meetings held across the province. The article put it succinctly when it stated that '[e]veryone who had a contribution to make in addressing the issues of the past had the opportunity to do so' and that the report's recommendations were 'founded on the testimony of hundreds of people who had suffered grievously in the conflict' (Anon., 2009c).

Another group that came to the defense of the CG was HTR, which issued a press statement welcoming the publication of the report and calling for a 'substantive debate' on the issues raised by the report. Directly quoting HTR's chair, Brandon Hamber, the statement notes that '[f]ew places have consulted so widely in their deliberations on such issues' and called for society to 'not squander' the opportunity for dialogue in the place of political posturing (HTR, 2009).

Additional responses to critics of the participatory process included the Northern Ireland Secretary of State, Shaun Woodward, and the CG themselves. Mr Woodward indicated that when criticizing the work of Eames and Bradley one should 'remember that they did not invent the concept themselves' but that their recognition payment proposal was put forward not by one individual 'but by a cross-section of the community' (Padley, 2009). The Group itself made several statements over the period of the consultation as well as afterwards to defend their policy of inclusion and the large number of individuals and groups who participated in the consultation. Shortly after completing the Group's private consultations, Denis Bradley indicated that they had heard from 'dozens of interested groups and individuals' and as they moved into the public consultation phase he urged 'everyone with any ideas or views ... to make their voices heard' at the public forums (Young, 2008).

After the publication of the report, Eames and Bradley stood behind their recommendation for the recognition payment, with Bradley indicating that it—like others—had come from 'some of the relative heads' and represented 'the voice of the voiceless' (Anon., 2009b). However, criticism of the participatory process associated with the CG came at the earliest stages of the project, with both nationalist and unionist victims' groups complaining about both a lack of consultation by the NIO in the creation of the CG and, most importantly, the lack of any representatives from either victims' community in the CG's membership. The heads of three nationalist groups indicated that they were 'disturbed by the failure to discuss this proposal in advance with victims' and survivors' groups' and 'the lack of representation on the panel of precisely those sectors' (Urwin *et al.*, 2007). The unionist victims' group FAIR concurred, noting that the CG process:

has failed to properly accommodate victims and their views, we cannot see one member who can honestly represent our views, and therefore we must conclude that we have been purposely excluded. (FAIR, 2009a)

Alex Kane, Director of Communications for the UUP, expressed a similar view in a 26 January 2008 press release where he excoriated the membership of the CG, stating that:

I have, on many occasions in the past, expressed my concerns and reservations about commissions, consultation groups and enquiries. But if we are to have them, would it be possible to by-pass the usual do-gooders and congenial moderates and select at least a few people who have some genuine understanding of, and sympathy for, everyday, ordinary, unionist opinion?

As detailed above, both interview subjects felt that they had ample opportunity to present their views, but differed on the extent to which they felt listened to. While the nationalist respondent indicated that he felt his group's views were listened to and taken seriously, the unionist respondent described the members of the CG as detached and felt as though his views did not fit into what he perceived as their pro-republican agenda.

Other groups and individuals also expressed a lack of confidence in the CG's ability or willingness actually to listen to their concerns. In particular, one ex-RUC officer indicated that he would not attend the public meeting in Armagh because 'Eames and Bradley saying they are listening. But they will go away and do what they want, not what the victims want' (Dempster, 2008).

This sentiment may have been widespread because only 500 people attended the seven public meetings held across the province out of a province-wide population of 1.5 million, many thousands of whom were related to victims of 30 years of conflict. On 19 January 2008 the *Irish Times* noted that:

Just 50 people attended the meeting at the Tullyglass House Hotel in Ballymena, most of them unionist in their politics and thinking ... Ballymena and Derry were venues for two of six public meetings held by the consultative group this week. Other meetings were in Enniskillen, Armagh, Omagh and Bangor, with an average attendance of about 80 each night. This discrepancy was noted by the NIAC in their December 9, 2009 evaluation of the CG report, noting that 'no public meetings were held in Great Britain' despite the fact that violence had occurred there and, further the NIAC felt 'it right to recognize that the number attending meetings in Northern Ireland was not large'.

It appears that while the CG spent some 6 months engaged with individuals and groups in private meetings, they managed to hold their public forums within a short time span in January 2008 (Anon., 2008, p. 16). Although efforts were made to ensure that the meetings were widely publicized, there exists the possibility that such a compact schedule did not allow for everyone who wished to attend to be able to do so, especially if it is true that some meetings were held two to a day, which might have precluded attendance by working individuals during the daytime.

Both interview subjects agreed that the public process appeared to be abbreviated and, to some extent, an afterthought. The nationalist victims' representative compared the CG's public meetings with those held by the Patten Commission on Policing, which held dozens of meetings, including some best described as 'single identity meetings' with groups on one side of an issue. Part of the problem with the CG's public meetings was that 'everybody was thrown together', which was 'a recipe for disaster'. The sense that he conveyed

was that the 'public part' of the process was 'superficial and unsatisfactory' when compared with the private meetings and that, in his estimation, 'the way to do it was to go out and have hearings with individual groups and in local communities where people feel safe' to share their concerns without fears of being demonized or re-traumatized.

Altogether it seems clear that the CG as constituted by the NIO attempted through its private consultation process to reach out to as many interested groups and individuals as possible. The data show that in addition to meeting with official bodies, NGO groups and victims' groups, the CG also managed to meet with security officials and with members from loyalist paramilitary groups. The fact that the IRA declined to meet with the group harks back to the initial criticism by republicans that the group would not be neutral because of its creation by the British government. Therefore, it seems as though those groups who wished to meet with the CG were able to do so. However, the fact that so few people attended the seven public meetings means that either they did not care about addressing the past or, more likely, the CG failed to consider adequately the difficulties they might face in attracting attendance, such as work schedules, childcare needs and, quite possibly, the natural reticence of the Northern Irish to discuss personal matters in a public forum. At the very least, more attendance might have been generated by holding more meetings, holding them further apart in time and holding more than one meeting in each locale.

Overall, what we can see is that the four criteria outlined by Tyler act in concert with one another. In other words, the lack of participation and voice expressed by the victims' groups dovetails with their sense that CG members were less than trustworthy because: there were no actual victims or relatives of victims on the panel; and those who were on the panel were chosen by the British government. For nationalists this was problematic because they view the British as one of the parties to the conflict, not the neutral arbiter that they espouse to be. For unionists this was because they suspect that the motives of the British government are to 'sweep everything under the rug' and to guide the CG to an outcome that would draw that line in the sand and, hopefully, make the past go away by ignoring their pain and suffering.

Before evaluating the extent to which factors of procedural justice had any impact on the reception that the CG's report received, I shall first examine my data to uncover the situational, contextual and structural factors that outcome analyses typically dwell upon. It is my sense that only through such a comparison will we discover the extent to which deficiencies in the CG process as opposed to dissatisfaction with the CG's outcome led to the acrimony following the publication of its report.

Outcome and Issue Analysis

The question for this section is the extent to which circumstances, issues and outcomes affected the negative response to the CG report. I shall rely largely on a thematic analysis of the documents collected for this project, although others' analyses will be examined as well.

The first set of themes generated by my bottom-up analysis represent narratives about the formation of the Consultative Group, including the effects of previous attempts to address the past, allegations of collusion between security forces and loyalist paramilitary forces, and questions regarding the motivation behind the British government's decision to form the CG and give it its marching orders. This first set of themes

shows considerable overlap with the neutrality of the authorities' criterion. This is because the dissatisfactions related to the issues at hand are largely procedural in nature, although this is not typically thought to be so because many of the complaints regarding these themes were couched in terms that focused on the dissatisfaction with the CG's recommendations.

The second set of themes surrounded a series of leaks from the CG that took place in early 2008. These leaks were of two possible suggestions by the group, namely the ideas that the group would recommend that the government extend amnesty in some format to combatants of the Troubles and that it would recommend that the British government redefine the conflict as a war. Again, these themes show overlap between an issues-oriented approach to analysis and a process-oriented approach as leaks can be seen either as an issue themselves or as an indication of both a lack of trust and a lack of opportunity for participation or voice. Some criticisms focused on the substance of the leaks, but many also focused on the process of leaking itself, criticizing the CG for sending up trial balloons of possible outcomes.

It is only beginning with the third set of themes that we can see a marked differentiation between process and outcome issues. Questions about the Legacy Commission, its remit, functions and duration are, at heart, about the outcome of the CG process as was much of the criticism regarding the £12,000 payment. These questions are important to analyze from both directions because not only do they uncover possible procedural justice issues, but they also highlight the concerns of constituencies who may not be as amenable to procedural justice issues; in other words, they can help to identify those constituencies who are less concerned about fair processes and more focused on specific retributive or distributive outcomes.

Although not as controversial as the recognition payment, the recommendation for a Legacy Commission was hotly contested by various parties in both communities. Some of the first complaints about the Commission came from republicans, who complained that it did not meet their requirement for a fully international and independent Truth Commission. Sinn Féin were most vociferous on this point, while the SDLP was more concerned that the 5-year time limit was arbitrary and would, in effect, create a sort of amnesty in relation to past crimes.

In addition, Duffy (2010, p. 26) criticized the Legacy Commission's proposed processes as opaque and 'couched in the language of forgetting'. My nationalist interviewee, by contrast, indicated that his group supported the idea of the Legacy Commission, indicating that 'the idea of a non-judicial process of truth recovery [would be] the best way of getting at the truth in the least traumatizing' manner possible.

The reaction by unionist victims' groups also assailed the idea of the Legacy Commission. However, these groups were more concerned with the idea that the Commission would replace or supplant the historical enquiries that were taking place. Particular scorn was leveled at the idea that a 'plea from toothless tigers' would persuade 'hardened killers' to come forward with the truth, leading to the assumption that only through judicial inquiries would all of the facts come out into the open. This sentiment was echoed by Tom Roberts, director of a loyalist ex-prisoners group, who noted that he did not 'detect an appetite for any Truth and Reconciliation Commission'. It was also noted that, given republican objections to its purported lack of independence, it did not seem likely that important players from that community would willingly engage with a Legacy Commission.

Another question about the Legacy Commission is the extent to which its work is going to supplant that of the HET and the Office of the Police Ombudsman (OPONI) to investigate historical cases and whether such supplanting might run foul of the European Convention on Human Rights' requirement to investigate suspicious deaths. This emerging issue came from academic corners as well as from some who wish to pursue criminal cases in order to 'achieve justice' for themselves or loved-ones who were killed during the conflict. Currently it is the PSNI's HET that reviews historical cases and determines whether there is enough evidence for prosecution (Lundy, 2009). The CG's recommendations are to replace the HET and OPONI investigations with a Review and Investigation Unit within the Legacy Commission, which would then oversee historical investigations and determine which cases were sent forward for prosecution and which were subject to information recovery for the benefit of victims and families. Procedurally, the CG views the Review and Investigation Unit as equally able to meet the requirements of Article 2 of the European Convention as the HET, which they indicate was viewed favorably by the Secretariat of the Council of Europe (CGPNI, 2009, pp. 108–109).¹⁰

The most contentious recommendation, however, was contained in the fourth set of themes to emerge from my bottom-up analysis. This was the one-time recognition payment of £12,000 to be paid to the relatives of those killed in the Troubles. As usual, supporters and opponents of the payment were spread across the sectarian divide, although there was some cross-community agreement supporting or opposing the suggestion.

There were several themes associated with opposition to the payments, most notably the belief that such payments should not be made to the families of individuals who belonged to paramilitary groups. The argument from loyalist victims' groups was that some victims were more deserving than others, because they were innocent, while other victims, in essence, got what they deserved because of their membership of paramilitary organizations. As one can imagine, this hierarchy of victims argument was precisely the kind of thing that the CG was trying to avoid when they named the payment a recognition for loss and aimed it at surviving family members rather than at those who had been wounded.

Another argument against the recognition payment ran along the lines of rejecting it as some form of blood money through which the families of those killed could be bought off with some sort of wergild in the place of the justice that they sought. This formula was more prevalent in the unionist community than the nationalist or republican communities, as members there tended to be more in favor of receiving payments and, at least for those whose loved ones were killed by security forces, there was a belief that members of the police and armed forces would be protected from prosecution or serving any prison sentences. Additionally, as my nationalist interviewee notes, because the British compensation system was based on the victims' earning power at the time of death, many of their relatives received 'pitiful payments', some of whom now live a 'frugal existence' and would benefit greatly from this payment. Although there were some procedural gripes about how the payment scheme was handled, detailed above, discontent regarding this issue seems clearly lodged in the retributive/distributive realms of justice rather than in the procedural justice realm.

Overall, these outcome-oriented issues bare the main divide between those who propose that a therapeutic procedurally oriented approach should be taken towards the past and those who believe that only a retributive, punitive approach should be taken towards those who committed acts of violence and took the lives of others. Paradoxically,

this preference is also embedded with a great deal of political significance and within historical power relationships. For victims from the protestant-loyalist community, the clear preference is for punitive action against perceived IRA ‘terrorists’ who received a ‘slap on the wrist’ and are currently free under the tenets of the Good Friday Agreement. Catholic-nationalist victims, by and large, are more content with obtaining recompense and a measure of historical truth rather than demanding that those who acted against them and their families be brought to justice.

The identification of the themes surrounding discontent about the CG report mirrors many of the findings of other researchers about the basic difficulties in implementing a truth recovery process in Northern Ireland. Some of these are unique to the Northern Irish character, namely the desire among the unionist and loyalist communities for an adherence to law and order and a reticence about speaking about the past (Arthur, 1999). Others are purely political, such as the role often played by loyalist victims’ groups, which were formed in the wake of the Good Friday Agreement (GFA) in protest at that Agreement’s provision for the early release of paramilitary prisoners from custody (Morrissey & Smyth, 2002; Hamber, 2002). Still others have to do with the fact that the GFA was negotiated between two parties of relatively equal power who would be expected to share that power in a structure that would merely transform the conflict from one using violence to one using politics (Horowitz, 2001; Smyth, 2003, 2007; Wolff, 2005).

Procedure versus Outcome

As can be seen from both of the analyses, different aspects of the CG’s operation and report were criticized by different actors across Northern Ireland’s political spectrum, giving rise to the question as to whether procedural factors had any impact on the outcry against the CG or whether the structural constraints of both the conflict and the agreement to end it were preponderant in preventing the success of any truth recovery process.

Drawing apart the threads of our top-down and bottom-up analyses is akin to attempting to unweave a well-made basket. This analysis of perceptions of procedural justice shows that some of the expressions of dissatisfaction with issues such as the neutrality of the forum, trustworthiness of the authorities, treatment with dignity and respect and the perception of opportunity for voice point to issues that emerge from this outcome analysis. The key here is in looking at the narratives from different perspectives, and doing so gives some sense that while much dissatisfaction stems from structural factors and the political arguments that are generated and sustained by them, at least some of the CG’s processes have had a negative impact on the reception that the report and its recommendations garnered.

The first wholly process issue was the method for the creation of the CG itself. In comparison with the transparent policies in creating the South African TRC, the members of the CG were selected by the Northern Irish Secretary of State—a member of the British Cabinet—rather than through any public process. Given the position that republicans have regarding the British government’s view of itself as a neutral arbiter rather than a party to the conflict, it is understandable that this process resulted in a group that could be seen as possibly biased towards one side of the conflict. Additionally, as has been noted, the lack of any individuals who were either victims themselves or relatives of

victims of the conflict led some in both victims' communities to complain that the composition of the CG was unfairly tilted against victims concerns and tilted towards those who preferred to 'draw a line in the sand'. This was exemplified by the complaint that Denis Bradley had called for the British government to impose an amnesty for those fugitives described as 'on-the-runs' (McKay, 2007).

Overall, what can be seen throughout the CG's operations is an attempt to pay attention to process issues, but the impact of that was hampered by the perceived procedural injustice inherent in the CG's creation and the lack of communal consensus about the trustworthiness of its members. Additionally, even though the rationale behind keeping the majority of its meetings private was understandable, the fact that the balance between private and public meetings was skewed so far in favor of the former could have led to some of the suspicions about the fairness and transparency of the process, exacerbating the tensions surrounding the recognition payment. Members of the CG argued that senior unionists had supported the idea of a recognition payment in private, but had subsequently withdrawn their support in the face of loyalist opposition. While it may have been less possible to get the unvarnished truth from politicians if their words had been publicly available, certainly members of the CG would not have been so blindsided by the reaction to the recognition payment suggestion if some of these groups had been forced to speak on the record.

Where to Go

Recent reports from Northern Ireland give voice to the fact that, for all intents and purposes, the recommendations of the Consultative Group are dead in the water. Although as at the time of writing the Northern Ireland Office has not made an official determination, the NIAC released a report in December 2009 that stated that the CG's proposals were 'unworkable' and that, once again, the 'absence of cross-community consensus' meant that more consultations would need to take place before any concrete action could be taken. One suggestion from the NIAC, namely a public debate on the meaning of forgiveness and reconciliation, has been taken up by the Northern Ireland Commission for Victims and Survivors, a group of four individuals appointed by the Stormont Executive (Roche, 2010).

Before delving into what might be done to address the conflict that has arisen out of the reaction to the CG report, it makes sense to look at some of the weaknesses of this study. Initially there are two categories of weakness in this study, the first being weaknesses in the data and the second being weaknesses in using procedural justice as an analytical framework for this case. In terms of the data weaknesses, I have noted above that because much of the consultative process was held in private it is difficult to gather accurate data on at least one of the criteria, namely the extent to which the CG treated those before it with dignity and respect. This weakness could be rectified by conducting more interviews with those who made presentations to the CG and, hopefully, by conducting interviews with members of the CG itself. Of the interviews that were conducted, it is difficult to say with any certainty that the satisfaction and particularly the dissatisfaction expressed resulted from the process or were projected on to the process based on the respondent's perception of the outcome. This is particularly true when noting that the unionist respondent indicated that the only outcome that would be satisfactory would be one driven by prosecutions, an outcome deemed unlikely by the nationalist respondent because it would open members of the security forces to possible prosecution.

In terms of analysis weakness, the only main issue with the use of Taylor's four criteria for procedural justice is that despite the fact that each criterion appears separate and distinct, the application of such to a qualitative or narrative analysis often means that statements and utterances by particular parties can be coded along several of the themes. For example, complaints about the fact that the British government created the CG can indicate both a perception of a lack of neutrality and, because the members themselves were chosen by the British government, a lack of trust in those members themselves. Additionally, as these chosen members did not include any representatives of victims' groups, one could further say that complaints about the British government origin of the CG could also be coded as a lack of opportunity for participation. This means that although the idea of using measures of procedural justice is one that has some resonance, it may be difficult at times to differentiate where a specific mechanism, such as the CG, failed to meet a specific measure of procedural justice.

Looking at the activities and results of the Consultative Group through the lens of procedural justice has, on the whole, uncovered several issues that were problematic and holds lessons for any future attempts at creating or implementing an official truth recovery process. The first major lesson is, of course, that the processes surrounding these institutions are often as important, if not more so, than the individuals involved or the outcomes achieved. In terms of group composition, future official efforts can take a lesson from HTR's Truth Recovery and Acknowledgement Sub Group, which attempted to replicate Northern Irish society to the extent of ensuring that representation on the group included all of the major stakeholders. As its report indicates, the subgroup included:

a number of people from loyalist, republican, British Army, and police backgrounds, as well as individuals from different faith backgrounds, victims' groups, academics, and community activists. (McEvoy, 2006, p. 1)

Paying attention to the ability of all concerned stakeholders to have the opportunity for a voice and participation does not necessarily mean that members from these communities would all have to be on any truth recovery panel; but it should mean that all stakeholders should be consulted and have an opportunity to weigh in and make recommendations as to the composition of any panel. The second element of voice and participation, particularly with regard to the formation of any official truth recovery panel, is to take the decision out of the hands of the British government and place it, at least partially, at the level of the devolved parliament and executive.

It is at this point that I need to acknowledge the political difficulties inherent in recommending that full public participation take place in the creation and operation of any truth recovery mechanism. That is, of course, the likelihood that any process that requires agreement and consent from all sectors of Northern Ireland's divided community is likely to suffer from the same sort of gridlock that has plagued the devolved parliament at Stormont since the signing of the GFA. This is indeed true and valid, with this author understanding that, at times, the level of political play and obstructionism that takes place in the province can make the recent stalemates between the Obama Administration and US Republican opposition look like a proverbial amateur hour. However, that being said, it is important to recognize that only by engaging in fractious debate and addressing the concerns of all constituencies does conflict resolution have any hope of taking place.

A related issue has to do with a lack of agreement about the nature of the conflict itself and unwillingness by political elites to address this disagreement in a clear and concrete manner; because the Good Friday Agreement was designed to allow each side to continue to strive for their desired end-state (remain in the UK or transition to the Republic), there was little incentive to address any of the moral issues associated with the conflict. Elements within the loyalist community—especially those associated with the victims' groups—are unwilling to view the republican struggle as justified in any manner, leading to the view that the struggle was nothing more than illegal criminality and should be addressed only by court cases and prison time. This view creates a sticking point for efforts to address the past and means that there is currently a vociferous minority that is less amenable to non-judicial attempts to reconcile the parties and heal the hurts of the conflict. There is a real question as to whether these views are widespread or held by a relatively small group of individuals and perpetuated by politicians nervous about their electability or eager to ensure their access to power; and the question is important, because as Shea (2010) notes, it is difficult to move forward without some agreement on what constitutes the past.

It must be noted, however, that despite the failure of the CG to have any of its recommendations implemented and the difficulties inherent in negotiating a shared sense of the past, some grass-roots efforts have been undertaken to engender reconciliation on local levels across the province. Work done by Smyth and Fay (Fay *et al.*, 1999; Smyth & Fay, 2000; Fay, 2001) on the Cost of the Troubles Study, Lundy & McGovern (2008b) with the Ardoyne Commemoration Project, Towards Understanding and Healing (Shea, 2010), and Hamber with many others on commemoration and storytelling projects associated with Healing through Remembering, are evidence of the vibrancy of civil society picking up where the politicians have failed to do so. This dynamic is indicative of Northern Irish politics throughout the Troubles and there is a great deal of good that these groups can do. As van der Merwe (2001) notes in analyzing the South African TRC, no reconciliation or truth recovery process can stand on its own. There need to be multiple efforts taking place in multiple sectors of society in order to help everyone process what happened during the Troubles and to forge new relationships to help ensure that it does not happen again.

Finally, it is important to respond to the sense that it may be too soon to engage in an official truth recovery process; a sense expressed by politicians, scholars and the media. There is some merit to this position. The fact that the political system seems fragile after 10 years of devolved government and that some constituencies that were displeased with the GFA itself have now moved on to fight in the truth recovery and victims' rights arenas means that any official measures are likely to arouse determined opposition. However, this argument also runs into its counter, namely the recognition that, after 10 years of fragile governance, something needs to happen to engage the rest of society in pushing for the success of that government, and that means a reduction in sectarian tensions and some official manner of addressing the past. This engagement is not something that civil society can do all on its own; and without some movement in the realm of transitional justice, or even just truth recovery, the people of Northern Ireland may be doomed to keep fighting the same battles again and again.

Notes

1. For example, see Hamber (2002), Smyth (2003, 2007), Gawn (2007), Lundy & McGovern (2007, 2008a), McEvoy (2007), Biggar (2008) and McGrattan (2009).

2. Most notable has been the work of Marie Breen Smyth in directing the Cost of the Troubles Study and Brandon Hamber in a number of organizations, most recently as the Chair of the Healing through Remembering project.
3. Both reports are available online at the Healing through Remembering website, healingthroughremembering.info.
4. The third Stevens report is available from a number of websites, including http://www.madden-finucane.com/patfinucane/archive/pat_finucane/2003-04-17_stevens_report.pdf. For allegations of incompleteness of the reports, see <http://www.amnesty.org/en/appeals-for-action/twenty-years-inquiry-patrick-finucanes-death>.
5. Theoretical approaches encompass philosophical approaches like those of Govier (2002), Jacoby (1983), Minow (1998), Rotberg & Thompson (2000) and Teitel (2000), to name a few. Studies of mechanisms and outcomes include works by Amstutz (2005), Barria & Roper (2003), Fletcher *et al.* (2009) and Hayner (2002), among others. One of a very few examples of the use of procedural justice is Apuuli's (2009) critique of Rwanda's Gacaca courts as not meeting judicial standards of legal procedural justice—as opposed to the psychological notion of procedural justice that I examine in this paper.
6. I had 1,062 cross-coded instances out of 19,228 document-code combinations with a median level of agreement at 90.7%, mode 87.3%.
7. Many unionists and loyalists describe Sinn Féin and the IRA as a single entity, abbreviating the term as Sinn Féin-IRA. While recognizing the high probability that senior members of the one organization belong to the other as well, I shall continue to analyze their statements separately in recognition of the roles each is purported to play.
8. As with many other things in Northern Ireland, the terminology used to describe those who fought paramilitary groups is contested along the lines of the oft repeated phrase 'one man's terrorist is another's freedom fighter'. I acknowledge that the use of 'ex-paramilitary' will displease some, but feel that it is the most neutral in terms of description.
9. Although both interviewees indicated that their testimony before the Group was the same as testimony that they had given on several other occasions and, at times, in public view, I have decided to preserve their anonymity because the CG processes, with the exception of the public forums, were intended to be confidential.
10. The CG's view is disputed by several parties, including Jim Allister, the Northern Ireland Retired Police Officer's Association and the RUC's George Cross Foundation, who all contend that the provisions of the Legacy Commission, especially the directive to draw a line in the sand amount to a *de facto*, if not *de jure*, amnesty, which would contravene the European Convention (NIAC, 2009). One of the more convincing arguments against the proposed Review and Investigation Unit was made by the PSNI's Sir Hugh Orde before the report was published. In testimony before the NIAC on 6 February 2008, Orde noted that although he was not opposed to any entity that had a 'broader remit' than the HET, he felt that no other venue 'would be seen as Article 2 compliant if a family did not want to go down that route' (House of Commons, 2008). However, when questioned about the usefulness of the proposed Legacy Commission by the NIAC on 9 July 2009, Orde was less pessimistic, noting that such a body could provide some advantages by giving options to families who did not want to use the HET, but that the end point for him was whether any such body would provide value for victims (House of Commons, 2009).

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