



## REVIEW ESSAY

### **Truth, Justice & Reconciliation? The Problem with Truth Processes**

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#### ***The Heart of The War in Colombia***

Constanza Ardila Galvis

Latin American Bureau, 2000

PBK: ISBN: 1899365427 £11.99 \$22.95

pp. 224 (including: footnotes)

#### ***Unfinished Business: State Killings and the Quest for Truth***

Bill Rolston (with Mairead Gilmartin)

Beyond The Pale Publications, 2000

PBK: ISBN: 1900960095 £12.99

pp. 335 (including: bibliography and index)

#### ***The Politics of Memory: Truth, Healing and Social Justice***

Ifi Amadiume and Abdullahi An-Na'im, (eds.)

Zed Books, 2000.

HBK: ISBN: 1856498425 £45.00 \$69.95

PBK: ISBN: 1856498433 £15.95 \$25.00

pp. 256 (including: references, tables, index)

One of the features of the modern era of internal conflict and civil war has been the attempt by various institutions, the United Nations included, to address the issue of gross human rights violations that have occurred during those conflicts. Many of those conflicts fall outside the legal definition of 'war' and thus outside the ambit of the international laws of war. The problem has been, therefore, to find a legal framework for addressing the many human rights violations that conflicts generate.

The gaze of the world is hard to avoid. It is more difficult to deny widespread human rights abuses in a world with high-speed communications and where 24-hour news organisations and the Internet facilitate the spread of information. Despite the bias of the west and its failure to see its own offences for what they are, we are more aware than ever of the cruelties of poverty and repression.

Along with the spread of information about conflicts has come an awareness of the concept of human rights. In the last few decades the consciousness of human rights and what Eide (1983) calls their *positivisation* has grown. Consequently the impunity of the junta, the puppet regimes and the dictators is increasingly difficult to justify. It is now the case that many countries accept the need to honour human rights standards on paper - the challenge now is how to get them to honour those standards in practice. Out of the awareness of that particular challenge has come the debate about accountability. One of the models to emerge from that debate has been the 'truth commission', a phenomenon particularly of the last 25 years. Originally an attempt to provide some measure of accountability, it has also been seen as a tool for peace and reconciliation. The popularity of the model has spread, across South America, into Africa and parts of Europe. In Northern Ireland, demands for a truth commission are part of the debate about the success of the evolving peace process.

These books, with their different focuses, methodologies and locations, seek to address the need for truth. Galvis' book is essentially a record of the stories and opinions of 10 people, mainly women, involved in the conflict in Colombia. It weaves its way through oral history, memory and debate to present a vivid picture of life in Colombia. Similarly, Bill Roulston's book, *Unfinished Business: State Killings and the Quest for the Truth* is a form of oral history, looking at the experiences of the relatives of a number of those killed by the state in Northern Ireland, who 'have *campaigned* over state killings' (p. x). As Rolston correctly observes in the opening to the book, campaigning on such issues has not been easy.

Victims of state killings were often forgotten and ignored while the war was raging. To draw attention to them was to risk being labelled as 'soft on terrorism'. Criticising the state's human rights record was usually condemned on the grounds that it 'played into the hands of terrorists' (p. xii).

*The Politics of Memory*, on the other hand, is a more academic piece, considering truth processes from the perspective of law, social justice and human rights. It does so by making case-studies of a number of African countries, including Sudan, Rwanda and South Africa and by a thematic consideration of accountability and truth processes.

### ***Civil War in Colombia***

The long civil war in Colombia has been unimaginably bloody and destructive, and it has escalated further in the last year. As Amnesty International observes:

Paramilitary groups acting with the active or tacit support of the security forces were responsible for the vast majority of extrajudicial executions and 'disappearances'; many of their victims were tortured before being killed. Armed opposition groups were responsible for violations of international humanitarian law, including arbitrary or deliberate killings. More than 300 people "disappeared" and more than 4,000 civilians were killed outside of combat for political motives by the armed groups. Over 1,700 people were kidnapped by armed opposition groups and paramilitary forces. All parties to the conflict were responsible for the forced displacement of large numbers of civilians (Amnesty International, 2002).

In *The Heart of the War in Colombia*, the contributors are ordinary people, who begin by telling their stories. Some consciously chose the path of violence, seeing the life of the guerrilla as the only option in their lives. For others, involvement in the war was incidental, a product of poverty, birth or circumstance.

What emerge are experiences of great cruelty and great passion. Many of the women experienced violence in the home, as children from mothers, fathers and siblings; as young women from husbands, partners, and combatants. These early experiences in a society where physical violence seems to have been commonplace, combined with the surrounding poverty and conflict drove many of them into 'the heart of the war'. Some of the stories are beautifully told – Ana Dolores' mesmeric narrative of her life is reminiscent of Gabriel Garcia Marquez. The huge trauma inflicted through lives of grinding poverty, violence and displacement is apparent from these stories. But what also becomes clear is that many of these survivors are human beings of great spirit and endurance.



Later in the book the participants move through debate and argument to consider the experience of violence. Many conclude that non-violent approaches are necessary but not easy. Their debates echo many in other societies where civil war has bred despair and led to various attempts at peace making. In Columbia, heavily militarised, fractured by a vicious civil war, ridden with drugs and corruption, non-violence is a hard choice. As one contributor to the debate notes, 'war is not recent...the problem is power' (p. 196) Another observes that 'hatred does not end with accords' (p. 197). The problems and ideas that appear in these dialogues are familiar and recur throughout societies struggling to emerge from conflict. The attempts by these ordinary Colombians to explain and to understand the factors that created their experiences readily focus on poverty. They are slower to identify equally relevant factors such as patriarchy and the unyielding conservatism and authority of church, state and society. The women's lives in particular are the products of their status as commodities, valued according to their virginity, their compliance and their willingness to hand over their sons to war. Their stories create a picture of injustice as a product of poverty and the abuse of power by families, governments and armies. A continual thread throughout this book is that abuse of power and the ease with which the powerful appropriate law. 'We are the law' is a repeated refrain of the men with guns.

The book does not seek to be a coherent analysis of repression and violence in Colombia. As Marcela Lopez Levy notes in her preface, its aim - and that of the process which produced it - was to reclaim a collective memory 'through the exchange of personal histories' (p. 7). The author's aim of 'reflect[ing] on the mechanisms through which ordinary people become willing and able to kill and torture and reproduce the cycles of violence in Colombia' (ibid.) is well achieved in this book. It is also claimed that the book's other purpose is to propose that 'truth and memory can reconcile both victims and perpetrators of violence to a new beginning' (ibid.). This is an aim that is not realised. It is a significant observation nonetheless - that finding the truth can facilitate reconciliation to a new start. Too often we are told that the purpose of truth processes is to reconcile victim and perpetrator to *each other*, when that is probably impossible.

This book is not an argument for a truth process. It is however a record of oral history and political debate as therapy. It is a powerful, compelling read, unblinking in its honesty about the capacity of ordinary human beings to inflict and to survive great harm. It refuses to provide any neat answers, presenting instead a picture of the confusion, disorder and pain that poverty and violence create.

### ***Politics of Memory***

*The Politics of Memory* opens with an examination of the meaning of social justice, positing it as the aim of reconciliation. This is a recurrent theme, particularly in Africa, where those who sought justice before the Truth and Reconciliation Commission often complained of their poverty compared to the wealth of their abusers. Economic reparation and the goal of social justice complete the loop of oppression and violence, human rights abuses, despair and war-weariness, through to peace making. It is often vast social inequality that creates the circumstances in which violence and oppression thrive, yet many of those who advocate an end to violence fail to couple that with a demand for an end to poverty. Without a serious attempt to end the repression engendered by poverty, the survival of a peaceful society may be precarious.

*The Politics of Memory* is a collection of essays, broadly on the theme of reparation and restoration after gross human rights abuses. The essay by Juan Mendez, on the Latin-

American experience and 'Truth in a Box', the chapter by Julie Mertus on the limits of the law and legal accountability, stand out as particularly significant pieces.

Mendez provides a good summary of the obligations of governments in the face of allegations of abuses and a succinct exploration of the arguments involved in truth seeking. In an important passage he effectively nails the old argument that truth processes only exacerbate division. The 'let's just draw a line under the past and move on' view is common in countries emerging from conflict. The case is made that one only obstructs reconciliation by requiring an accounting for the abuses of the past. But as Mendez points out, 'reconciliation must be preceded by some act of contrition by the victimizers' (p. 136). He remarks that 'in some camps there is a dangerous tendency to consider truth as an alternative to justice' (ibid.). He argues that this 'is a serious misunderstanding of truth-telling experiments... they function best when they are conceived as a step in the process of overall accountability, and worst when they are conceived as the final stop along that road' (ibid.). This is one of the problems with truth processes – people tend to see them as the end of the journey rather than the beginning.

It is an established principle that the rule of law demands accountability. As Julie Mertus puts it 'transition to democracy...requires the establishment of the rule of law' (p. 151). This is a commonly held view and many of the transition projects in post conflict zones – Eastern Europe, Africa, South America – specifically state that one of their goals is the re-establishment of the rule of law. It is clear however, that the legal processes instituted in the name of achieving accountability (criminal trials, tribunals, inquiries, truth commissions) may only deliver it in a limited form. Political considerations, deals, the legal threshold for proof, the sheer scale of abuses, all create a situation where not every crime is prosecuted, not every harm addressed. As Mertus notes: 'Tribunals can never try the many cases in which the harm has no name as a crime – the harm of lost time, dreams shattered, the suffering which comes from endless waiting, the humiliation of asking for the help of someone else' (p. 155).

But why, if the law is so imperfect, is the assertion of the rule of law so important? The answer is that accountability is necessary to prevent permanent impunity. Unless *the law* officially corrects the pre-existing official narrative that no harm was done then the offence, the harm continues. Just because legal truth processes are imperfect, they should not be rejected out of hand. To disregard their aim – accountability as reparation, the rule of law replacing the rule of the gun – would be a mistake.

### ***The Limits of Law***

Commentators ought, like Mertus and Mendez, to be realistic about the reach of legal processes. Those who seek such processes as a way of finding the truth and of honouring their suffering should be warned about their limits. In Northern Ireland, many demand the truth about the activities of state and paramilitaries, seeking judicial inquiries into the many unresolved murders. This is a clear thread throughout Bill Rolston's book, where there is a palpable hunger for the truth to be told, the 'unfinished business' of the title. That book captures the individual experiences very well and shines a light on one aspect of the conflict, the 10% of the deaths which were caused by the state and the other, numerous deaths inflicted by loyalist paramilitaries, where it is alleged they were assisted by the state.



The response of the authorities to these deaths has been denial, counter-claim and abuse of the relatives of the dead. Kathleen Duffy went to the hospital where the body of her 15 year old son Seamus had been taken after he was killed by a plastic baton round fired by the police. She was confronted in the hospital by a police officer who shoved a plastic baton gun in her stomach and asked her if she wanted to be next (p. 192). As Sean McGovern, whose young brother Kevin was shot dead by the police on his way from his local pub to a disco, remarks: '[t]he reaction of the security forces... is to behave as if the family of the victim have done something wrong' (p. 236).

Many continue to fight long, protracted battles with the authorities, some helped, some hindered by the legal profession. The names of two lawyers who helped the families of the dead conduct those battles recur repeatedly throughout the book. Both lawyers, Pat Finucane and Rosemary Nelson, are now dead, killed by loyalist paramilitaries acting, it is alleged, in collusion with the state.

Rolston's book serves as a firm warning about the need for struggle in the assertion of truth and justice, for what transpires in it is the terrible failure of the traditional legal models and the sheer power of state's opposition to telling the truth about its activities. Of course, the state was not the sole cause of death and abuse in Northern Ireland, but when the state claims a monopoly on the use of force, it must operate under stricter standards than the paramilitary organisations it criminalises. Story after story in the book relates the callousness with which people's experiences of grief and loss are treated by the authorities. That such treatment and the denial of the truth drove some people towards bitterness and division is not surprising. What is remarkable is the manner in which many have remained steadfast in their attempt to assert the rule of law. That they naturally do not trust the state to assist them in that attempt is hardly surprising and partly explains the yearning for a truth commission.

For many the long-running and unprecedented second Tribunal of Inquiry into the events of Bloody Sunday, where 14 unarmed civilians were shot dead by the British Army is the forerunner of a truth process in Northern Ireland. Yet many of the shortcomings that Mertus observes of the international tribunals are equally true of the Bloody Sunday Inquiry. She describes the limits of those legal processes, noting that '[f]or the war crimes tribunal, survivors of war wear the stamp of potential witness; they become conduits through which investigators and prosecutors can make their case' (p. 143). She goes on to observe that:

the process and the language of law transmutes individual experiences into a categorically neat something else. Law does not permit a single witness to tell their own coherent narrative; it chops their stories into digestible parts (p. 150).

This has been the experience of many of the civilian eye-witnesses testifying before the Bloody Sunday Tribunal. Their stories are not allowed to unfold naturally, witnesses are constantly interrupted by lawyers asking 'relevant' questions; their written statements put up on a screen and shards selected for further examination. This is the nature of the legal process, but traumatic experiences do not fit neatly into numbered paragraphs: memories of murder, panic and chaos cannot be treated as a series of files on a hard drive, accessible and complete at all times. In the legal process incomplete memories, or narratives which differ, however slightly, from previous statements are treated as suspicious, proffered as reasons to disbelieve the charge of murder against the state. There is little awareness, it seems, that the narrative form and content which people use

to tell their stories to friends, communities and even to the media is necessarily different to the one which they will be obliged to use when taking part in a legal hearing.

### **Truth and Judgement**

The meaning of truth is explored, in *The Politics of Memory*, by Mahmood Mamdani in his essay on the South African Truth and Reconciliation Commission (an essay which is, peculiarly, without a bibliography). Mamdani criticises the TRC for focussing on limited types of victims and for not 'locating agency within the workings of the system' (p180). His argument is that the TRC should have indicted the legal system as well as the individual perpetrators, posing the question, what happens when the crime is legal? There is however, a difference between legality and legitimacy and it is here that the rule of law is crucial. The laws of Apartheid and the Third Reich may have been *legal*, but they were illegitimate. Perhaps the term 'the rule of law' is used less in the modern era, as it has been replaced by international human rights standards as an objective standard by which we can judge legal systems, their progenitors and actors.

Mamdani asserts that there are two kinds of truth – 'truth that brings unresolved tensions to light, and truth that obscures, hides veils, masks the unpleasant face of reality' (p. 177). This 'many truths' view is taken by several commentators, but it may be a problem with the nomenclature which is part of the confusion.

The notion of 'truth' is a difficult one both philosophically and practically. It is particularly difficult in the context of a conflict where even the nature of the conflict – that is, what the conflict was about – is contested. In many places, such as Northern Ireland, for example, it is further complicated by the length of the conflict and the appropriation of law by the state in dealing with that conflict. The school of thought which declares that there is no such thing as a single truth argues that there are always going to be different versions of an event, because people saw things from a different angle, remember things differently or imperfectly. It is however arguable that there is a general truth, an objective truth about events. Alex Boraine and others refer to this as 'forensic truth'. For example, one may say, perfectly correctly, that A shot B and that sometime later B's brother shot D. Anything further, any attempt to explain the actions of A or D is judgement. Thus 'A was wrong in shooting B and therefore it's understandable that B's brother shot C. This was war.' is a judgement. An alternative view of the same events would be 'A shot B because B was a terrorist. Look at what his brother did.' But both are not 'the truth'. Both are judgements, which is a different thing.

It therefore seems that people sometimes use the word 'truth' when what they mean is 'judgement'. Not 'judgement' in the formal legal sense that one gets damages for a civil wrong done or that someone gets sent to jail for a criminal offence, but an acknowledgement, an admission that what done was wrong. Thus the debate creates 'truth' as a pre-requisite for peace, when what is actually necessary is acknowledgement. Individuals, families and communities may all 'know the truth' about events, but if that truth is not formally acknowledged, the sense of injustice persists and the possibility of the abuse occurring again remains. Truth may be a part of the acknowledgement process, but without that acknowledgement, one cannot prevent the replication of the abuses of the past. Legal processes are obvious vehicles for such acknowledgements because of their status, form and formality, but they are not the only component in the process of truth and justice.



### **Conclusion**

Mahmood Mamdani, in *The Politics of Memory*, makes one of the most interesting observations on truth processes when he urges that they should focus on the beneficiaries of abuses as well as the perpetrator. This is a useful reminder of the opening focus of the book – the need for equality and social justice. One of the consequences of years of repression and misrule is that the inequalities that created the oppression are further exacerbated. Too often it is the communities most disadvantaged by the initial injustice who suffer most from the conflict to which it gives rise (see, for example Fay et al, 1999, pp. 133-146). Rarely do truth processes properly address that outcome, but it underlines what is a key message of all three texts – that legal processes are only one part of the package necessary to generate accountability, closure and peace-building.

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