

## Abstract

The British government's current approach to holding the Army accountable for historical crimes during the Northern Irish Troubles is self-serving and limited. Since the 1998 peace process, successive governments have adopted a narrow, juridical approach, focused on prosecuting a handful of individual soldiers for the most egregious crimes like unlawful killings. This strategy deliberately avoids scrutinising the collective responsibility of the political system and Army as a whole, as well as the more mundane, everyday violence perpetrated against the nationalist community. The article argues that this is part of a wider process of colonial amnesia around Britain's role in Northern Ireland. The juridical approach constructs a particular narrative of the Army's role in the conflict, rehabilitating their use of violence, while obscuring broader systemic responsibility. It concludes that while a more transformative approach to historical justice would be preferable, this remains unlikely.

## Introduction

Quests for historical justice for crimes committed by a state's security forces need to address both personal legal guilt and collective political responsibility.<sup>1</sup> Not so, according to successive British governments, who have eschewed any efforts to examine collective responsibility. Historical abuses by the Army in Northern Ireland during the Troubles have been confronted through what I label a 'juridical approach'. This approach holds a small handful of individual soldiers to account through the legal system whilst refusing to scrutinise the collective responsibility of the political system and the Army as a whole. Soldiers accused of the most egregious crimes (typically an unlawful killing) are put on trial. Even when Westminster established two major independent inquiries to investigate aspects of the Army's behaviour in Northern Ireland, the emphasis was still on individual soldiers' responsibility around specific events. The Army's crimes are reduced to a handful of unlawful killings that are presented as the exception rather than seen as the extreme end point of a spectrum of colonial violence.

Various voices at Westminster have called for the people of Northern Ireland to accept the findings of trials and inquests and move on from the past. They warn that dwelling on the past causes more harm than healing, reopens old wounds and hinders reconciliation. Indeed, forgetting can sometimes be helpful where quests for justice are divisive.<sup>2</sup> What is more, British veterans facing historical investigations are ageing, as are victims and survivors, and we will soon move into a period 'after memory'.<sup>3</sup> However, in Northern Ireland trauma has

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<sup>1</sup> H. Arendt, 'Organized Guilt and Universal Responsibility', *Jewish Frontier* 12(1) 1945, pp. 19-23.

<sup>2</sup> D. Rieff, *In Praise of Forgetting. Historical Memories and its Ironies*, New Haven, Yale University Press, 2016.

<sup>3</sup> L. Wieseltier, 'After Memory. Reflections on the Holocaust Memorial Museum', *The New Republic*, 3 May 1993.

been inherited by subsequent generations and the sense of injustice remains deeply felt.<sup>4</sup> In actuality, because of its juridical approach, the government is hindering dealing with the past. Trials of individual British soldiers and inquests have become a way for the British state to claim that it holds itself to account to its own high democratic standards and where it is found wanting, prosecutions are pursued. But these trials are so narrowly focused on individuals and exceptional incidents that they ignore the everyday violence of colonialism and allow Britain to 'rehabilitate' its legacy in the region.<sup>5</sup> Historical justice is never just a technical, legal process. When it comes to determining who is accountable for what and when, historical justice processes are moulded by power. Britain and the British Army have it; civilian victims and their families do not.

Examining the legacy of the British Army during the Troubles raises a number of important questions. How should a democracy with a history of imperialism, but also with a public commitment to justice and human rights on the world stage, hold its army to account for historical crimes? And who or what should be held accountable - individual soldiers or the army as a whole and the political dynamics that led to it being deployed? And what are the politics underpinning these decisions?

### **Army Accountability During the Troubles**

Northern Ireland's relationship with Britain during the Troubles was a colonial one. A colonial lens explains the 'structures of animosity between the descendants of settlers and the descendants of natives' that delineated disputes in the region.<sup>6</sup> When Northern Ireland was created in 1921, its borders were decided by Britain based primarily on a political logic. The new border was drawn to ensure a loyal Protestant majority and it excluded those counties that were historically part of Ulster, but which had a majority Catholic (and untrustworthy) population. Partition enabled the British state, working through unionism, to maintain control over the region. Its formation took place at a time when the British Empire was transferring power from its imperial parliament to its dominions in response to the rise of democracy and self-determination. It was not that Westminster let go of its interests (the Government of Ireland Act (1920) explicitly asserted Westminster's sovereignty and Northern Ireland was heavily dependent on Westminster financially and politically), but protestant unionism was given a free hand to govern from 1921-1972. Northern Ireland was sectarian from the outset, a one-party Protestant state for Protestant people, that actively discriminated against Catholics.

The British Army largely withdrew from Northern Ireland after its formation, last being deployed in 1935 in response to sectarian riots in Belfast, leaving law and order to local security forces. However, when the Troubles erupted in 1969, the Army was deployed at the

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<sup>4</sup> B. Rolston, *Children of the Revolution. The Lives of Sons and Daughters of Activists in Northern Ireland*, Belfast, Beyond the Pale Publications.

<sup>5</sup> J. Johnson, 'Beyond a Politics of Recrimination: Scandal, Ethics and the Rehabilitation of Violence', *European Journal of International Relations* 22(3), 2018, pp. 703-726.

<sup>6</sup> B. O'Leary, *A Treatise on Northern Ireland. Volume 1 Colonialism*, Oxford, Oxford University Press, 2020.

request of the Unionist government to aid the civil power and restore order. Although initially welcomed by the Catholic population who hoped the Army would rein in local security forces, nationalist communities soon turned against the Army, coming to see it as a partisan force that propped up the existing sectarian regime. When direct rule from Westminster was imposed in 1972, it was seen as an assertion of where real power lay. Under direct rule, British policy combined reform of the most egregious sectarian aspects of Northern Ireland with repression and harsh security policies. But the 'British state's programme, by design and default, was not one of anti-sectarianism but rather about managing sectarianism' – sectarianism which its long legacy of colonial polices had largely created.<sup>7</sup> It was into this political arena that the Army was deployed, ostensibly to restore law and order but, given the long legacy of British colonialism in Ireland, it was soon seen by many nationalists as a means of propping up the existing order.

More than 300,000 soldiers served in Northern Ireland, reaching a peak in the 1970s of over 20,000 at any one time. At the time of the Army's deployment in 1969, it had fought 64 counterinsurgency campaigns in its colonies after World War II alone, with many becoming infamous for their brutality.<sup>8</sup> But the Army had never fought a counter-insurgency campaign in the UK and the British government expected it to behave differently. Whilst undoubtedly the Army was more moderate in Northern Ireland than overseas, its deployment became another tool in the colonial control of Ireland by Britain.<sup>9</sup>

Looking at the full range of crimes and abuses by the Army during the Troubles reminds us that colonial violence is suffusive as well as explosive. There was extensive collusion between soldiers, the Royal Ulster Constabulary and loyalist paramilitaries.<sup>10</sup> Soldiers were regularly accused of planting evidence and were found guilty of doing so in some high-profile cases. The Army set up checkpoints where and whenever it wished and was accused of using these to harass and disrupt nationalist populations. It blew up roads (known as 'cratering') to limit border crossings into Ireland at non-checkpoint roads and British soldiers frequently crossed illegally into Ireland. Armed observation posts were set up in the heart of nationalist communities, such as a controversial one at Crossmaglen in 1980 where the Army seized a Gaelic Athletic Association clubhouse and its helicopters regularly disrupted matches. It undertook stop-and-searches of individuals and house searches on a daily basis – in the early 1970s it was averaging between 1200-1600 house searches a month with vast claims submitted for damages. Curfews were imposed, as were restrictions on entering town centres. All of this was enabled by emergency powers that significantly curtailed human rights protections.

And, of course, there were the killings. Between 1969 and the peace deal in 1998, British soldiers killed 300 people (255 of whom were Catholic; 152 of whom were civilians) while 502

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<sup>7</sup> R McVeigh and B Rolston, *Anois ar Theacht an tSamraidh: Ireland, Colonialism and the Unfinished Revolution*. Kerry, Beyond the Pale Books, 2021, p. 244.

<sup>8</sup> E. Burke, *An Army of Tribes. British Army Cohesion, Deviancy and Murder in Northern Ireland*. Liverpool, Liverpool University Press, 2018, p. 34.

<sup>9</sup> On being more moderate, see H. Bennett, *Uncivil War. The British Army and the Troubles, 1966-1975*, Cambridge, Cambridge University Press, 2024, pp. 1-13.

<sup>10</sup> Sir J. Stevens, *Stevens Inquiry. Overview and Recommendations*, 17 April 2003.

soldiers were killed.<sup>11</sup> From the outset, accountability of the Army hinged around legal trials examining unlawful killings or serious injuries caused by individual soldiers. Section 3 of the Criminal Law Act of 1967 set out when private individuals could use reasonable force in the prevention of crime. As there was no other law specifically regulating the conduct of the British Army on the streets of the UK, this Act was applied to the actions of soldiers as if they were private citizens. To help them navigate this legal uncertainty, every soldier was issued with a deliberately simplified set of instructions (a 'Yellow Card') of what was an acceptable use of force and in what circumstances.

Given the Army was being deployed against (in the eyes of Westminster) British subjects, this enabled Westminster to justify a juridical approach to Army accountability. British soldiers accused of killing in the United Kingdom could be tried in British courts and face British justice. During the Troubles, some soldiers clearly engaged in unlawful killings and were investigated and charged accordingly. There were also some contemporary inquiries that touched upon the Army's behaviour, such as the Compton Inquiry (1971) that looked at the 'interrogation in depth' of 14 interned men who were tortured. In total, between 1974 and 1994, 34 people were charged in relation to 24 incidents of the use of lethal force, but only eight were convicted of criminal offences for the use of force exercised while on duty.<sup>12</sup> Some of those found guilty were reintegrated back into the Army after serving their sentence (like Private Ian Thain), while others had their sentences overturned or reduced on appeal (for example, Private Lee Clegg had his convictions overturned, thanks, in part, to a young Keir Starmer who was a member of his legal team). A couple of others were also convicted of murder while not on duty, such as Staff Sergeant Stanley Hathaway and Sergeant John Byrne who, in 1981, pleaded guilty to the murder of Michael Naan and Andrew Murray nine years earlier.

### **The Limits of Historical Justice Procedures**

The juridical tradition established during the Troubles was replicated when it came to historical justice too. After the Belfast Agreement in 1998, discussions turned to transitional justice and the Army came under scrutiny alongside paramilitaries. A Historical Enquiries Team was set up in 2005 to review all 3,269 unsolved killings during the Troubles that eventually (see below) encompassed killings by state security forces.<sup>13</sup> After a mixed performance, the Historical Enquiries Team was closed in 2014 and replaced with a Police Service of Northern Ireland historical investigations team. Various inquests were also held into killings involving the Army.

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<sup>11</sup> M. Sutton. *An Index of Deaths from the Conflict in Ireland*. <https://cain.ulster.ac.uk/sutton/index.html>, accessed August 2025.

<sup>12</sup> F. Ni Aolain, *The Politics of Force. Conflict Management and State Violence in Northern Ireland*, Belfast, Blackstaff, 2000, p. 73. A couple of others were also convicted of murder while not on duty, such as Staff Sergeant Stanley Hathaway and Sergeant John Byrne who in 1981 pleaded guilty to the murder of Michael Naan and Andrew Murray nine years earlier.

<sup>13</sup> Northern Ireland Affairs Committee. *Third Report of Session. Policing and Criminal Justice in Northern Ireland: The Cost of Policing the Past.*, 2007-08, HC333, p. 10.

These investigations led to the spectre of veterans appearing in court haunting the Army and the Ministry of Defence over the last decade. To date, six soldiers covering five incidents have been charged with historical crimes with up to another 50 reportedly facing potential charges.<sup>14</sup> Only two of those have gone to a full trial. In 2022 David Holden was given a three-year suspended sentence for the manslaughter of Aidan McAnespie in 1988. McAnespie was a member of Sinn Féin and a person of interest to the British Army. He was unarmed and crossing an Army checkpoint on his way to a Gaelic football match when he was shot by an 18-year-old Holden who claimed his wet finger slipped on his trigger and a bullet ricocheted, killing McAnespie. The historical investigation found this to be the least likely explanation for what happened given the force required to pull the trigger. The second full trial was that of Soldier F, who in October 2025 was found not guilty of two charges of murder and five charges of attempted murder relating to his actions on Bloody Sunday in 1972. Upon finding the soldier not guilty, the judge noted that there was no concept of “collective guilt” in the courts.<sup>15</sup>

Of the other soldiers charged, one soldier’s trial ended when he died during proceedings. Dennis Hutchings was accused of shooting an unarmed civilian named John Pat Cunningham, a 27 year old with a severe learning disability, in the back in 1974. Hutchings claimed he fired a warning shot over Cunningham’s head after he ran away from their patrol, and another soldier (deceased at the time of the trial) was the one who shot him. Hutchings died with Covid in 2021 in Belfast far from his family and whilst receiving treatment for incurable kidney disease. Philip Barden, one of Hutchings’ lawyers, declared that he would still be alive were it not for the trial and that ‘Nobody cared about putting a man who is 80 years old on trial in these circumstances’.<sup>16</sup> In this light, it is hard not to see Hutchings as a sort of victim of the British state’s juridical approach too.

Another soldier, who was charged with the murder of Daniel Hegarty in Derry in 1972, died in 2024 before his case came to trial. Daniel Hegarty was 15 when he was shot twice in the head near his home whilst watching an Army operation to clear ‘no go’ areas in Derry in July 1972. His cousin was also shot in the head by the same soldier, but survived. Both boys were left for dead rather than offered medical help or searched. The soldier claimed Hegarty charged at him and he only shot him after issuing a warning. Both of these claims were rejected at an inquest in 2011.

In 2021, Soldiers A and C were acquitted when their trial for the murder of Joe McCann in 1972 collapsed after the judge ruled certain historical evidence was inadmissible. Soldiers A and C, in their 70s at the time of the trial, (along with Soldier B who was deceased) admitted

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<sup>14</sup> ‘Now clear them too. Campaigners demand seven more Northern Ireland veterans have cases against them dropped following collapse of ex-paratroopers ‘witch hunt’ trial’, *Daily Mail*, 5 May 2021; <https://www.dailymail.co.uk/news/article-9544517/More-British-Army-veterans-Troubles-cases-against-dropped-IRA-case-collapse.html>

<sup>15</sup> Soldier F cleared of two murders, five attempted murders on Bloody Sunday. RTE, 23 Oct 2025. <https://www.rte.ie/news/ulster/2025/1023/1540095-soldier-f-trial/>

<sup>16</sup> ‘Army veteran’s Troubles trial contributed to his death, lawyer says’, *The Guardian*, 19 October 2021; <https://www.theguardian.com/uk-news/2021/oct/19/dup-hits-out-at-prosecution-of-army-veteran-who-died-from-covid>

killing McCann but argued it was a reasonable use of force. McCann was a member of the Official IRA. On 15 April 1972, he was recognised by two police officers who requested the soldiers help with an arrest. When confronted, McCann ran away. When he refused to stop, the soldiers shot him in the back. He was unarmed but the Army had classified him as a dangerous terrorist. The case hinged on whether he posed a danger at that point in time or not.

It was against this backdrop of looming trials that Karen Bradley, the Conservative Secretary of State for Northern Ireland, infamously declared in 2017 that ‘over 90 percent of the killings during the Troubles were at the hands of terrorists. Every single one of those was a crime. The under ten percent that were at the hands of the military and police were not crimes; they were people acting under orders and instructions, fulfilling their duties in a dignified and appropriate way’.<sup>17</sup> Boris Johnson and Rishi Sunak turned this claim into a prophecy by passing the Northern Ireland Troubles (Legacy and Reconciliation) Act in 2023. This prevented any prosecutions for Troubles related crimes (granting amnesties to soldiers and paramilitaries) and, in return, established the Independent Commission for Reconciliation and Information Recovery. On the surface a tool for information recovery was highly appealing but, in reality, the Act was primarily an amnesty for soldiers and roundly rejected by victims and survivors.<sup>18</sup>

It would be a mistake to think that Westminster has sought to evade accountability for the Army in Northern Ireland entirely. At the same time as denouncing ‘vexatious’ charges against veterans, the British government wanted to be seen as committed to justice and human rights. The most expensive (£191.2 million) and longest (1998-2010) public inquiry in British history was one that investigated the killing of 13 unarmed civilians on Bloody Sunday in 1972. There is also an ongoing investigation (Operation Kenova) since 2017 into the handling of a senior member of the IRA turned British agent (known as “Stakeknife”) by the security services. There is no denying that both of these were robustly independent inquiries that challenged the Army and raised uncomfortable questions around the security forces’ behaviour, especially their attitude and approach to nationalist communities. But these inquiries, too, were about individual accountability and the actions of a ‘few bad apples’, not collective political responsibility.

Counterintuitively, the government’s juridical approach favours the impunity of its Army. The juridical approach embodies traditional Western understandings of justice that put the individual, both in terms of rights and responsibilities, at its core. The legalistic approach creates singular, and legally definitive, truths around a particular incident. It discovers key facts around what happened, when and where beyond reasonable doubt (or to a lower standard of ‘on the balance of probabilities’ in coroner’s inquests), and potentially assigns blame. Holding the Army accountable by focusing on the actions of a small minority of individual soldiers reflects British interests, even if individual soldiers feel the government has sold them out (despite the Johnson and Sunak governments trying to stop these trials). Collective state violence fades from scrutiny and the past is no longer seen holistically, but

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<sup>17</sup> *Hansard*, 6 March 2019, vol. 655 col. 945.

<sup>18</sup> Commission for Victims and Survivors, ‘Contentious Legacy Bill Becomes Law’, 22 Sept 2023; <https://www.cvsni.org/news/contentious-legacy-bill-becomes-law/>.

instead it becomes a series of decontextualised and individualised events. The very idea of singular, legal truths about specific incidents is problematic when events are wrapped up in a bigger frame of ethnicised memory politics that is mapped onto competing narratives of community, the nation and the past.<sup>19</sup>

### **Colonial Amnesia and the Politics of Forgetting**

Another way of seeing Britain's juridical approach is as a quest to shape the collective memory of the past, particularly what should be remembered, how the memory of events should be framed, and ultimately what should be the narrative of the conflict. From this perspective, it reveals the long legacies of imperial power. Trials and inquests legitimise the state's preferred history of the Army in Northern Ireland and encourage us to connect with the past in a particular frame - indignation at certain unlawful killings but sympathy for the circumstances faced by soldiers and ignorance of the broader culpability of the British state and of the daily suffusive violence the Army visited on Northern Ireland.

Hannoum, writing about France and Algeria, documented how former imperial powers create regimes of remembrance around their colonial history. A regime of remembrance is 'an ensemble of statements, images, monuments - in short, a corpus - of verbal and non-verbal knowledge about the past. This body of knowledge is authorized, taught, celebrated and repeated. It has been given the status of truth: that which we remember, that which happened, and that which we already know, that which everybody should know'.<sup>20</sup> It is about sanctioning certain forms of ignorance through what is left out and announcing that it is acceptable to be unaware of this.

Choosing what to remember entails choosing what to forget and what history to deauthorise. Forgetting is not simply the opposite of remembering; it is an active process of editing the past through things like the restriction or destruction of state archives, denial, occlusion, or drawing a line under past events (Operation Legacy and Britain's destruction of archival material relating to the Mau Mau rebellion in Kenya is perhaps the most notorious example of this). Forgetting is about choosing to forget even though there is often evidence at the time of harms committed by empires during the colonial period. It is about reorganizing memory in a deliberate way to give the present a particular meaning. It is not that abuses by the British Army in Northern Ireland were unknown at the time, but rather it is about editing the legacy of such events. It is about downplaying collective decisions by the Army and politicians to securitise the nationalist population and up-playing the 'small number of misguided soldiers operating in difficult circumstances' narrative.

What is at stake is a meta-conflict, or a conflict over the causes of the conflict. These struggles are about labelling, interpreting and grounding different actor's uses of violence in a

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<sup>19</sup> C. Lawther, 'Let me Tell You'. Transitional Justice, Victimhood and Dealing with a Contested Past', *Social and Legal Studies* 36(6), 2021, pp. 890-912.

<sup>20</sup> A. Hannoum, 'Memory at the Surface: Colonial Forgetting in Postcolonial France', *Interventions* 21(3), 2019, pp. 367-391.

particular interpretive frame that determines present-day debates. If historical justice mechanisms exculpate the Army as a whole but find a limited number of egregious acts by a very small minority of individual soldiers, it allows the British to write a heroic narrative of the Army as neutrally upholding democracy against an onslaught of IRA terrorism. Alternatively, if this narrative is challenged, it could mean that the Army is seen as a colonial aggressor used to suppress the rights of a minority group. And thus it gets to the core of the legitimacy of the British Army.

There are various ways that colonial amnesia is built up around the Army's role in Northern Ireland. From the outset of the peace process, the idea was established that transitional justice was something for the paramilitaries, not the Army. There is little mention of dealing with the past in documents related to the peace process, but when it is mentioned it solely focuses on paramilitary groups. The British Army's accountability was not mentioned at all in key documents like the Belfast Agreement (1998), St Andrews Agreement (2005) or other official documents dealing with the legacy of the past. The first report of the Victims Commissioner in 1998, *We Will Remember Them*, was widely criticised by nationalists for overlooking those who died at the hands of the security forces. While there was pushback against this, the official narrative was one that failed to include these killings as worthy of investigation alongside those caused by paramilitaries.

When the Historical Enquiries Team was set up in 2005, it took a very different attitude to historical investigations involving the Army compared to paramilitaries. Their operational guidelines stated that 'it is not appropriate to compare the review processes in military cases with reviews of murders committed by terrorists. Soldiers were deployed on the streets of Northern Ireland in an official and lawful capacity, bound by the laws of the UK and military Standard Operating Procedures of that time'.<sup>21</sup> It was the same during the Troubles where, initially, there was an agreement that the local police force would not investigate shootings by British soldiers but would leave this to the Army. This became untenable the longer the Army stayed in Northern Ireland and was changed in 1973. However, the Army was still protected from full scrutiny. Even after procedures for investigating complaints against the Army were reformed in 1991, the decision was made that the RUC would record prosecutions of servicemen as 'members of the public'. Finally, there are extensive 'national security' restrictions on relevant files in the archives. The Army has also chosen not to engage with researchers on this topic and instructed serving soldiers not to do so either.<sup>22</sup>

Colonial amnesia is also constructed through the British government's responses to criticisms of the Army's role. The most apt example is then Prime Minister David Cameron's response to the findings of the Bloody Sunday Inquiry in June 2010. Cameron asserted his patriotism before giving a fulsome apology and acknowledging that the actions of some soldiers were 'unjustified and unjustifiable'. He ended the apology with the following lines 'I hope what this report can do is to mark the moment where we come together in this House and in the communities we represent to acknowledge our shared history, even where it divides us. And

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<sup>21</sup> Her Majesty's Inspectorate of Constabulary. *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, 2013, p. 17.

<sup>22</sup> Bennett, *Uncivil War*, 277-281.

come together to close this painful chapter on Northern Ireland's troubled past. That is not to say we should ever forget or dismiss the past, but we must also move on'.<sup>23</sup> For Cameron the apology was about ending the process. In contrast, for many victims and their families, this was now an opportunity to open an honest debate about the Army and how it policed nationalist communities. For the government, the purpose of the Inquiry was to shut down the debate; for victims and their families, the purpose was to start a debate. Fifteen years later we know which of these two competing visions won out.

Perhaps the uncomfortable reality is that individual soldiers are being put on trial to protect the British state and its Army from scrutiny of its collective decisions, scrutiny which inevitably would raise the shadow of colonialism. And the British Army needs to protect its reputation. Its recent history has seen a number of overseas adventures and scandals. The government established an independent inquiry to look into the actions of Special Forces in Afghanistan between 2010-13 in light of accusations of excessive violence, killings and substandard internal investigations. The Chilcot Inquiry was critical of the government's reasoning for going to war in Iraq in 2003. What is more, a significant number of investigations against British soldiers also followed their time in Iraq.

It also looks like the role of the Army overseas is currently on the up. Its budget (and expected level of activity) is increasing following pressure from the Trump administration, but even before this it had engaged in operations in Libya and Syria in recent years. The protection of the Army's historical reputation in Northern Ireland is necessary for its reputation overseas today. If the Army is seen to have abused its own population within the UK, imagine what it might be doing abroad.

### **Where Next for Historical Justice in Northern Ireland?**

The Northern Ireland Troubles (Legacy and Reconciliation) Act of 2023 is quietly being repealed by Starmer's Labour government. The Secretary of State for Northern Ireland, Hilary Benn, has attempted to placate protesting veterans concerned about facing trial again, stating that while he recognises 'the very real fears that many veterans have', a blanket amnesty is incompatible with human rights law. This means that the Labour government now has an opportunity to rethink historical accountability mechanisms for the Army. However, significant change seems highly unlikely. Indeed, in September 2024, Benn announced he was establishing a judge-led inquiry into the 1989 murder of the republican lawyer Pat Finucane, who was killed by the Ulster Defence Association in collusion with the security forces. Also, the Independent Commission for Reconciliation and Information Recovery, which looks likely to survive even if the Labour Government repeals the Legacy Act, is pursuing a juridical model of historical investigations into 35 incidents (as of October 2025), many of which involve the British Army. In other words, Labour under Starmer appears as strongly committed to the juridical approach as his predecessors. Nor will opposition support for any change in direction be forthcoming; the Conservative Party are committed to preserving the Legacy Act while claims of 'vexatious' prosecutions of veterans have been a dog whistle for Reform UK.

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<sup>23</sup> *Hansard*, June 15 2010 vol 511, col. 742.

Although unlikely to be adopted, it is worth thinking about what an alternative model might look like. An alternative approach would be for the British government to adopt a more transformative conception of historical justice. Transformative justice looks not just at individual events but also acknowledges the structures and circumstances that led to those events in the first place.<sup>24</sup> It acknowledges the systemic violence built into a colonial society's institutions and practices, understanding their origins and their effects. Historical justice is then about transforming these to prevent conflict from arising again. From this perspective, justice should be about more than judicial mechanisms, which remain an important aspect, but should also entail social and political change.

This would entail rethinking the process so that it places victims at the centre, not veterans (whilst acknowledging that veterans may well fall into this latter category at times too). It is not about abandoning juridical processes entirely - many victims and their families want legal justice and situational truths about particular incidents. But it is about acknowledging that justice is not just about blame and punishment; it should also entail rectificatory elements that acknowledge past abuses and confront their underlying causes. This should be done for its own sake and not as part of an instrumental exchange for an amnesty. This would tackle the sense that remains within nationalist communities that they continue to be met with concealment, obfuscation and denial when looking for scrutiny of the security forces.

In Northern Ireland this would entail being more honest about the colonial context and the thinking behind the Army's deployment, how this shaped sectarianism in Northern Ireland, and moving away from British assertions that it had no selfish strategic interest during the Troubles and that it was a neutral broker of the peace process. Transformative mechanisms would entail opening a space for frank discussion of the Army and colonialism. If archives are a means of controlling a historical narrative, then Britain could open up existing archives and the Army could make itself more accessible to victims, survivors and their families. After all, with the British political culture of documenting deliberations, there is a trove of information to examine the motivations of the government and Army towards Northern Ireland. France's efforts since the early 2000s to open up their archives on the Algerian War of Independence could be instructive here, even if only the most charitable of observers would call it a complete success.

The idea that Northern Ireland was a place apart within the UK, lawless, subject to irredentist tribalism, in need of a strong imposition of order, that necessitated emergency rule, a stain on an otherwise progressive UK, needs to be scrutinised. The degree to which such attitudes were embedded in Westminster's and the Army's thinking, then and now, and how this shaped the approach to policing nationalist communities using the Army, should be held accountable. Acknowledging this collective mentality, interrogating how it contributed to animosity in Northern Ireland, and then transforming this mentality, would represent a significant improvement on the approach to date. Instead, the government deliberately

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<sup>24</sup> For example, P. Gready & S. Robbins, 'From Transitional to Transformative Justice. A New Agenda for Peace', *International Journal of Transitional Justice*, 8(3), 2014, pp. 339-361; R. Mani, *Beyond Retribution. Seeking Justice in the Shadows of War*. Oxfordshire, Polity, 2002.

avoids its collective historical responsibility – and its failure to address this continues to undermine Northern Ireland today.

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