Memory, Historical Responsibility, Truth and Justice: the Balkan Wars

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*Ethnic conflict is caused by fear of the future, lived though the past*  Vesna Pesic

*Mistaken ideas always end in bloodshed...but in every case it is someone else’s blood. That is why some of our thinkers feel free to say just about anything*  Albert Camus

A former political prisoner who returned to Prizren after the Kosovo war, tells Mark Baskin (U.S. political scientist): *On my way to work each day I greet the judge who sentenced me to nine years in prison.*

The search for memory, truth and justice at the grassroots

In 1998, during a fieldtrip in the former Yugoslavia, I interviewed members of associations of internally displaced persons (IDPs). They were petitioning the authorities for recovering their homes and properties because they wanted to “go home.” They also wanted the truth told about their families, communities and the war. They presented me with photos of a house or farm, anonymous letters threatening them to leave, photos of missing family members, legal papers. And they wanted justice. Those responsible for killing their kin and neighbors and driving them from their homes should be punished.

In Ljusci Palanka, in Bosnia, the Association for Return to Prijedor had compiled a book listing 3146 Muslim persons, 9 to a page, about half with a photo, missing from the district, including 120 children and 400 women. They were working on a volume 2. Most of the dead and missing occurred during the ethnic cleansing of Prijedor district in the Spring of 1992. I asked the leader of the group who was responsible. He said that “not all
Serbs were complicit in the ethnic cleansing. Many were, but some helped the Muslims, some were killed by other Serbs, and some were so scared when ordered to kill that they wept, but then they killed.” He rejected collective responsibility for Serbs. His views were nuanced and complex: historical truth often turns out to be that.

In Bihac, there was a photo exhibit of 50 Catholic churches destroyed or damaged by the Serbs in the war. One photo of the church before, and one photo after destruction: memory preserved in photographs.

Elsewhere people wanted memories erased and a new history written. In Banja Luka, the capital of Republika Srpska, in May 1993, fifteen mosques were dynamited and razed during the ethnic cleansing of non-Serbs, including the historic Ferhadija mosque, an architectural treasure. Overnight, the ruins and remains were buried in dumps, the site was bulldozed and left vacant as though it had never existed. It was not marked on any city map. There was no picture postcard of it anywhere to be found. In a nearby park, the busts of World War II partisan heroes were toppled or broken, lying in the grass. I asked my friendly hotel clerk to explain. He said they commemorated heroes in Tito’s Yugoslavia and people now want to forget they’d ever been part of it. After pressure by the international administration, the city issued a building permit to a Muslim foundation for rebuilding the Ferhadija. In May 2001, the ceremony for the laying of the cornerstone was disrupted by a hostile mob of about a thousand who attacked the two hundred and fifty officials as police stood by watching. Ambassadors and local Muslims sought refuge in a nearby Islamic center. Since then, it has been rebuilt.

These vignettes tell the grassroots story of memory, truth and justice. The victim group seeks to preserve the memory of their dead and missing and where and how they lived, wants their property back and hope to return, and insists on accountability and justice; the perpetrator group denies responsibility, wants to erase memory and constructs a fabricated history, and does not want the victims back. Local justice is problematic: some of the police, prosecutors and judges were the organizers, together with party leaders and the military, of massacres and ethnic cleansing, and appropriated the houses, autos,
businesses, positions and savings of the victims, and robbed them of their foreign currencies.

The demand for justice and truth by one side in violent conflict, and the determination to deny by the other side and insist on another competing truth, raises the question of how truth is established in contentious human affairs, and what version of history becomes accepted.

Institutions for truth and justice

Two methods of inquiry for knowledge and truth have been forged over the centuries: scientific inquiry and justice institutions for determining guilt or innocence of those accused of crime. The scientific method guides inquiry for knowledge about the nature. It follows a set of rules and principles developed and tested over centuries, and keeps being adapted to new fields within science. Skepticism to inherited authority and acceptance of the findings of observations and experiments is at its core. Science defines its domains as natural phenomena and distinguishes them from spiritual, supernatural, and religious beliefs that are matters of faith not investigated with the scientific method. It holds nature is impersonal and its laws independent of human interests, passions and wishes. Scientists study nature as it is and not as religious and political authorities believe it to be. Nature is invariant and lawful. Clarity, parsimony and simplicity of theorizing are valued over ambiguity, elaboration and complexity. Science is public, cooperative and international: its publications, findings, instruments, techniques are a collective good for all mankind to share. There should be no private ownership and secrecy in knowledge. Scientists build on knowledge accumulated by previous generations of scientists. Theories and findings are provisional, not final. Dissent and debate ensure progress. The scientific method is objective and impersonal. Desire for recognition and fame, financial interest, national prestige, rivalry and competition may motivate the scientist at the stage of discovery but are eliminated from the logic of proof. Peer review of scientific work and replication of findings by other science teams ensure that the discoverers are not the judges of claims to knowledge. The scientific method has been spectacularly successful.
The adversarial method in criminal justice system for determining guilt or innocence for those accused of crime dates to the Middle Ages when it displaced justice by oathing, private revenge and retribution by kinfolk. The adversarial method rests on the conviction that for getting at truth in human affairs the strongest case for both sides should be made by advocates to a third, non-interested party that decides the truth beyond reasonable doubt. There is a presumption of innocence until guilt is proven. The advocates for both sides have access to the same and all pertinent facts, are bound by the same rules for presenting their case, and the same rules on evidence and trial procedure are enforced by an impartial judge. Truth emerges by the vigorous probing and cross-examination of the material facts and human testimony, with false, unreliable, contradictory and ambiguous evidence discarded, conjectures based on such material becoming implausible and the remaining robust evidence allowing a judgment about truth made by the jury or a panel of judges. Trial errors are appealed to a higher court. The interest of the prosecution to convict, and the tools it has for swaying the jury with selective and biased arguments are balanced by the interest of the defense for an acquittal and the tools it has to counter omissions and weaknesses in the prosecution’s case. This is the ideal. Like all institutions justice is vulnerable to human error. Miscarriages of justice do occur, yet some are later corrected, and steps keep being taken within the law profession, as with DNA evidence, to improve criminal investigations and trials.

In politics and public affairs, the means for getting at knowledge and truth are deeply flawed. Political debate seeks persuasion and consensus rather than truth. The venue of public debate is the mass media and political sites accessed through the media and the internet. Responsible research and reporting is overshared by superficial and sensational coverage of public issues that blur the line between fact, opinion, information, and entertainment. Misinformation, falsehood, biased selection of facts, and fabrication are fair game and impair knowledge and truth seeking. “Balance” in media confronts one story with another story reminiscent of two siblings each telling a parent “I did not do it; she did it.” Martin Kaplan refers to balance as “polarized pairs doing battle without a resolution” (“Welcome to the Infotainment Freak Show” Andras Szanto ed. What Orwell
The jury in the “court of public opinion” are ordinary people who selectively expose themselves to views they already agree with. Advocates for policy based on faulty knowledge do not pay the price for faulty judgment. When failure can not be covered up, denial of responsibility and blaming others is the standard response.

How are judgments about knowledge and truth made? Much of what we know and believe mirrors conventional wisdom, peer opinion, and other milieus where agreement and consensus are valued and is a ticket of admission and good standing in the group. Truth derived from personal experience is a small part of what we know. We can “reality” test the hardness of stone, but not the unemployment rate and health policy. Charles Lindblom ([Inquiry and Change, 1990, Yale UP, p.78] writes that “I take it as undeniable that what people think about the social world…derive from social interchange far more than from direct observation…for answers…you depend almost entirely on other people, including acquaintances, journalists, other people who reach you through press and broadcasting.”) Belief gains truth value from confirmation in membership and reference groups. Belief gains truth value when it is the majority belief– vox populi, vox dei. Beliefs become convictions when trusted authorities voice them: ancestors, Founding Fathers, God(s), sacred texts, experts of many stripes and colors. Social knowledge is socially constructed and socially tested. The opportunity cost of checking the truth of all but a few of our beliefs other than by social testing, assuming we have the intellectual skills and resources for doing it, are prohibitive. There is no escaping trusting other persons and institutions for persuading us about knowledge and truth.

Public communications consists of a messenger using a message to persuade the public. The messenger is an interested advocate and uses well-known and proven means of persuasion – called the ‘art of propaganda’ – appeal to passions (fear is especially powerful [Carl Hovland et al, Communications and Persuasion, 1963, Yale UP]), repetition, omission, stereotyping, exaggeration, misinformation, and so on.
The message is framed using metaphors, catchphrases and symbols. A frame is a mental structure which situates and connects events and people into a meaningful narrative. A study of mass media framing of nuclear power in the U.S. from 1945 to 1980 based on content analysis found that a small number of symbols and themes and icons framed public discourse on the polarity of “technological and scientific progress” accenting the benefits of nuclear power versus a “devil’s bargain” highlighting the dangers of out-of-control technology, with lesser used frames playing in a minor key [William Gamson, “Political Discourse and Collective Action” International Social Movement Research 1 (1988), pp.219-244]. Uncertain, unfamiliar, complex, unobserved events and social units are framed by means of metaphor and analogy with the structure and moral values of what is certain, familiar, simple, and observed. Knowledge and truth are thus socially created through persuasive frames.

Social psychological and mass communications research have found that the recipients of communications, the public, selectively expose themselves to information they are likely to agree with, which is the dominant view in their social milieu, and selectively avoid information that they are likely to disagree with, which is also what is unpopular in their social milieu. Thus the recipient actively reinforces consensus. Beliefs persist because one keeps confirming them selectively and because one filters out contrary information. Other research found that [Diana Muntz, Hearing the Other Side. Deliberative Versus Participatory Democracy 2006, Cambridge UP] people tend to talk politics within homogeneous clusters. When people of opposite political views talk to one another they tend to avoid politics because they do not want to put at risk a social relationship they value through disagreement. A related social psychological process, called “cognitive dissonance,” modifies or changes contrary or “dissonant” information to make it fit into an existing set of beliefs and frame. Denial can be thus explained . When you value your nationality highly, highly valued information about it is easy to fit into one’s nationality frame, but not so damaging information, like war crimes. The psychological dissonance between positive value for nationality and negative value for war crimes can be resolved in two ways. Many people simply deny or justify the war crimes (“it did not happen”, “they did it to us also” or “they did it first”), and a few develop a more complex view of
their and others’ nationality. Similar to denial, folk thinking about truth is deficient because it dismisses negative evidence as “exceptions;” thus false beliefs persist despite the accumulation of contrary evidence.

Social testing works much of the time for the routines of life. When I was six years old, I was convinced that the earth is round and not flat. How could that be? In my room, I could spin a round globe with all the oceans, continents and countries in vivid colors. My parents and first grade teacher said the earth is round. I had travel books with drawings of strange animals like camels and polar bears and mountains and palaces, and their locations could be matched to the globe. Why would my parents, teachers and the writers of these books want to deceive me? The thought didn’t even occur to my classmates and myself. What they taught us was true, but had they taught us the earth is flat, like the pages in an atlas, we would have believed that as well. Nor did either belief have a consequence for our daily life, except in so far as disagreeing with our parents and peers would have meant being labeled weird or stubborn or stupid.

Social testing does not curb passion, interest, biased selection and omission of evidence, fabrication, and other cognitive and emotional flaws from judgment. It seeks confirmation for preconceptions and rejects organized skepticism. Social testing is the opposite of scientific inquiry and the adversarial process in justice for getting at knowledge and truth. It forges consensus within a group, around a local truth. Another group coalesces around a different consensus and local truth. When these two confront one another in a public forum, one truth confronts the other truth, and there is no mechanism for resolving the dispute, as in scientific inquiry and the adversarial method of justice.

The pursuit of memory, truth and responsibility takes place under flawed human conditions. When parallel and contradictory “truths” coexist, they can be manipulated by political entrepreneurs for a future round of violent conflicts, as happened with the memory of World War II atrocities and ethnic cleansing in Yugoslavia that was not cleared by the Tito regime. How could scientific inquiry and the adversarial mode of
justice that have demonstrated their worth on knowledge and truth be incorporated into the “court of public opinion” for historical, political and policy debate? I will examine three institutions for historical truth that have done so, and evaluate the results achieved: the international tribunal, as the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY); the Truth Commission, as in the South African Truth and Reconciliation Commission; other commissions, as in the Goldstone commission on the Gaza war; cooperation between adversaries using political and academic institutions for changing biased national histories in school texts and curricula to a more truthful history, as France and Germany did after world War II.

Is it at all possible to establish factual truths for contested historical and current events, including assigning responsibility for actions and crimes in an adversarial judicial institution?

**Truth about facts and events: Irving vs. Lipstadt**

The standard for establishing historical truth in a trial was set by the British judge Charles Gray in his judgment on April 11, 2000 at the conclusion of Irving versus Lipstadt, the holocaust denial trial [www.holocaustdenial.net/trial/judgement/13.15]. The trial turned on how historians used historical evidence. The plaintiff Irving argued that the facts on any complex human enterprise contain inconsistencies, gaps, and uncertainties and that therefore different interpretations of the same events are normal and legitimate. The defense established that Irving had practiced deliberate manipulation of data and deception, such as omission of contrary evidence, fabricating and altering quotes, and doctoring the historical record. These were not random errors and sloppy scholarship, but consistently stacked the evidence in favor of Irving’s point of view.

In Gray’s judgment, the defense had proved beyond a reasonable doubt that Irving had created a body of data that was not truthful. Though not a historian with a university appointment, Irving had a good reputation as a military historian in some circles. Over the years he had written several books on the German military history of World War II
and had located important materials in archives and interviewed German participants in key events. To prove that Irving had fabricated history in a trial was a tedious and expensive undertaking. The defense hired Richard Evans, a well-known historian of modern Germany, and he in turn put many graduate students to work, checking hundreds of quotes and citations Irving had made in his writings to thousands of sources and documents located in dozens of archives. Irving vigorously cross-examined Evans and the other researchers during his defense, trying to cast doubt on their methods and findings.

The judge concluded that in seventeen instances that were at the core of the trial, Lipstadt’s contention that Irving had not done objective historical scholarship was true. In one instance, Irving had repeatedly written and said in lectures and media appearances that between one to two hundred thousand people died in the February 13 and 14, 1945 British bombing raids on Dresden. The defense demonstrated that Irving had based his numbers on a document TB 47 which the Dresden archivist had told him was a forgery, and that Irving knew about other documents from the Dresden police and the office responsible for disposing of the bodies, which listed deaths in the 20,000 to 30,000 range, and which Irving contended were incomplete and unreliable without offering credible reasons for his opinions. Moreover the defense produced the authentic TB 47 report, which supported other military historians’ estimate of twenty-five to thirty thousand deaths. Judge Gray concluded that the fabrication and intentional omissions of evidence, bias, and advocacy, claiming to be scholarship, can be distinguished from sound scholarship and rational argument, using the same methods of proof as in a criminal trial for establishing the guilt or non-guilt of the defendant.

The ICTY

Could truth be established for on-going or recent history in a trial? The international stakeholders assuming responsibility for peace and stability in the Balkans created the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and exerted diplomatic and economic pressures on the adversaries’ governments to
cooperate with war crimes investigations. Public opinion in these countries condemned
the Tribunal’s work as victor’s justice and as collective punishment, a belief promoted
and exploited by nationalist politicians and the defendants. Others argued that truth and
justice are not achievable in an on-going violent conflict. The ICTY is very expensive
and time consuming. It costs about one hundred million dollars a year. Of the estimated
fifty thousand persons who were responsible for atrocities, war crimes and crimes against
humanity, the ICTY will try about two hundred by 2012, mostly senior military and
political offenders. For lower officials and ordinary citizens, state courts have been set up
in Serbia, Croatia, and Bosnia, and with assistance from the ICTY, have started
prosecuting for war related crimes. The ICTY went ahead with prosecutions despite these
criticisms and obstacles.

ICTY versus General Stanislav Galic. The UN Security Council mandate to the ICTY is
to “insure some accountability and justice during extraordinary periods of lawlessness
when national justice fails to do so.” The prosecutions were meant to cut through the fog
of propaganda, misinformation and lies and create a public record of what crimes had
actually occurred and which individuals were responsible for criminal acts: truth and
justice. It wasn’t an easy task. The ICTY might indict an alleged war criminal, but had no
power to arrest them, nor to subpoena witnesses and documents. It had to get the
cooperation of reluctant governments, especially Serbia, Croatia, and Republika Srpska,
where public opinion regarded the indicted as national heroes. It had few resources to
protect witnesses, and some were threatened and withdrew or altered their depositions.
On the defense side, false witnesses came forward and documents were forged that
claimed alibis for defendants putting them far from the scene of massacres and other
crimes. More important still, comrades who knew about the crimes did not testify against
one another, and ministries refused to make available incriminating documents, e.g. the
minutes of high level meetings were crucial decisions were made about military
operations and ethic cleansing. Even electronic intercepts of military communications by
UN forces and international observer teams were of limited value because they used code.
Here is where science comes to the rescue in war crimes trials. There may not be a witness of a massacre, nor documentary evidence, but years later when mass graves are discovered and the bones exhumed, forensic specialists by painstaking methods establish the number, gender, and approximate age of the victims, the approximate date of the massacre, and from marks on bones and other objects like bullets and bits of clothing and buttons, they provide information about how the victims were killed (e.g. shot from behind) and what weapons were used. This information can be matched with the last sighting of detainees on buses and trucks who have since gone missing, and with the police or military units that rounded up the detainees. Ballistics experts can determine from the pattern of casualties and physical damage through an explosion (e.g. mortar shell) which direction the shell was fired from and the approximate distance to the target, and this can be checked against information about the location military units at that location at that date recorded by UN or NATO peace troops. Similarly, the coroners who examine bodies for cause of death can determine what is the entrance and the exit wound, and which direction the bullet was fired from in relation to where the deceased was hit, and whether the bullet was a certain caliber that is used for sniper fire at long distance or an ordinary rifle at shorter range. These methods and findings can and are challenged by defense experts, but the upshot is that scientific evidence in part substitutes for the documents and witnesses that are not forthcoming.

How were incriminating facts established in the trial of General Stanislas Galic [case IT-98-29-1] at the Hague before the ICTY? Galic was the commanding officer of the Bosnian Serb forces from September 1992 to August 1994, during the siege of Sarajevo. The prosecutor charged that Galic was responsible for a campaign of sniping and shelling civilians in Sarajevo which resulted in many deaths and injuries to civilians. The defense argued that the casualties were collateral to legitimate military activity, resulting from targeting errors and stray bullets. The trial hinged on evidence about the number of civilian casualties and on whether they were caused by deliberate or indiscriminate shelling and sniping. The trial started on December 29, 1999 and ended November 30, 2006 with the judges’ verdict to the final appeal. A total of 171 witnesses were heard; fifteen reports by experts were submitted; there were 1,268 exhibits consisting of
documents, reports, film, photographs, maps, and sound-recordings. It was a long, expensive and hotly contested trial. My focus is on the number of civilian deaths from the fighting – a matter of fact - and the criminality of those deaths, i.e. intentional killing rather than collateral damage.

The prosecution’s principal expert witness on civilian deaths was the demographer Ewa Tabeau who headed the demography unit at the ICTY. The first task was to establish from military maps exactly which areas of Sarajevo were held by the Bosniak forces, and then to get an accurate count of deaths in the population of that area for the time period of the indictment. The number of deaths were gotten from the death certificates at the hospitals and matched with the records of funeral homes, and triangulated with a 1994 household census listing dead, wounded and missing. Natural, accidental and criminal deaths were sorted out, and then the military deaths. Military deaths were indicated by whether the deceased wore uniform or insignia, carried a weapon, and/or listed as a death in official records such as death benefits to a family, and some other criteria such as location on the front line. The balance of deaths were civilians killed in the fighting: of 3798 total deaths there remained 1399 civilians, of which 617 were women, 295 children 0-17 years old, and 85 elderly.

The defense contested both the totals and many particular deaths. For instance it pointed to incomplete information and inconsistencies in autopsy reports, questioned the qualification of some who performed autopsies and the technical facilities for post-mortems (interruptions in the electricity supply, etc.), and argued in particular cases that the killed was military rather than civilian, or was collateral damage, i.e. the presence of military targets within a dense civilian population. These claims were disputed by the prosecution with evidence. For instance, in the case of three girls killed by sniper fire while they were pulling a wheelbarrow loaded with cans of water, the defense claimed that there were Bosniak soldiers in the vicinity. The prosecution countered with testimony that there was no military activity near them, and similarly for other civilian deaths. The trial demonstrated that it is possible to establish quite accurately casualty figures that are hotly contested in an adversarial procedure by experts and witnesses.
In the Galic trial, the criminality of the civilian deaths in Sarajevo was also hotly contested. The defense claimed that the Bosniak forces fired on their own civilians to create an international incident. Ballistics and medical experts were called to establish the direction of fire, the caliber of the bullets, and entrance and exit wounds to contest such an interpretation of the deaths. A second line of defense was collateral damage. The civilian deaths occurred because the military targets were in close proximity to and mixed in with civilians. The prosecution provided evidence that in many instances that was not the case. The prosecution further contended that when UNPROFOR warned General Galic about sniper and mortar fire at civilians, sniper fire and deaths ceased immediately and completely, for a time, which indicated that he had command control over his soldiers, and that the sniping was not simply reckless firing by rogues. It argued from such evidence that there existed a campaign of attacks against civilians by the Bosnian Serb forces under General Galic. The defense countered that the number of deaths per month had actually decreased during Galic’s command, but the defense showed that the decrease was due to civilians learning how to avoid being targets, the building of anti-sniping barricades, safer pedestrian routes, closing and moving schools, and shifting humanitarian aid distribution points out of sniper sights.

The judgment concluded that “the Majority (of judges) is thus convinced that civilians in Sarajevo were attacked directly or without distinction from SRK (Bosnian Serb Army) controlled territory…the exact number of civilian casualties from these attacks is not known. What is known is that hundreds of civilians were killed and thousands were injured in sniping and shelling incidents…the attacks were not isolated incidents but amounted to a widespread and systematic campaign…it is established that General Galic as commander of the SRK had effective control of SRK troops…that [he] was informed of the attacks against civilians committed by the SRK forces…the Accused was well aware of the unlawful activities of his troops.” The defense tried to explain the civilian deaths with a “fog of war” and “collateral damage” frame. Based on the evidence, the judges accepted the prosecution’s “intentionality” interpretation of the civilian deaths,
ruled out the “fog of war” and “collateral damage” frame of the defense, and held Galic personally responsible for war crimes.

The Galic trial demonstrates that it is possible, in an adversarial process, to discriminate between appropriate and inappropriate interpretations of the facts, or plausible and implausible “frames” for interpretation. This was also demonstrated in Irving versus Lipstadt: not only did Irving fabricate and alter factual evidence, but the pattern of omissions when there was contrary evidence and the choices he made when there was conflicting evidence was systematically biased rather than random. Irving consistently favored a benign interpretation of Hitler, Nazi and Wehrmacht intentions and actions, and consistently minimized and rationalized incriminating material, i.e. he used a pro-Nazi frame rather than the skepticism frame of professional historians [Richard Evans, In Defense of History, 2000].

*Other Balkan truths.* The adversarial method is not the only means of getting at truth about controversial matters of fact that were exploited by political leaders. Two instances from many that I have examined concern the numbers of victims used in propaganda campaigns. Serb nationalists accused Croats of killing seven hundred thousand Serbs in the Jasenovac World War II concentration camp. On the 60th anniversary of the death camp’s liberation on April 21, 2005, the leaders of the Jasenovac camp victims association, a multi-national group who for many years compiled the names of victims, reported that the Jasenovac museum had a list of 59,188 dead, and that although the real number may never be known precisely, the association estimates that between eighty and one hundred thousand died there, about half Serbs, the others Roma, Jews, Croats and others [Hina News Service “60th anniversary…” April 21, 2005].

Charges of sexual assault and rape by Albanians in Kosovo against Serbs were highlighted in the Serb mass media and Milosevic’s justification for “taking back Kosovo” in 1989-90. Vojislav Stojanovic, president of the Association of University Teachers and Scholars, stated “…the savage Albanian terrorists are now running amok in Kosovo and Metohiya, attacking and destroying everything that is Serbian…Kosovo and
Metohiya are gripped by fear of terrorists armed to the teeth…” A team of Belgrade social scientists analyzed Kosovo crime statistics in the 1980’s from Kosovo court records and found that the rate of sexual assault and attempted assault from 1979 to 1989 in Kosovo (0.96% per 100,000 adult males) was lower than in central Serbia (2.43) and in all Yugoslavia (1.63); that the conviction rate for those accused was higher in Kosovo (52%) than in Serbia (31%) and all Yugoslavia (42%), and that rapes in Kosovo tended to occur within nationality and not across (Serb victim/Serb aggressor and Albanian victim/Albanian aggressor) accounted for 81% of reported sexual assaults [Srdja Popovic et al, “Kosovski Cvor: odresiti ili seci” 1990]. This research and figures were ignored. Mira Markovic, a professor of sociology and wife of Milosevic, called the victimization of Serbs in Kosovo “feudal terror.”

In these instances, data compiled by sound social science are more accurate than the numbers and opinions promoted by ideologists. The more accurate figures were ignored for political reasons, but can and should be used when a truthful history of these Balkan conflicts is written. Facts can be distinguished from opinion and wishful thinking. Not all estimates are equivalent; some are closer to the truth than others, and there are methods based on scientific inquiry and the adversarial method for getting closer to the truth. Interpretive frames that are appropriate and reasonable can be distinguished from others that are not.

Denial and collective myths

Elena Bonner wrote that a collective myth is the “collective memory of a people about their past which sustains …their views of the world they live in.” [NYRB, March 8, 2001]. The self-image of ethnic groups and nations is positive. Its members obtain dignity and other social and psychological rewards from it, and seek public approval for it. This phenomenon is called ethnocentrism and is as universal as language and the family in human communities. The visible markers of the positive self-image are monuments, flags, street names, national holidays, festivals, museums, songs, literature and poetry, and history in schools. These public signals affirm on a daily basis the
collective myths of the nation. The theory of “cognitive dissonance” explains how information contrary to conventional wisdom and collective myths is modified or changed to fit into existing beliefs and frames. Atrocities and war crimes reflect poorly on positive self-image and do not fit the public displays of national myths. They are experienced as an attack on the moral worth of the entire group, and the psychological response is to downplay them, justify them and even deny them altogether. Denial is made easier when trusted authorities deny and the mass media adopt a denial frame. The denial syndrome is widespread and not just in the Balkans.

What if the evidence for crimes is overwhelming, not just transmitted through the media but accessed from personal experience and interpersonal sources? The events of Prijedor in Bosnia during the May to August 1992 ethnic cleansing, massacres, and concentration camp atrocities are a case in point. In the 1991 census, Prijedor district was 44% Muslim and 42.5% Serb; ethnic cleansing and killings reduced the Muslim population from forty-nine thousand to six thousand and Croats from six thousand to three thousand. The organizers of the Serb coup d’etat, ethnic cleansing and camps were members of a Serb Crisis Committee headed by well-known Prijedor Serbs such as the police chief, former and current mayor and deputy mayor, head of the local Red Cross, director of the hospital, all well known local figures. Those who rounded up the victims, guarded them in the camps, tortured, raped and killed them were for the most part local Serb police and volunteers, some of whom knew their victims well, augmented by non-local paramilitaries. By accident, the international media stumbled on the camps and the camp survivors were evacuated by the Red Cross, which meant that many victims and eyewitnesses told their stories and later also in the ICTY trials.

The evidence of crimes is overwhelming. It was covered thoroughly in the international media and books written by journalists, special reports by Human Rights Watch, a major UN Report (the Bassiouni Report), and the ICTY trials of several of the Crisis Committee members as well as camp officials, shift leaders, and guards. The leaders gave some incriminating interviews when they were firmly in power, e.g. the head of police described the entire ethnic cleansing operation to a local newspaper one year after it
happened, and told the journalist Tim Judah [The Serbs, p.254] “The assets of fifty thousand Muslims and Croats expelled from the region amounted to several million DM…the greater part of these resources have either been transferred to Serbia (by the paramilitaries) or have been expropriated by private individuals (Serbs in Prijedor).” The perpetrators remained in power throughout the war and after the Dayton peace settlement for several more years before they were indicted by the ICTY. During this period they perpetrated more crimes, e.g. dynamiting the houses of Muslim and Croat internally displaced persons (IDP) who tried to return. By means of their control of local organizations, such as banks, the Red Cross, the distribution of humanitarian aid, transportation and the police, they operated a criminal mafia of corruption and war profiteering.

The ICTY trials were thorough. The trial of Milomir Stakic, physician and director of the community health center, member of the Crisis Committee and in 1997 mayor, lasted one year from 4/02 to 5/03. The prosecution presented 37 witnesses and 19 witness statements in 80 sitting days, and the defense 38 witnesses and 7 witness statements in 67 sitting days. 1448 exhibits were admitted in evidence. Stakic was charged with specific counts of crimes against humanity, murder, extermination, deportation, inhumane acts, persecutions, and two counts of genocide. His defense claimed that the camps were only transit centers for the protection and assistance of people who wanted to leave. Attempts to intimidate witnesses were numerous. Thirty-four witnesses were granted protective measures, e.g. facial and voice distortion, pseudonyms, testifying in closed session, redaction of testimony. Stakic was sentenced to 20 years to life in July 2003. In other prosecutions as well, there were attempts to intimidate witnesses, and defense witnesses swore alibis for the accused, placing them far from the alleged scene of a particular crime, but the evidence was overwhelming against the perpetrators.

Relations between Serbs and others in Prijedor were characterized as good before the conflict erupted in the open. Biljana Plavsic, the Prime Minister of Republika Srpska, testified at her ICTY on December 12, 2002, that “The reason (for the ethnic cleansing and other crimes) lies in the word fear, fear that renders people blind. Driven by the
obsession never to be reduced to the status of victim again, we allowed ourselves to become the makers of victims.” We know that in March 1992 the TV relay transmitter on Mt. Kozara was seized by nationalists, and Zagreb and Sarajevo TV stations were cut off. The remaining Serb media flooded the airwaves with World War II Ustasha and Muslim atrocities against Serbs, and accused Muslims of plotting to create an Islamic state in Bosnia. These accusations and falsehoods sowed the seeds of mistrust and fear between Serbs and others who were their neighbors, pupils, and work mates. No one was prepared, however, for the later brutality. For example, Dusko Tadic, a low level camp guard, tortured his friend the Muslim policeman Emir Karabasic, who had been a patron in his café, whom he had taught karate, and with whom he had frequently jogged [IT-94-1, transcript].

After the Serb Prijedor leadership was arrested and indicted by the ICTY, return of Muslim and Croat refugees and IDPs became safe and several thousand did so [Isabelle Wesselingh and Arnaud Vaulerin, Raw Memory. Prijedor, Laboratory of Ethnic Cleansing, SAQI, London, 2005]. Because a critical mass returned, they managed to elect several of their leaders to the municipal council and establish some Muslim friendly schools and access to municipal services. They discovered that the Serbs had constructed their own version of what had happened, the opposite of the findings by the ICTY and outsiders. According to the local Serbs, the first victims had been Serbs, every one was guilty, many of the alleged victims were still alive, the Muslims and Croats came of their own accord to the camps and the Serbs helped them to be evacuated, and so on. There had been no mention in any of the media about the ICTY trials and the convictions. A monument to the Serb victims of war was built. A Serbianization of culture and history had been accomplished with changes in street names, dates of holidays, Orthodox crosses, saints commemorated, and so on, all of which obliterated past events and responsibilities. Serbs argued that if so many non-Serbs came back, it proved that what had happened was not so bad after all.

These findings highlight the power of the denial syndrome and collective myth making. The underlying mechanisms are ethnocentrism, conformity, cognitive dissonance,
selective attention, selective perception, and ethnification, which are typical dimensions of social testing for knowledge and truth. Despite war crimes trials achieving truths that satisfy outsiders to the conflict, many participants commit to denial, collective myths and contradictory truths. A laissez-faire policy on shared truth gets defeated by the social dynamics within the adversaries. To overcome denial, what else besides tribunals has been done in the name of truth, justice and historical memory?

Truth Commissions

Truth and Reconciliation Commissions (TRC), as in South Africa and Guatemala, are also means for uncovering the truth and achieving partial justice after civil strife when there are thousands of perpetrators and victims. The TRC achieved partial rather than full justice, because the political settlement by the adversaries included conditional amnesty for perpetrators of crimes including the senior security personnel and politicians. In South Africa, amnesty was conditional on telling the truth and publicly apologizing to the victims for politically motivated crimes at a public hearing. A great deal of knowledge about covered-up criminal events surfaced. These truths are difficult for public opinion to deny since they were voluntarily provided by perpetrators, accepted by the victims, testimony was matched with documentary evidence, and witnesses were subject to cross-examination.

The Amnesty Committee of the South African TRC was empowered to determine whether the applicant’s actions met the criteria for amnesty in exchange for full disclosure. Failing that test, the case was to be referred to the justice system for prosecution. Both individuals and organization leaders appeared before it, including ex-Prime Minister De Klerk and ANC leaders Tembo and Mbeki. A total of 16,700 victims were identified by the Reparations and Rehabilitation Committee and got an average compensation of about $500 that observers labeled “symbolic” because the legislature had limited the total reparations fund.
By 2000, of 7,112 applications for amnesty, 849 were granted and 5,392 refused, many referred to further prosecution. As can be seen from these figures, amnesty was not easy to obtain. Another committee, the Human Rights Violation Committee, investigated human rights abuses from 1960 to 1994. It established the identity of victims, the harm they suffered, the identity of offenders, and the complicity of both state and insurgency organizations. The committees held open hearings all over South Africa, in eleven languages, many broadcast on radio and television, which were a public forum for the victims to tell their story. Because of the work of these committees and large-scale participation by victims and offenders, the public learned about killings, torture, the human rights violations of the apartheid system and of inter-African political and criminal violence that could not be ignored. A “historical memory” was put on record by these authoritative commissions that will make fabrication and misinformation about the past difficult. The South African public has by and large accepted the historical truth about its past [Anthony Oberschall, Conflict and Peace Building in Divided Societies, 2007, pp. 218-223].

An actual case will illustrate how the TRC worked. Rayner Moringer, a foreign businessman in the aircraft industry had lived in South Africa thirty years before he became involved in the kidnapping by the security police of an African business acquaintance, Mr. Mbotoli, who was implicated in a coup attempt in the Transkei. At his trial for treason, Mbotoli had received a twenty year prison sentence. Moringer admitted helping in the abduction and that his actions were unlawful. He proved to the commissioners’ satisfaction that he hadn’t profited financially form helping Military Intelligence. Called as a witness, Mbotoli stated that “in the spirit of Mandela and reconciliation, he advises the TRC to grant amnesty” to Moringer, and Moringer declared publicly “I am sorry and regret the harm to you”. The commission attorney pointed out that full disclosure was made, that the applicant was totally honest in his answers, and that his motive was political. In 1999, Moringer was granted amnesty.

The truth commission process is strong on getting at truth. It has elements of the adversarial process, but it also enlists the cooperation of the perpetrator, victim and
security agencies as in a scientific inquiry that mobilizes all resources for getting at truth. Amnesty is a powerful incentive for cooperation by those responsible for crimes. Unlike the International Tribunal process, the TRC has gotten favorable acceptance by the adversaries and the bystander publics. Not every TRC type experience has been as successful as the South African. In El Salvador, the UN mediated peace agreement to the twelve year civil war called for a UN truth commission for investigating and publicizing human rights abuses including killings by death squads. It proved politically impossible to punish top army generals and officers. There were no penalties for an estimated 75,000 deaths, two-thirds civilians. Some truth emerged, a little justice, but the peace held [Arjeh Neier, War Crimes, 1998, New York, Random House, chapter 3]. In Guatemala, a thirty year insurgency during which two hundred thousand people were killed ended with a UN mediated peace settlement in 1996. Both sides agreed to a general amnesty for war crimes, but not for crimes against humanity, i.e. against civilians. A Commission for Historical Clarification (CEH) was set up to establish the truth about the war years. It submitted a 15 volume report to the United Nations in 1999. Both the armed forces and the insurgents cooperated with the CEH to only a limited extent. It worked behind close doors and its recommendations were non-binding. Because of these limitations, the Catholic Church created another truth commission called the Recovery of Historical Memory (REMHI). Church volunteers collected thousands of victim testimonies in open hearings using local Indian languages. Its investigators reconstructed 70 massacres, named 55,000 killed civilians, and named war crimes perpetrators. When its four volume report was published, the head of the REMHI was murdered. A lot of historical and criminal truths were established, some justice was meted out, and the peace held [Stephen Kinzer, “The Unfinished Peace” 2001, New York Review of Books, June 11].

South African delegations advocated truth and justice institutions to the Balkan states after the Dayton peace agreement, but were turned down. In some ways, the TRC model does not fit the Balkans. The magnitude of the crimes in South Africa did not reach the mass executions and large scale ethnic cleansing of the Balkans. Most victims were tortured and abused, but not killed. In the Balkans, the dead victims can not confront the perpetrators. South Africa is a unitary state with clear lines of authority for governance.
and justice, whereas a TRC in the Balkans would have to operate in a non-cooperative multi-state environment. In South Africa, a mass movement of citizens, including both Africans and non-Africans, demanded truth, justice and end to violence when government leaders and the African National Congress agreed to the National Peace Accord of 1991. In the Balkans, there was no popular mobilization by the adversaries for truth and justice.

Commissions of inquiry by outsiders

In most conflict and wars, non-governmental advocates conduct inquiries and publish reports that have a factual component and recommendations to the adversaries about stopping unlawful actions and take remedial steps. The best known are Human Rights Watch, Amnesty International, International Crisis Group, and others are more specific to a particular conflict like Iraqi Body Count and several on Darfur (United Nations Commission of Inquiry, United States Atrocities Documentation Team). Though these groups advocate for a cause, their reputation for objectivity and accuracy is their only asset for gaining visibility and funding and at least limited access to sources controlled by the adversaries. Though they tend to achieve more knowledge and truth than propaganda put out by governments and partisan groups, they labor under greater handicaps than tribunals and TRCs. Still, they are a useful and at times the most reliable (or least unreliable) source of information about controversial conflict events. Other commissions of inquiry are conducted by international bodies like UN agencies. Because I don’t have a good example from the Balkans, I will probe the strengths and weaknesses of outsider commissions with reference to the UN Fact Finding Mission on the Gaza Conflict (the Goldstone Report) to the Human Rights Council of the UN, released September 2, 2009. [Note: I might have used the Serb and NATO inquiries into the casualties from the NATO bombing campaign in the Kosovo war].

The UN Mission’s mandate was to investigate violations of international human rights and international humanitarian law in the period June 2008 to July 2009. The report does “not purport to be exhaustive in documenting the very high number of incidents”(para. 16)
and selected 36 of them for scrutiny. It did not “pretend to reach standard of proof applicable in a criminal trial” (para. 25). Because the report is over five hundred pages long, I examine only a few important incidents about which I had done some research before the report was released. A major problem for the Mission was that the Israeli government did not cooperate with it, and that Hamas and the armed Palestinian fighter groups did not either. In the Gaza population “those interviewed proved reluctant to speak about the presence and conduct of hostilities by Palestinian armed groups” (para. 439). The Gaza authorities, which the Mission believes is different from Hamas, were equally silent: “we had nothing to do, directly or indirectly with the al-Qassim Brigades or other armed groups and had no knowledge of their tactics.” When the Mission requested meeting with armed groups, it was turned down (para. 441). Consequently the Mission had to rely on “indirect sources” such as NGOs, the media, the Israeli government reports, and private individuals.

Few facts were uncovered that were not already known. The most publicized and controversial incident of the Gaza war was the al-Fakhura street shelling by the Israeli army of an alleged Palestinian rocket launching team in which many were killed and wounded outside a UN school used as a civilian shelter. The Israelis claimed that the Palestinians purposely used the launch site for its proximity to civilians for a shield and that several fighters were also killed in the attack. The Mission found no new facts that were not discussed and debated at length in the international news media. The Canadian Globe and Mail published a comprehensive account of what really happened [Patrick Martin, 29/1/2009] together with maps and photographs which is more concise and clearer than the many pages devoted to the incident by the Mission report [pp.146-156]. The finding about the Palestinian fighters presence and use of civilians as a shield was inconclusive, as it had been before the inquiry: “Mission notes that the attack may have been in response to a mortar attack from an armed Palestinian group…” (para. 690). In another incident, the air attack and destruction of the el Badr flour mill after several Israeli warnings (para. 920-921), the Mission accepted the Palestinian owner’s statement that the mill had not been used for any purpose by Palestinian armed groups. Yet it also reported that hundreds of shells were found on the roof, specifically 40 mm. grenade machine-gun
spent cartridges. The Mission made no follow up investigation: was this ammunition used by the IDF, by the Palestinians? Crucial information for the determination of war crimes and crimes against humanity was not gotten on whether or not the IDF was shot at from the roof of the mill, and whether the mill was thus a legitimate military target. The mill incident was one of several for which the Mission did not probe sufficiently whether the target of IDF attack was “dual use,” yet concluded it wasn’t and the IDF was at fault.

A contentious issue on violations of the laws of war was whether the Gaza police was a legitimate military target, because the Israelis claimed that Hamas had integrated armed fighters and security forces with the police, or whether it was a distinct civilian police force, as the Palestinians claimed and as the Mission concluded. One sixth of all Palestinian deaths were police killed (248 out of an estimated 1400 deaths), and thus counted as “civilians” killed in the war by the Palestinians, whereas the Israeli counted them as “combatants.” The Gaza authorities admitted that after Hamas seizure of power in June 2007, religious and resistance fighters were integrated into the police, but in a later reorganization the civil police was differentiated from the security police, which was military. According to the Gaza authorities, the police was responsible for crime fighting and combating drug trafficking. They were equipped with Kalashnikov firearms (a military weapon) because the police “has not been able to obtain other equipment such as small guns” (para. 410). Estimates of Hamas members in police units by police commanders ranged from 70-95%. At the war start, the police received orders to continue law enforcement, supervise humanitarian aid distribution, “protect the internal front” (round up Fatah supporters, see ‘internal violence’ chapter), and “face the enemy if Gaza is invaded.” The Gaza authorities claimed that not a single policeman has been killed in combat. None of these claims were investigated by the Mission (para. 393-428). It investigated the circumstances of death for 99 policemen killed in police stations and training grounds in the first Israeli airstrikes. But for other police deaths, there was no mention of any investigation. Did the police oversee humanitarian aid distribution? Did they safe-keep abandoned buildings? Did they go into hiding? Did they fight the IDF? Did they arrest Palestinian fighters who were launching rockets in the vicinity of civilians? The Mission made no attempt to find out. It might also have checked the death
certificates and circumstances of the 149 policemen “not killed in combat.” An Israeli research group identified 78 dead police names on the websites of al-Qassam brigades and other armed groups. The Mission acknowledged (para. 423) that “these cases require in-depth investigation”, but it did not do so: “the Mission could not verify the allegations of membership of armed groups of policemen” (para. 428). Its finding on the police is that “there is insufficient information to conclude that Gaza police as a whole has been incorporated into the armed forces of the Gaza authorities” (para. 427). Because they were not proven combatants, the Mission concluded that the IDF was at fault for not providing the same protection to Gaza police as civilians have in war.

The Mission also investigated the blockade and its effects on the people and economy of Gaza. It noted that (para. 317) “The number of trucks is considered a fair measure of the amount of imports and exports from the Gaza Strip. This number increased slightly (my emphasis) during the period of calm between June and November 2008, but declined sharply again in November due to the resumption of hostilities following the Israeli incursion.” The UN Office for the Coordination of Humanitarian Affairs (OCHA) publishes the Incoming Gaza Truckload by Commodity category, for every month [OCHA, Occupied Palestinian Territories, Gaza Crossing]. On food, animal feed, and medical supplies, roughly the same truckload amounts entered Gaza during the entire period of the blockade, in keeping with Israeli policy on humanitarian aid. The blocked commodities were in other categories. On June 2008, an agreement was worked out between the Israelis and Hamas: Hamas stops the rockets and mortars on Israel, and Israel lifts the blockade. Hamas had launched 357 in May and 245 in June, then decreased to 9 in July, 11 in August, 4 in September and 2 in October [Summary of Rocket Fire and Mortar Shelling in 2008, Intelligence and Terrorism Information Centre]. How did Israel respond?

According to OCHA, construction material truckloads went from 17 and 2 in May/June to 2256 and 903 in July/August; industrial goods from 15 and 16 to 16 and 117; non-edible consumables from 14 and 16.5 to 106.5 and 156.5; livestock from 21 and 19 to 62 and 152; agricultural raw materials from 16.5 and 25.5 to 66 and 57. These changes the
Mission report labeled “slightly increased.” What brought an end to the truce? Hamas resumed firing rockets and mortars in November and December: after 2 in October, they fired 193 in November and 602 in December. In retaliation, Israel decreased the truckloads of food, animal fodder and medical supplies for two months, then increased them again, but shut down other commodities. In this instance the UN Fact Finding Mission was remiss in not providing facts, which could have been done from data and tables that were publicly available through UN sources.

In conclusion, based on the incidents analyzed in the Goldstone report which I also researched, and notwithstanding parts of the inquiry which were professional, the Mission did not meet the standards expected of an adversarial or scientific inquiry into historical truth. It did not meet the standards set by ICTY and the TRC. In a highly politicized international climate flaws and biases associated with social testing impinged on its methodology and interpretations. Because the adversaries refused to cooperate, the Mission was deprived of the most salient sources of information to get at historic truth. Despite these limitations, it could have performed better.

Israeli public opinion is by no means homogeneous on controversial issues, and it wasn’t on the Goldstone report, but by and large it has not accepted the findings as historical truth, and neither have the Palestinians (as far as I have been able to determine). Each public blocked out the findings of fact and interpretations it disagreed with, which is the usual way that social testing operates, and which in this case was easy to rationalize because of the flaws in the report that I have discussed. As for mobilizing public opinion and pressuring governments for an internal justice process among Israelis and among Palestinians that would punish violators of international law committed by their side, one can forget about it.

Accusations were made about pro-Palestinian bias, but the problem with such an inquiry has deeper roots. It ignores the last twenty-five years’ research and knowledge about new wars, asymmetric warfare, insurgency, urban guerrilla warfare and counter-terrorism [Robert Alt and Louise Richardson, eds, Democracy and Counter-terrorism. Lessons
from the Past. 2007, Washington D.C., U.S. Institute of Peace]. The frame it employs for its methodology and interpretations is a state against state model, where peace and war are distinct; combatant and civilian are sharply distinguished; fog of war is limited; collateral damage, dual use, proportionality of response and other warfare norms in the Geneva Conventions are clear-cut; officials who are interviewed tell the truth; no one fabricates false evidence by tampering with videos; witnesses don’t lie; there is paper or electronic trail for verifying and cross-checking, and so on. That is not the real world of the Gaza war and other contemporary conflicts [Anthony Oberschall, “How Democracies Fight Insurgents and Terrorists” 2008, Dynamics of Asymmetric Conflict, 1 (2) pp.107-141]. One fighter in Gaza city was interviewed by a news reporter: “He took up the accusation that Hamas fighters hid behind civilians. Fighters in a way are both, he argued, and are accepted by many residents as defenders. People bring them food, he said. Sometimes they oppose rockets being launched nearby, but often they do not. “I am a civilian, and I am a fighter” he said [NYT, 1/14/2009]. That is the real Gaza war.

In the Gaza war, the news media produced a huge amount of data on the war. Some of it was on the central issue of Hamas using civilians as a cover for launching rockets. One eyewitness in Gaza said “They (Hamas) fired rockets in between houses and covered the alleys with sheets so they could set the rockets up in five minutes without the planes seeing them. The moment they fired them, they escaped…” [NYT, 1/19/2009]. Another twenty-one year old member of Islamic Jihad with a shrapnel wound said “we are fighting the Israelis. When we fire we run, but they hit back so fast we run into houses to get away.” [NYT, 1/10/19]. A surgeon reported that Hamas militants next to his apartment building fired mortar and rocket rounds. Israel fired back with force and his apartment was hit. His wife and his five-year old son were killed” [NYT 1/1/2009]. There was no reluctance on the part of the Gaza residents and the fighters to speak to the news media during the war. But the Goldstone Commission discounted such information and relied instead of statements to the Mission by officials who had every reason to tell untruths and reluctant witnesses who knew the danger for telling the truth about Hamas fighters. The report concluded (para. 35) that it found evidence that Palestinian armed groups launched rockets from urban areas. That is hardly an issue, since most of Gaza is
an urban area. The issue is whether the rockets were launched in the vicinity of and close to inhabited places so that these actions recklessly endangered civilians and were in violation of the laws of war.

Justice Goldstone stated that “I accepted with hesitation my United Nations mandate to investigate alleged violations of the laws of war and international human rights during Israel’s three week war in Gaza… I accepted because the mission was to look at all parties… both Israel and Hamas have dismal records of investigating their own forces. Absent credible local investigations, the international community has a role to play…” [NYT]. I do not doubt Justice Goldstone’s good intentions and integrity, but the Mission performance for getting at historical truth was inadequate.

Undoing collective myths: Germany and France

Germany and France fought several wars against one another since the wars of the French Revolution, resulting in millions of dead, many war crimes and atrocities, massive propaganda dehumanizing the enemy, a punitive and humiliating peace settlement at Versailles, territorial losses and gains, and much else that fueled revenge and Nazi nationalism. After the war, the Nurnberg war crimes trials meted out justice for the top Nazi leadership. Mountains of evidence were made public and the Nazi and German war crimes could no longer be denied. President De Gaulle and Chancellor Adenauer did not stop there. They sponsored a broad range of Franco-German collaborations by professional associations and civic bodies for changing their historical adversarial relationship. Universities established relations under the auspices of a conference of rectors; twin-city partnerships were established starting in 1949; a Franco-German commission of secondary school teachers made changes in the history and geography curricula and textbooks; secondary school partnerships were started for pupil exchanges; Franco-German intellectual associations were created under the leadership of highly regarded public intellectuals like Alfred Gosser and Theodor Heuss; and the entire reconciliation enterprise was capped by the state visit of De Gaulle to West Germany in
An important part of conciliation was teaching future generations a truthful version of Franco-German history instead of the blatantly nationalist histories and popular culture that the previous generations had been exposed to. It was not an easy task. Every town and city in both countries had its monument to the war dead in the central square. Military cemeteries were located at the battlefield. Street names, national holidays, literature, movies, cultural stereotypes and personal memories kept a nationalist history current. Nevertheless, with a great deal of work, these deadly and destructive events were framed as a tragic consequence of nation state rivalries and total war which must come to an end once and for all if Europe was to be peaceful.

Truth, justice, reconciliation and memory (TJCM) are on a tortuous path in the Northern Ireland peace process. The Northern Ireland Peace Agreement of 1998 created a power sharing government but left many contentious issues for commissions to consider at a later date, including the decommissioning of IRA weapons, police reform, and truth and justice for the 3500 insurgency related deaths from 1969 to 1998 (about one thousand deaths to the army and police, and the remaining to paramilitaries and civilians). The Republicans (Sinn Fein) refused to sign the agreement unless there was a prisoner release of those charged with terrorism related offenses. During the troubles, one of the principal arenas of confrontation between the Republicans and the British government was over the demand, in mass hunger strikes, of prisoner of war status for paramilitary detainees. They had been convicted in special courts for the most part on weapons charges and membership in a banned (terrorist) organization. Most were released within two years after the Agreement. There was no amnesty, and there were three thousand deaths to account for. The government created a blue ribbon Consultative Group on the Past (CGP) to come up with a TJCM plan.

In January 2009, the CGP reported its recommendations to the government and the public [New York Times, 1/29/2009]. The executive summary stated “Northern Ireland has
made tremendous progress … toward peace and stable government. ..the divisions of the past that led to the conflict in the first place are all too present and only by honestly addressing the past can we truly deal with it and then leave it to the past.” The heart of it was a Legacy Commission and a Reconciliation Forum that would coordinate with the Commission for Victims and Survivors. The plan resembled the South African Truth and Reconciliation process, but was promptly denounced for suggesting a twelve thousand pound recognition payment to victims’ families regardless of circumstances and guilt (which the media labeled a ‘compensation’ payment, implying that human life was considered worth twelve thousand pounds by the CGP). The Unionists were outraged about the implied moral equivalence of a policeman killed in the line of duty and a terrorist killed in an attack. Sinn Fein leader Gerry Adams did not think that a British Legacy Commission would recover the truth against “state secrecy and concealment” and called for an international commission. The heads of the CGP stated that if the proposal was ignored, there could be thirty years of public inquiries disrupting reconciliation.

Despite these controversies, the vast majority of the people of Northern Ireland are committed to the peace process; the exception is a small group of violent spoilers calling themselves the REAL IRA. Steps have been taken in Northern Ireland for remaking historical memory and popular culture. Although over 90% of Protestant children attend de facto Protestant schools and 90% of Catholic pupils attend Catholic schools, curriculum, textbook and teacher training changes have been made for reducing sectarian bias in history and social studies and to promote toleration. In the past and during the Troubles, the most bloody sectarian riots took place at Orange marches (or parades) that commemorate the seventeenth century English military victories over the Irish and the history of domination of Protestant over Catholics.

The marching season peaks at the July 12 parades commemorating the 1690 Battle of the Boyne and the victorious William of Orange. It is a national holiday. Scots cross the Irish Sea by the thousands to support their Northern Ireland “kith and kin”. The night before Protestant youth light bonfires in all night celebrations. On the twelfth, members of the Orange Order dressed in dark suits, wearing bowler hats and orange sashes, march in the
main street of towns and cities, and alternate with fife and drum bands (known as “kick
the pope” bands) whose performers sing provocative songs and chant insulting slogans,
amid a sea of flags hung from balconies and lamp posts. The riots occur when the
marchers proceed through Nationalist neighborhoods where the residents pelt them and
the police with bricks, fire bombs and gun shots. During the troubles, some marches were
rerouted and banned altogether because they occasioned civil strife, the last time on June
24, 2005 in North Belfast. Since the Good Friday peace agreement, attempts have been
made to tone down the political dimension of the marches and the violent history they
commemorate and reframe the twelfth as a family friendly cultural event, an
“Orangefest” at which tourists are welcome. A leading businessman in Derry explained
to me how such sectarian marches were bad for business and tourism, and how a Derry
businessman’s association was working with the local Orange lodges, the police, and
Nationalist leaders to “tame” these events. He had been successful in Derry.

The Orange marches story bears some similarity to the early Christians making Christian
holidays out of pagan festivals, and transforming pagan temples into churches. No one
denies the bloody Anglo-Irish history, and the full story of the Troubles’ victims will
become public. Reframing the Orange marches updates that divisive history with the
emerging reality of sharing governance, a reformed and integrated police force, and non-
discriminatory employment in government and increasingly also the private sector.
Symbols and collective celebrations convey the new reality as well as the old, and what
better way of doing that than invest new meanings into a centuries old popular tradition.

When truth and justice are avoided in the aftermath of bloody conflicts, for the sake of
nation building, political leaders can exploit doubts and passions about the past for
turning peoples against one another. In the much quoted essay “What is a Nation?” the
French historian Renan wrote that “…the essence of a nation is that all individuals have
many things in common, and also that they have forgotten many things…Forgetting, I
would go so far as to say historical error, is a crucial factor in the creation of nation.” [in
Geoff Eley and Ronald Suny, eds, Becoming National, A Reader, 1996, pp.41-55]. Tito’s
Yugoslavia instituted a culture of “brotherhood and unity” between peoples through all
the organs of the League of Communists, enforced a policy of forgetting about the atrocities in World War II, and prosecuted those who lifted the veil of silence. Neither the communists nor the nationalists were interested in historical truth. Each group harbored its own agenda and version of the truth. After Tito’s death, nationalists started a politics of fear and historical falsehoods that mobilized the peoples of Yugoslavia against one another.

Conclusion

I have examined four institutions for getting at knowledge and truth on contested historical events and their interpretation: the international criminal tribunal, the truth and reconciliation commission, the outsider commissions, and political agreements between adversaries. I have shown that the tribunal process converges on truth and can be and has been applied successfully for contested current events and recent history, but acceptance by the adversaries is problematic. In the tribunal, the same rules apply to adversaries, evidence is accessed by both, witnesses are cross examined under oath, documents are verified for authenticity and completeness, experts provide technical and scientific evaluations, an impartial jury or judges determine truth beyond reasonable doubt (but not all doubt), and there is an opportunity for appeals. Truth commissions perform well under favorable political conditions, and acceptance is wider. Commissions by outsiders are sometimes the only available alternative to self-serving propaganda by the adversaries. Unfortunately they can become politicized and fail to achieve an accepted standard for historical truth that professional historians demand and that their “skepticism” frame enables them to reach.

Historians can distinguish historical fiction (The Three Muskateers); fictionalized history (the author invents speeches and thoughts by Napoleon, Cesar, Ronald Reagan to make the case for his interpretation); fabrication of history (the Protocols of the elders of Zion); history as glorious myth and propaganda (e.g. the nation is chosen by God, history, destiny etc. for a grand mission); and history writing that conforms to the norms of the justice and tribunal process and converges on truth. Similarly, for contested current
events, an ICTY tribunal process, commissions of inquiry, a TRC process, civic and professional groups committed to truthfulness, and professional journalism challenge propaganda, misinformation, myth making and self serving spin in the “court of public opinion,” but there is no final arbiter for truth and falsehood, no judges or jury whose decision is binding, and no convergence on truth. True and false facts, accounts and explanations are available for the picking. Ordinary people select what they want to hear and already agree with, what is accepted in their social milieu, and what presents their group in a favorable light. Unless political leaders and authorities who were adversaries join in a massive effort to get at the truth, be it though a political process as in Germany and France after World War II or with a TRC process as in South Africa, divergent collective memories and myths will persist, available for mobilization by adversaries. I don’t believe that benign neglect is the answer, or that time heals old wounds once and for all, in some subsequent generation.