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ORIGINAL ARTICLE

Acknowledging the past in the post-truth era: Witch-hunts, lawfare and the veterans' amnesty in Northern Ireland

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Abstract

Using the amnesty introduced by the Boris Johnson government designed to protect British army veterans who served in Northern Ireland as a case study, this article examines the intersection between law, politics and the legacy of conflict. The article first offers an account of the amnesty's genesis and traces the evolution and deployment of the *witch-hunt* narrative to rationalise its introduction. Next, it explores the related claim that addressing the past in Northern Ireland was a variant of *lawfare* against the British state as part of a broader effort to rewrite the past. Finally, it explores the broader relevance of this episode to debates concerning *post-truth* discourses in transitional justice and the challenges it suggests to long held assumptions about law, truth and acknowledging the wrongs of the past in the field.

1 | INTRODUCTION

> Troops, many now in their 60s and 70s were following orders as members of Her Majesty's Armed Forces… We must protect people against unfair prosecutions. And I will.[1]

[1] 'Victory: Boris Johnson Vows to Stop the Witch-Hunt of Northern Ireland Troops as Backs the Sun's Veterans Pledge'. *The Sun*, 11 November 2019.

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In their compelling account of the relationship between order and disorder, Johnson et al. argue that disorderly events must do violence to 'a collective account of the social'.[2] They contend that the stories we tell about disorder are normally framed as either a tragedy, a crisis or a scandal. Each of these has in turn three constitutive dimension—(i) the ways in which disorder is problematised (how it is interpreted), (ii) the grammar of responsibility (e.g., harm, agency and fault) and (iii) techniques of response (how is resolution sought).[3] In this article, I use this framework to examine the amnesty introduced under the Boris Johnson government that was designed to protect British army veterans of the Northern Ireland conflict. The investigation and prosecution of veterans were interpreted by some as a witch-hunt against soldiers for events that happened decades ago in Northern Ireland.[4] The grammar of responsibility for the witch-hunt was that it was as a result of *lawfare*—driven by politically motivated human rights lawyers—a variant of which had already been endured by veterans who had served in Iraq and Afghanistan. The technique of response was an amnesty to protect the veterans, coupled with a closing down of irksome investigative and legal processes which had continually unearthed embarrassing details about state human rights abuses during the conflict. As I detail below, the fact that all of this occurred in a context where there was no actual empirical or legal basis for these various claims and the purported response to this 'disorder' tells us much about efforts to secure the acknowledgement of past wrongs in the era of post-truth politics.

On 1 May 2024, the Northern Ireland Troubles (Legacy and Reconciliation) Act (NITLR) came into effect. As described by the former Secretary of State for Northern Ireland (SOSNI), this legislation was driven by the desire to 'stop the witch-hunt' against British army veterans.[5] It introduced a conditional amnesty and an end to all Northern Ireland conflict-related prosecutions, civil actions, legacy inquests, police and Police Ombudsman investigations. In addition to the conditional amnesty scheme, these legal mechanisms and processes were replaced by an Independent Commission for Reconciliation and Information Recovery (ICRIR), appointed by the Conservative government'.[6]

This legislation was pushed through by the UK government despite vociferous opposition from the Irish government, Northern Ireland political parties, UK opposition parties, international stakeholders including two UN Special Rapporteurs (on Transitional Justice and Extra-Judicial Executions), the Council of Europe, victims' organisations, churches and a diverse array of civil society actors across Ireland. Framed ostensibly as helping 'both victims and survivors and aiding reconciliation' in Northern Ireland,[7] the legislation was in fact only supported by UK Conservative Party, some army veterans' organisations (e.g., Northern Ireland Veterans Movement),

[2] Johnson, Jamie M., Victoria M. Basham, and Owen D. Thomas. 'Ordering Disorder: The Making of World Politics' (2022) 48(4) Rev Int Stud 607.

[3] Ibid p. 612.

[4] K. Hearty, 'When Ideal Victims Don't Make Ideal Offenders: The (Re)framing of Legacy Case Prosecutions Against Elderly Perpetrators of State Violence' (2024) 20(1) *Crime Media, Cult* 3.

[5] Brandon Lewis, former SOSNI 'My Legacy Plan: No Longer Will Our Veterans Be Hounded About Events That Happened Decades Ago' Conservative Home, 9 June 2022.

[6] Northern Ireland Troubles and Reconciliation Act 2023 Chapter 41, abstract. See further CK Chung, 'Twenty Years After: Statute of Limitations and the Asymmetric Burdens of Justice in Northern Ireland and Post-War Germany' (2021) 74(4) *Parliam Aff* 979; T. Leahy 'Rigorous Impartiality?: The UK Government, Amnesties and Northern Ireland Conflict Legacy 1998–2' in L. McAtackney and M., Ó Catháin (eds) *Routledge Handbook of Northern Ireland Conflict and Peace* (2024) 64–92.

[7] SOSNI HC Debates 24th May, Northern Ireland Troubles (Legacy and Reconciliation) Bill, Hansard 24 May, 2022, Col. 177.

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right-leaning think tanks (e.g., Policy Exchange, discussed below) and commentators and the right-wing press in Britain. Justified and rationalised by falsehoods, the legacy legislation is an example par excellence of transitional justice in the context of post-truth populism.[8]

The political background to this legislation is complex but requires summarising in order to inform the thematic discussion below. Unlike some analogous peace agreements, the Good Friday Agreement (GFA) did not include an over-arching mechanism, such as a truth commission, to deal with the past.[9] Instead, a piece-meal approach to dealing with the legacy of the conflict emerged after 1998, with law and the legal system shouldering much of the responsibility to address particular conflict-related events. These included public inquiries into particular events (e.g., the Saville Inquiry into Bloody Sunday), coronial inquests, police-led investigations as well as Police Ombudsman investigations (into allegations of police malfeasance), a plethora of civil actions and judicial reviews and, in a small number of cases, prosecuting those responsible for conflict-related offences.[10] Although the work of these legal and investigative processes has been slow, they have established important truths, including that the IRA was responsible for a long-denied sectarian massacre of protestant civilians at Kingsmill; the innocence of those killed by the army on Bloody Sunday or at Ballymurphy; extensive collusion between state agencies and loyalist and republican paramilitaries and irrefutable evidence that elements of the security services, military and police have attempted to obstruct, deny and delay such investigative and legal processes for decades.[11]

In 2014, the Irish and British governments and four of the five main local political parties in Northern Ireland finally agreed a set of over-arching proposals to deal with the past—the Stormont House Agreement (SHA). It left open the possibility of prosecutions of state and non-state actors.[12] The United Kingdom drafted enabling legislation to enact the SHA, but it was never implemented.[13] Instead, as discussed further below, in March 2020, the Boris Johnson government abandoned the SHA and committed to introducing an amnesty.[14] In 2022, the Northern Ireland Troubles (Legacy and Reconciliation) Bill was introduced, coming into effect in May 2024. As noted, that legislation included a conditional immunity scheme with a conspicuously low eligibility threshold,[15] and ended all conflict-related prosecutions, investigations, civil actions and inquests replacing them with the ICRIR.

[8] For current purposes, post-truth populism represents a fusion of populist politics with the erosion of factual authority—a shift away from the Habermasian notion of 'truth' as the foundation for deliberation, accountability and evidence-based decision-making and towards emotionally charged narratives, identity affirmation and epistemological polarisation. See further S. Newman, and M. Conrad, (eds) *Post-Truth Populism: A New Political Paradigm* (2024); T. Eldem 'Post-Truth Populism as an Emerging Electoral Strategy: The Case of Turkey's 2023 Elections' Third World Quarterly (2025), <https://doi.org/10.1080/01436597.2025.2597393>

[9] G. Mitchell, *Making Peace: The Inside Story of the Good Friday Agreement* (1999).

[10] C. Lawther, *Truth, Denial and Transition: Northern Ireland and the Contested Past* (2018).

[11] For example, Inquests into the Deaths of ten men on the Kingsmill Road, County Armagh on 5 January 1976, No. [2024] NI Coroner 21; *In the Matter of a Series of Deaths That Occurred in August 1971 at Ballymurphy, West Belfast, No. [2021] NI Coroner 6;* OPONI *The Murders at the Heights Bar in Loughinisland* (2017, amended 2020); J. Boucher (2024) *Operation Kenova: Northern Ireland Stakeknife Legacy Investigation*; D. De Silva *The Report of the Pat Finucane Review* (2012).

[12] K. McEvoy and A. Bryson, 'Justice, Truth and Oral History: Legislating the Past 'From Below' in Northern Ireland' (2016) 67(1) *NILQ* 67.

[13] NIO (2019) *New Decade New Approach Deal*, para 16.

[14] SOSNI (18 March 2020) *Written Ministerial Statement: Addressing Northern Ireland Legacy Issues*.

[15] The Conservative government had originally proposed a sweeping general amnesty—The Guardian 7 September 2021 'UKs Amnesty Plan Goes Further Than Pinochet's'. Following widespread international and domestic criticism, this was

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Since the legislation came into effect, the amnesty provisions have been found to be unlawful under the European Convention of Human Rights (ECHR) by the High Court and Court of Appeal in Belfast as have some of the powers of the ICRIR.[16] The Irish government also instigated an inter-state challenge before the European Court of Human Rights (ECtHR).[17] Having opposed the Bill in opposition, the Labour Party committed to repealing and replacing the legislation.[18] Since the election, Labour has revoked the amnesty provisions of the legislation, reinstated civil actions and some legacy inquests. In September 2025 the UK and Irish governments announced an agreement for addressing the past, returning to the principles of the SHA of 2014, reforming the ICRIR and re-emphasising the primacy of the ECHR as the bedrock for addressing the past.[19] The commitments contained there-in were in turn contained in new legislation introduced in the UK in October 2025 with analagous legislation due in the Republic of Ireland in 2026.[20]

At first blush this is a reassuring narrative—a variant of what Butterfield (and later Thompson) referred to as the 'Whig view of History'—wherein despite some 'vicissitudes', an inevitable arc towards progress, rationality and legality has eventually prevailed.[21] The aberration of the Johnson era has now passed, the amnesty has been abandoned, the UK and Irish governments have secured a new agreement premised on the rule of law, and new legislation has been tabled. This is not a view I share.

The spurious witch-hunt narrative detailed below emerged under the Theresa May premiership, and the amnesty law crafted by the Johnson administration was continued under Rishi Sunak. Moreover, when considering the Dillon appeal in October 2025 concerning the original Legacy Act, the UK Supreme Court permitted interventions from 'the Northern Ireland Veterans Movement' to argue that the previous amnesty was in fact lawful, despite the fact that government had abandoned it.[22] The veterans were represented by the Conservative Shadow Attorney General who authored a review of the effect of the ECHR on UK law which has been used to justify the Tory commitment to leave the ECHR.[23] That review includes an extensive discussion of veterans

modified to a conditional immunity scheme, albeit one involving a subjective test where immunity *must* be granted to person applying if the person has 'provided an account [of a conflict incident/s] which is true to the best of their knowledge and belief' Northern Ireland Troubles (Legacy and Reconciliation) Bill, 'Parliament: House of Commons, Bill no. 37' (2022), Clause 18, 3, (c).

[16] Colton J found that amnesty provisions were incompatible with Articles 2 and 3 of the ECHR and under Article 2 of the Windsor Framework which requires that European Union rights cannot be diminished as a result of Brexit. The Northern Ireland Court of Appeal upheld these findings but went further, concluding that the ICRIR was not capable of holding an ECHR Article 2 standard investigation to the level of an inquest which it had replaced. The Labour government abandoned the amnesty provisions but appealed to the Supreme Court arguing that the case raised 'broader constitutional questions'. That judgement is pending. See further Dillon and Others in the Matter of the NI Troubles (Legacy and Reconciliation) Act 2023 and the SoSNI [2024] NIKB 11; Re Dillon and Others: NI Troubles (Legacy and Reconciliation) Act [2024] NICA 59.

[17] *Irish Times*, November 2023 'Taking the UK to Court Might Be Awkward but It's the Right Thing to Do Morally'. ECHR Registrar of the Court 19 January 2024 'New Interstate Challenge Brought by Ireland Against the UK' ECHR Press Statement 014 (2024) Case No 1859/24.

[18] Labour Party *The Labour Party Manifesto: Our Plan to Change Britain* (2024) pp. 117–118.

[19] UK/Irish Government *The Legacy of the Troubles: A Joint Framework* (2025).

[20] *The Northern Ireland Troubles Bill* 2025.

[21] H. Butterfield *The Whig Interpretation of History* (1931). See also E. P. Thompson Whigs and Hunters: *A Whig View of History* (1985).

[22] Case No KSC/2025/0013 and UKSC/2025/0013/A. Dillon et al. Written Case of the Northern Ireland Veterans Movement. 16 October 2025.

[23] 'Badenoch: I Will Take Britain Out of the ECHR if We Win Next Election'. *The Telegraph*, 3 October 2025.

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being 'endless pursued by vexatious legal attacks', 'ECHR generated lawfare' against veterans and concludes that the ECHR exposes veterans who served in Northern Ireland, to inquests and prosecutions 'which are difficult to address without ECHR withdrawal'.[24] This is a position supported by the Reform Party.[25] Although Labour has (to date) held firm that the amnesty will not be re-introduced, the government has committed to 'robust protections for veterans who served in Northern Ireland'.[26] In short, notwithstanding the apparent demise of the amnesty, the entwined false narratives of witch-hunts and lawfare against veterans are alive and well in British politics.[27]

2 | VETERAN WITCH-HUNTS AS A 'DISORDERING OF THE ORDER'

As noted above, it has become increasingly commonplace in Britain in recent years to associate the investigation and prosecution of British Army veterans with the notion of a 'witch-hunt'. The term permeated protests by veterans themselves, discussions in the conservative leaning press, the outputs of right-wing think tanks and parliamentary debates on the issue.[28]

Witch-hunts can be traced to the period between the 15th and 17th centuries in Europe and Northern America when concerns about witchcraft, pacts with the devil and other menaces were considered an existential threat to the existing political order—what Cohen referred to as a 'spreading social disease'[29]—a threat so serious as to require resort to extreme legal measures.[30] In Scotland and England, although torture was generally prohibited (on paper at least) during this period, legal dispensation for its usage was specifically authorised regarding witchcraft.[31] In continental Europe, many legal safeguards were 'systematically cast aside' as torture became a 'tool of moral order whose use and limits were almost entirely contingent on the needs of that order'.[32] In the 20th century, it has been deployed to discuss Stalin's periodic purges, McCarthyism in 1950s America, Erdogan's pursuit of his enemies in Turkey and other legal/political phenomena.[33] President Trump has repeatedly dismissed the multiple civil and criminal charges against him as a witch-hunt and indeed issued unconditional pardons to nearly 1600 people charged or convicted

[24] Lord Wolfson (2025) *Advice to the Leader of the Conservative Party*.

[25] N. Farage and A. Holloway, 'We Must End the Betrayal of Our Soldiers Over Northern Ireland' *The Telegraph*, 18 November 2025.

[26] NIO Press Release, 14 October 2025 'Northern Ireland Troubles Bill to Repeal and Replace Legacy Act'.

[27] 'Former Heads of the British Army Attack Keir Starmer on Human Rights Law'. *The Times*, 10 November 2025

[28] See, for example, 'British Army Veterans Protest About Troubles 'Witch Hunt' *Irish Times*, 14 April 2017; 'Prime Minister Demands End to Troubles 'Witch Hunt' Against Northern Ireland Veterans' *Daily Mail*, 29 September 2018; 'Tory MPs Pile Pressure on the Government to End Witch Hunt Prosecutions of Northern Ireland Veterans' *Telegraph*, 8 February 2021; 'Starmer Sparked Witch-hunt of British Troops, Says Johnny Mercer', *The Times* 28 January 2026.

[29] S. Cohen *Folk Devils and Moral Panics* (2002, 3rd ed).

[30] A. Lleweln Barstow, *Witchcraze: A New History of European Witch Hunts* (1994); R. Thurston, The *Witch Hunts: A History of Witch Persecutions in Europe and North America* (2013).

[31] B. Levack, *Witch Hunting in Scotland: Law, Political and Religion* (2008).

[32] E. Currie, 'Crimes Without Criminals: Witchcraft and Its Control in Renaissance Europe' (1968) 3(1) *Law Soc Rev* 7; see also I. 'Reed Deep Culture in Action: Resignification, Synecdoche, and Metanarrative in the Moral Panic of the Salem Witch Trials' (2015) 44 *Theory Soc* 65.

[33] V. Rogovin *Stalin's Terror 1937–1938: Political Genocide in the USSR* (2000); J. Michaels, *McCarthyism: The Realities, Delusions and Politics Behind the 1950s Red Scare* (2017); A. Vatandas, *Hungry for Power: Erdogan's Witch Hunt and Abuse of State Power* (2015).

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in connection with attacks on the US Capitol on 6 January 2020 claiming that they had been the victims of a 'grave national injustice'.[34]

A number of themes are common across these diverse settings. These include that the pursuit of the *victims* of the witch-hunt is politically motivated; that the witch-hunt is linked to a broader social or political malaise and a threat to the established order; and that the witch-hunt itself necessitates unorthodox legal measures and the disapplication of normal judicial rules. Witch-hunts thus represent a disordering of the established order which *requires* an exceptional approach to law and legality.

Veterans were the *victims* of politically motivated prosecutions and investigations—thus the unorthodox legal measure (for the United Kingdom at least) of an amnesty 25 years after the conflict ended was *necessary*. As detailed below, the grammar of responsibility—the ways in which the disorder was articulated—was that these prosecutions and investigations were variants of anti-state lawfare, obscuring the role of the terrorists. Before further deconstructing the sociological and political processes at work, it is important that such considerations are informed by 'real world' data—both during the conflict and in the transition.

Between 1969 and 1998 the Northern Ireland conflict resulted in over 3500 deaths and more than 47,000 injuries.[35] Approximately 2000 of the fatalities were caused by republican organisations, 1000 people were killed by loyalists, and 360 people were killed directly by the state security forces, over 300 by the British Army, the rest by the police.[36] Many of the deaths at the hands of the army occurred in the early (and most violent) period of the conflict. Between 1969 and 1974, 189 people were killed by state actors, the majority (170) by the army. According to Ní Aoláin, 63% of those killed by the security forces were undisputedly unarmed at the time of death; 12% (24 people) were confirmed as having been in possession of a weapon, and a further 14 of those killed were listed as being 'possibly armed'.[37]

Despite the high numbers of unarmed civilian deaths, there were few criminal prosecutions against state actors during this period.[38] As Bennett sums up, poor investigations, a lack of investigative resources, cultures of concealment and a helpful Director of Public Prosecutions (DPP) appear to have ensured that relatively few soldiers ended up in the dock.[39] Between 1970

[34] 'It's Been a Political Witch-Hunt: Trump Defends Himself in Court at Sentencing' *The Guardian* 10 January 2025; 'Trump Grants Sweeping Clemency to All Jan 6. Rioters'*New York Times* 20 January 2025.

[35] C. Thornton et al., *Lost Lives: The Stories of the Men, Women and Children Who Died as a Result of the Northern Ireland Troubles* (2001).

[36] It should be noted that in addition to the 360 people directly killed by the security forces, there were significant levels of state collusion between the security forces and Loyalist and Republican paramilitary groups. See, for example, J. Boucher op cit, A. Cadwallader, *Lethal Allies: British Collusion in Ireland* (2013).

[37] F. Ní Aoláin, *The Politics of Force. Conflict Management of State Violence in Northern Ireland* (2000).

[38] While there is consensus in the literature that soldiers were treated 'sympathetically' by the prosecutors and courts during this period (Bennett p. 243), there are some differences regarding the numbers prosecuted. Ní Aoláin argues that no state actors were prosecuted for killings between 1969 and 1974 (p. 23). Walsh claims that there were 55 civilians killed by the army between January 1972 and 1975, that six soldiers were prosecuted but that all but one was acquitted and his conviction was over-turned on appeal (p. 237). Bennett contends that six soldiers were convicted for fatal shootings but does not specify the charges or sentence received (p. 242). See F. Ní Aoláin, 'The Politics of Force: Conflict Management and State Violence in Northern Ireland—A Brief Historical Overview' (2000) *Minnesota Legal Studies Research Paper No*. 12-12; D. Walsh Bloody *Sunday and the Rule of Law in Northern Ireland* (2000) H. Bennett *Uncivil War: The British Army and the Troubles in Northern Ireland* (2024).

[39] H. Bennett 'Smoke Without Fire? Allegations Against the British Army in Northern Ireland 1972–1975' (2013) 24(2) *20th Century Br Hist* 275.

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and 1973, any deaths involving the army were investigated by the army themselves (the Royal Military Police), and the purpose of these investigations was largely 'managerial' in tone, functioning more as an operational debriefing by the army investigators rather than a criminal investigation. By way of illustration, civilian witnesses were often not interviewed, evidence was not properly gathered or stored, and other standard civilian investigative procedures ignored.[40] Declassified documents from the period point to routine 'understandings' between senior political and legal figures that 'the army should not be inhibited in its campaign [against the IRA] by the threat of court proceedings and therefore should be suitably indemnified'.[41] Although the practice of army investigations of army killings was abandoned in 1973 at the insistence of the DPP (himself a former soldier) and was criticised by the then Lord Chief Justice, there is little evidence that this led to an increase in British Army accountability.[42]

In contrast, between 25,000 and 30,000 republicans and loyalists were imprisoned during the conflict for politically motivated offences.[43] Again bearing in mind the high number of unarmed civilian fatalities at the hands of state actors, only a dozen serious army cases came before the courts during the 30 years of the conflict. As a result of these, four soldiers were convicted of the murder of civilians, one of which was overturned on retrial.[44] Of the three whose convictions were upheld, despite being sentenced to life imprisonment, all were released from prison early after serving very short sentences.[45] Moreover, it was determined that all could be allowed to return to their positions in the British army despite their murder convictions and legal efforts from the victims' families to prevent that reinstatement.[46]

As a result of the early release of prisoners component of the GFA, the courts determined that no state or non-state actor convicted of a conflict-related offence which occurred between 1973 and 1998 would serve more than 2 years.[47] Legal obligations under Article 2 of the ECHR to conduct effective investigations into conflict-related deaths remained in place. Given the evidential difficulties associated with prosecuting historical cases, only a small number of cases were ever likely to come to trial. Between 2012 and 2024, there were twelve cases involving prosecutions against former republicans, four against former loyalists and six cases involving British soldiers. Three soldiers were acquitted, two died while their trials were ongoing, and one soldier was convicted of manslaughter (having shot an unarmed civilian in the back) and received a suspended

[40] Ld. Saville, *Bloody Sunday Inquiry Report Volume IX* (2010) p. 234. See also Mr Justice Kerr in In the Matter of an Application by Mary Louise Thompson for Judicial Review [2003] NIQB 80.

[41] *Conclusions of a Morning Meeting held at Stormont Castle on 10 July 1972, chaired by William Whitelaw MP, SOSNI*; *Attorney General document 24 January 1974 reference LM to 154* (AG Sec). *Correspondence, 17 January 1974 from Lieutenant General Sir Frank King to General Sir Cecil Blacker*.

[42] *R v Foxford* Northern Ireland Law Reports [1974] NI 181.

[43] R. Jamieson et al *Aging and Social Exclusion Amongst Politically Motivated Prisoners* (2010).

[44] 'Only Four Military Convictions for Troubles Murdered', *Irish News*, 15 June 2021. These figures do not include the locally recruited Ulster Defence Regiment (UDR) which was significantly infiltrated by loyalist paramilitaries. 18 UDR soldiers were convicted of murder. See M. Smyth *UDR Declassified* (2022), C. Ryder, *The Ulster Defence Regiment: An Instrument of Peace* (1991) p. 51.

[45] Private Ian Thaine was sentenced to life for murder in 1984 and released in 1987. Private Lee Clegg was sentenced to life for murder in 1993, released on license in 1995 and his conviction was overturned in 1995. Soldiers Mark Wright and James Fischer were sentenced to life for murder in 1995 and released in 1998. See further K. McEvoy et al., *Prosecutions Imprisonment and the SHA* (2020).

[46] 'Killers of Catholic Man to Remain in British Army'. *Irish Times*, 14 August 2003.

[47] The Northern Ireland Sentences Act 1998. S. 3. See J. Stephens in Rodgers (Robert James Shaw) Application [2014] NIQB 79 at para 11.

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sentence.[48] In the latter case, the trial judge noted that the defendant had expressed no remorse and given a dishonest account to the police and the court.[49] The decision was nonetheless described as a 'disgrace' and proof that 'the witch-hunt continues' by veterans.[50] One other veteran is currently being prosecuted for murder alongside two of his colleagues who are being prosecuted for attempted murder. All belonged to the covert Military Reaction Force unit which was disbanded in 1973 having been linked to the killing of a number of unarmed civilians.[51]

Given that the PSNI Legacy Investigation Branch had a caseload of over 1000 conflict-related cases to investigate (March 2024),[52] such a small number of prosecutions may be viewed as of primarily symbolic value, albeit very important for the families of those who were killed.[53] The symbolism of these prosecutions was a two-way street. For veterans, these prosecutions represented a profound 'moral injury', a betrayal by the political and legal establishment of 'what is right'.[54] That sense of outrage can only be understood by the context of historically substandard investigations into state actions during the conflict, few prosecutions, limited jail time and a stubborn commitment on the part of the army to facilitate soldiers convicted of murder to return to their regiments. In effect, a de facto culture of impunity for soldiers largely prevailed *during* the conflict.[55] In such a context, *any* shift towards more effective post-conflict investigations or prosecutions of former British soldiers was always likely to be viewed as a witch-hunt—whatever the empirical reality. Impunity was the established order; proper investigations and a handful of prosecutions were thus 'disorderly'—a witch-hunt facilitated by politically motivated lawfare.

3 | THE GRAMMAR OF RESPONSIBILITY; LAWFARE AND REWRITING THE PAST FROM BASRA TO BELFAST

In his compelling account of efforts to make moral sense of a confusing world, including questions of who is responsible for 'bad acts', philosopher Gabriel Moran argues that we begin with 'some hold on the truth', but that our grasp on the truth may often be 'expressed in distorted or incomplete fashion'.[56] Taking contests over what is true as axiomatic, our contemporary efforts to articulate responsibility and agency are inevitably shaped by what happened in the past.[57]

[48] Figures provided to author by DPP, 10 April 2024. In October 2025 Soldier F, the only soldier charged with events related to Bloody Sunday, was found not guilty on the basis that the implicatory evidence of other soldiers was not reliable. 'Soldier F Found Not Guilty of All Charges in Bloody Sunday Murder Trial' BBC News NI 23 October 2025.

[49] 'Former Soldier Given Suspended Sentence for Troubles Killing' *Guardian*, 2 February 2023; Witch-hunt Against Former Soldiers Continues, Says Military Veterans Groups' *Belfast Telegraph*, 25 November 2022.

[50] Aidan McAnespie Killing: Sentence Handed Down to Former Soldier David Holden 'Extremely Harsh' Says Veteran Organisation' *Newsletter*, 2 February 2023.

[51] 'Undercover Soldiers Killed Unarmed Civilians in Belfast' *BBC News*, 21 November 2013.

[52] Private Correspondence with PSNI Assistant Chief Constable, 7 May 2024.

[53] 'NI Troubles Amnesty Proposals Branded 'Disgrace' and 'Slap in the Face' by Victims' Families', *Belfast Telegraph*, 15 July 2021.

[54] K. Hearty 'Closing the Ranks: Bondedness, Sense of Self and Moral Injury During Legacy Case Prosecutions'. (2023) 31(2) *Ir J Sociol* 183.

[55] The UN has defined impunity as *'the impossibility, de jure or de facto, of bringing perpetrators of human rights violations to account—whether in criminal, civil, administrative or disciplinary proceedings…'*. UNCHR *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity* (2005).

[56] G. Moran *A Grammar of Responsibility*, (1996) p. 18.

[57] Ibid, p. 30.

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Contemporary 'bad acts' require both an articulation of 'who and what must be held accountable' but also a usable version of the past which rationalises that designation of responsibility and prompts a course of action 'through which accountability is symbolically processed and resolution is sought'.[58] In the case of the putative witch-hunt against veterans, those deemed responsible were politically motivated lawyers using *lawfare* and the resolution required was an amnesty.

Although sometimes linked to a critique of the role of law in the broader imperial project,[59] the term lawfare has increasingly been deployed by right-leaning governments, politicians and commentators to critique efforts to hold state actors legally accountable in conflict zones.[60] In an influential paper, Dunlap argued that the neologism 'lawfare' (a contraction of law and warfare) was a 'cynical manipulation of the rule of law and the humanitarian values it represents' deployed by its opponents to 'discredit US interventions abroad by using legal language, particularly international human rights law'.[61] Often directed at human rights lawyers, local and international NGOs and sometimes at 'interventionist' judges, lawfare is often framed as the 'imposition of international legal standards to confine traditional military means and operations and to limit both state responses to terrorism and the use of force'.[62] Following the War on Terror, 'military-security orientated understanding of lawfare' has proliferated in the United States in the guise of blogs, websites and policy commentary.[63]

A British version of lawfare has similarly come to prominence in recent years amongst conservative politicians, commentators and senior military figures to describe efforts to hold the British army to account in Iraq and Afghanistan and then in Northern Ireland.[64] As in the United States, the term is often used to frame legal accountability as undermining armed forces' reputation and military capacity. For example, the UK Defence Select Committee has decried the 'explosion of lawfare' which it claimed was hindering the military's 'ability to defend the nation and the national interest'.[65] The term also appears repeatedly in a report produced by the influential right-wing think tank Policy Exchange which argued for an amnesty (statute of limitations) for veterans and that the UK government should 'stand ready to defy the ECtHR' if it found a statute of limitations to be in breach of the ECHR.[66] In endorsing the report, Boris Johnson noted that the 'persecution of veterans on our judicial system turns the stomach……. *rendering ourselves*

[58] Johnson et al op cit., p. 162.

[59] E.g. See J. *Makenzie 'Austral Africa: Losing it or Ruling it'* (2015); C. Ekins *Legacy of Violence: A History of the British Empire* (2022).

[60] For example, O. Kittrie *Lawfare as a Weapon of War* (2016); T. Matthews 'Interrogating the Debates Around Lawfare and Legal Mobilization: A Literature Review' (2022) 15 J *Hum Rights Pract* 24.

[61] C. Dunlap, 'Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts presented at Humanitarian Challenges in Military Interventions Conference (29 November 2001, p. 4.)' Dunlap later acknowledged that a 'distorted model' of lawfare allows 'some pundits to label with untoward motivations everyone who uses the courts to challenge security related measures' and that litigation 'is a potent engine for truth finding' See C. Dunlap 'Does Lawfare Need an Apologia' (2010) 43 *Case W. Res. J. Int'l L* 121.

[62] D. Hughes 'What Does Lawfare Mean?' (2016) 40(1) *Fordham Int L J* 1.

[63] See C Martins, C. Martins and R Valim *Lawfare: Waging War Through Law* (2021), ix; The Lawfare Project https://www.thelawfareproject.org/whatwedo (last visited 24.10.25).

[64] A Foster 'British Judicial Engagement and the Juridification of the Armed Forces' (2012) 882 *Int Aff* 283.

[65] House of Common Defence Select Committee *Who Guards the Guardians*, 6th Report of Session 2016–17 HC 109 (10 February 2017), para 127.

[66] Policy Exchange *Protecting Those Who Serve* (2019), p. 32.

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vulnerable by permitting the growth of 'lawfare'.[67] Similarly, senior military figures warned that the rise of lawfare could lead to army being left 'unable to take the risks that are necessary to take on the battlefield'.[68]

As has been detailed elsewhere, the term was linked in particular to a complex array of investigative and legal processes focused on allegations of army abuses in Iraq and Afghanistan—alleged abuses with significant historical resonances with events in Northern Ireland.[69] For example, in 2011 a public inquiry into the death of a civilian who died in British Army custody in Basra found that he and other detainees were subjected to 'an appalling episode of gratuitous violence' via unlawful interrogation techniques previously used in Northern Ireland.[70] It also noted that a number of the soldiers involved had also served in Northern Ireland.[71] At a subsequent trial, one soldier pleaded guilty to inhumane treatment of a prisoner, six others were found not guilty as a result of what the trial judge termed 'a more or less obvious closing of ranks'.[72] The Ministry of Defence paid out compensation of £2.83 million.[73] Following further judicial review litigation concerning other allegations of Army abuses against Iraqis,[74] the government ultimately conceded the need for separate inquiry (the Al Sweady Inquiry) which reported in 2014.[75] In addition, concerned at the risk of an intervention by the International Criminal Court (ICC), the then government also established the Iraqi Historical Allegations Team (IHAT) to investigate allegations of unlawful killings and other military abuses including GBH, rape and sexual assault against Iraqi civilians.[76] IHAT's initial case-load of 165 ultimately swelled to over 1500 cases.[77] As in Northern Ireland in the 1970s, the government also had to defend a number of challenges as to whether the Royal Military Police conducting the investigations on behalf of the IHAT were sufficiently independent—ultimately resolved by replacing them with Royal Navy Police.[78]

IHAT was ultimately wound up as a result of sustained criticisms of its work. In his report on the Al Sweady cases, Judge Thayne Forbes concluded that while individual soldiers had mistreated detainees, the more serious allegations of murder were 'wholly and entirely without merit or foundation' and that many of the 'baseless allegations were the product of deliberate and calculated lies'.[79] Another key factor that undermined the IHAT process was the conduct of the lawyer Phil

[67] ibid. In addition to Boris Johnson, other MPs who endorsed the report included Jeremy Hunt, Gavin Williamson and Tom Tugendthat.

[68] 'Britain's Armed Forces Risk Being Paralysed by Lawfare' Warns Chief of Defence Staff'. Daily Telegraph, 11 November 2018.

[69] For an excellent overview, see C. Gearty, 'British Torture, Then and Now: The Role of the Judges' (2021) 84 (1) *MLR* 118–154.

[70] Sir W Gage The Baha Mousa Public Inquiry Report (2011) HC 1452-1.

[71] Ibid.

[72] *A Bloody Epitah to Blair's War'*. Independent on Sunday, 17 June 2007.

[73] A T Williams, A Very British Killing: The Death of Baha Mousa (2012), p. 67–68.

[74] R (Al-Sweady) v Secretary of State for Defence [2009] EWHC 2387; [2010] UKHRR 300.

[75] The *Report of the Al-Sweady Inquiry* (Chair: Sir Thayne Forbes) HC 818 (17 December 2014).

[76] Ministry of Defence (13 January 2016) IHAT: 'What Is It and What It Does?' See also A Lang *Iraq Historical Allegations Team* (2016) House of Commons Library Briefing Paper, No. 7478, 22 January 2016.

[77] House of Commons Defence Committee, Who Guards the Guardians? 6 Report of Session 2016–17 HC 109 (10 February 2017) para 13.

[78] Gearty op cit.

[79] Al-Sweady report, p. 973.

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Shiner who had represented many of the Iraqi clients.[80] Following publication of the Al-Sweady report, Mr Shiner was struck off by the Solicitors Regulation Authority for offences including making unsolicited visits or telephones calls to procure Iraqi clients via a local middleman and failing in his duty of candour to the court (at a previous judicial review) and to the Solicitors Tribunal itself.[81] Judge Forbes determination and Mr Shiner's behaviour were successfully deployed by Conservative politicians and think tanks to argue that *all* efforts to investigate army abuses in Iraq and Afghanistan were examples of lawfare.[82] Johnny Mercer, the former Royal Artillery officer and arch critic of veteran prosecutions in Northern Ireland, chaired the Defence Select subcommittee examining IHAT which concluded that it had been 'exploited by two law firms in particular', that it was an 'unmitigated failure' and that it 'must be closed down'.[83]

Overall, the dominant framing of the conduct of soldiers in Iraq and Afghanistan was that while there had been in a few 'bad apples', soldiers had largely been the victims of vexatious claims, 'hounded' by devious lawyers and in need of legal and protection.[84] The 2019 Conservative Party manifesto included a commitment to introduce legislation to 'tackle the vexatious legal claims that undermine our armed forces'.[85] As noted above, in his campaign to become Tory party leader, Boris Johnson signed a pledge organised by *The Sun* to 'stop the witch-hunt' against British soldiers, including those who had served in Northern Ireland.[86] More broadly, anti-human rights discourse depicting the ECtHR as a forum for 'foreign' interventionist judges to 'interfere' in UK government policy has nudged the protection of British army veterans front and centre of post-Brexit right-wing populism.[87]

The protection for veterans of Iraq and Afghanistan from such 'hounding' which ultimately emerged was the Overseas Operations (Service Personnel and Veterans) Act.[88] It introduced a presumptive amnesty after 5 years for offences committed overseas and also introduced significant

[80] See The Guardian 2 February 2017. 'Phil Shiner: Iraq Human Rights Lawyer Struck Off for Misconduct' see also HC Defence Select Committee 2017 op cit, pp. 44–45.

[81] Solicitors Regulation Authority and Phil Joseph Shiner Case No. 11510-2016.

[82] HC Defence Select Committee op cit.

[83] HC Defence Select Committee op cit. p. 3. 'Iraq Abuse Inquiry to Shut After MPs Find It Has Directly Harmed Defence of Our Nation' *Daily Telegraph* 10 February 2017.

[84] C Mallory 'Rights-Restricting Rhetoric: The Overseas Operations (Service Personnel and Veterans) Act 2021' (2022) 85(2) MLR 461, at p. 468. As Mallory notes (p. 475), the parliamentary debates were replete with references to 'rogue lawyers', 'unscrupulous lawyers', 'vicious lawyers', 'bad and egregious lawyers' and 'ambulance chasing lawyers'. This narrative has been hard to sustain. In 2022, following a BBC Panorama documentary alleging SAS involvement in 54 extra judicial killings in Afghanistan, the government was forced to establish an independent Public Inquiry which is ongoing. See Independent Inquiry relating to Afghanistan—<https://www.iia.independent-inquiry.uk/>. Interestingly, Johnny Mercer (discussed above) became a supporter of this inquiry (and gave evidence to it) after claiming that MOD officials had provided him with false information as a Minister (which he repeated in parliament) about the sources and seriousness of these allegations in 2020. See further D. Green 'Unpacking the Remarkable Witness Statement of Johnny Mercer' Prospect Magazine, 25 March 2024.

[85] Conservative Party, *Conservative Party Manifesto: Our Plan* (2019), 52.

[86] T. Dunn, 'VICTORY: Boris Johnson Vows to Stop Witch-Hunt of Northern Ireland Troops as he Pledges to Back the Suns Veteran Pledge' *Sun*, 11 July 2019. This Sun pledge was also signed by the other candidates for the Tory Party leadership.

[87] M. Boyd, 'Enemies of the People. A Multimodal Critical Analysis of Populism, the Popular Press and the Judiciary in Post-Brexit Britain' (2020) 15 *Iperstoria* 36.

[88] Chowdhury, T., & Shiner, B. 'Ministry of Defence Impunity: The Overseas Operations (Service Personnel and Veterans) Act 2021' *Public Law (2022) (April) 289–310*.

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restrictions for domestic tort and human rights claims.[89] Throughout the passage of that legislation the government was continuously asked for analogous 'protections' for Northern Ireland veterans to those who had served in Iraq and Afghanistan.[90] Although the May government continued with its public commitment to the SHA (without actually implementing it), the Johnson administration unilaterally abandoned it. In March 2020, on the same day that Overseas Operations Bill was tabled, the SOSNI instead announced a new direction in legacy policy—to 'ensure equal treatment of Northern Ireland veteran and those who served overseas'[91] and the NITLR Act and its conditional amnesty followed in due course.

The lawfare narrative which underpinned the Northern Ireland amnesty followed a similar pattern as the Overseas Operations Act process. Having successfully advocated for the closure of IHAT and the ultimate introduction of the overseas amnesty, the Defence Select Committee also produced a couple of influential reports arguing for an amnesty for Northern Ireland veterans aimed at the then Prime Minister Theresa May.[92] Although May did engage in some anti-lawyer and witch-hunt rhetoric at different junctures during her premiership,[93] as noted, she resisted efforts on the right of her party to introduce an amnesty for Northern Ireland.[94] The result was extensive briefing against those within government who opposed the amnesty as well as attacks upon Northern Ireland based lawyers involved in legacy-related cases.[95] All of the lawyers targeted were from an Irish catholic nationalist background. Once Boris Johson became Prime Minister, the lawfare narrative effectively became official government policy. The SOSNI argued that by stopping the witch-hunt, he would also thwart the work of 'specialist law-firms who campaign on legacy issues' and who 'peddle false hope and who profit from the pain of those seeking answers from their loved ones'.[96]

[89] After much debated and an intervention from the Prosecutor of the ICC, a number of exceptions to the presumptive amnesty after 5 years were included in the Act including all sexual offences, genocide, crimes against humanity and war crimes (Overseas Operations (Service Personnel and Veterans) Act 2021, Schedule 1. See further HL Deb 21 April 2021, vol 692, cols 1060–1073.

[90] See, for example, HC Debate on the Overseas Operations (Service Personnel and Veterans Bill) 2020 23rd September Vol 680, cols 984–1052.

[91] SOSNI Brandon Lewis MP, 'Addressing Northern Ireland Legacy Issues', Written Ministerial Statement UIN HCWS168.

[92] Defence Select Committee *Investigations in Fatalities in Northern Ireland Involving British Military Personnel* 2016–17, HC 1064; Defence Select Committee *Drawing a Line: Protecting Veterans By a Statute of Limitations*. ion 2017–19 HC 1224.

[93] For example, see October 2016 Party Conference Speech, Mrs May stated: '…we will never again—in any future conflict—let those activist, left-wing human rights lawyers harangue and harass the bravest of the brave—the men and women of Britain's Armed Forces'.

[94] 'Theresa May Is Branded a "Coward" by Ex-Army Tory MP Johnny Mercer for Allowing Witch Hunt Against Northern Ireland Veterans' Daily Mail 21 May 2019. Mercer also announced a 'qualified withdrawal of support' for Theresa May's government over the issue.

[95] Ibid. See, for example, 'Our Lions, the Rich and the War Probe; Firms Profit Heros, Lawyers Scored 12m in Legal Aid'—naming three Belfast Law Firms. The Sun, 10 december 2016 The Sunday Times referred to some of the same lawyers as 'the Sinn Fein-IRA family and their legal auxiliaries' and was successfully sued for defamation. See *Kevin Winters, Darragh Mackin and KRW LLP v Times*, [2016] NIQB 12. The then DPP for Northern Ireland Barra McGrory KC, a former defence lawyer who had previously represented senior republicans including Martin McGuinness, was also singled out for attention. One former Defence Minister, Gerard Howarth MP, issued a 'fervent plea' to the SOSNI that '.he should protect the interests of former British soldiers currently being charged by the Sinn Féin-supporting DPP for Northern Ireland with murder for events that took place more than 40 years ago?' Hansard, 17 January 2017, Col. 780. See further Law Society Gazette 24.01.2018 'Endangered Lawyers: Climate of Intimidation "Re-Emerging" in Northern Ireland'.

[96] Brandon Lewis, op cit. 9 June 2022.

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In sum, regardless the lack of any empirical basis for the witch-hunt narrative, 'lawfare' provided a useful grammar of responsibility to rationalise actions designed to secure state impunity for veterans from Basra to Belfast. The term captured an aversion to the human rights discourses associated with the ECHR as well as to the lawyers who deploy such arguments. For some, it also suggested a neo-colonial distaste for nationalist lawyers from Northern Ireland either effectively representing their clients in legacy cases or, in the case of the then DPP, making determinations on prosecutorial decisions including regarding soldiers.

4 | CONCLUSION

Martha Minnow has argued that 'survivors of violence often ache for … public acknowledgement of what happened'.[97] Such acknowledgement of past human rights violations—whether through prosecutions, truth recovery, reparations, apologies, memorialisation (or a combination thereof)—is the raison d'être of transitional justice.[98] All such processes are premised on maximising *truthfulness* from all of the actors to conflict. A truthful account of the role of the UK state is, in Johnson et al's terms, profoundly 'disorderly' to the favoured 'collective account' of its role as essentially that of a benign referee between two atavistic local tribes.[99]

Of course denial of human rights violations has long been the default response of the UK state and the right in British politics regarding Northern Ireland.[100] However, as discussed, a changed legal landscape (including incorporation of the ECHR), the work of judge led Public Inquiries like Bloody Sunday, Coronial Inquests, civil actions and a judiciary that was less deferential to official accounts, proper police investigations into past collusion with paramilitaries, more strategic litigation on the part of lawyers—these and other investigative initiatives profoundly disrupted narratives of blamelessness. The response to law beginning to deliver unpalatable truths was a different variant of denialism wherein transitional justice came face to face with the challenges of post-truth politics in the guise of the Johnson amnesty.

Post-truth politics does not necessarily entail a complete abandonment of facts. Rather it requires a rubbishing of the processes by which facts are credibly gathered and a marshalling of alternative facts no matter how implausible, so that they suit 'how one feels' about an issue.[101] Soldiers who served in Northern Ireland were thus all heroes, any investigation or prosecution which undermined that view were witch-hunts. For its supporters, all that really matter is that the stories '*feel* true, that they resonate'.[102] In this context, 'menacing narratives that involve plots by malicious others'—for example, politically motivated Irish nationalist lawyers engaged in lawfare using a 'foreign' legal convention (the ECHR)—provided a grammar of responsibility to mobilise an outraged audience, emboldened and encouraged by the right-leaning press.[103] Efforts to counter such narratives with facts and legal arguments were frequently swept aside not just by

[97] M. Minnow *Between Vengeance and Forgiveness* (1998), p. 4.

[98] T. Govier *Taking Wrong Seriously: Acknowledgement, Reconciliation and the Politics of Sustainable Peace* (2008).

[99] Johnson et al op cit. p. 610.

[100] C Lawther, (2018) op cit. CAJ 2024 *Bitter Legacy: State Impunity in the Northern Ireland Conflict*.

[101] L. McIntyre Post *Truth*. (2018), p. 9.

[102] M. Dancona *Post Truth: The New War on Truth and How to Fight Back* (2017), p. 54.

[103] I. Kalpokas *A Political Theory of Post-Truth. Palgrave Macmillan* (2019) p. 19.

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lies but by relentless tides of 'bullshit'.[104] As Arron Banks (the man who funded the similarly post-truth Brexit Leave campaign) boasted, 'The Remain campaign featured fact, fact, fact, fact. It just doesn't work. You have got to connect with people emotionally. It's the Trump success'.[105]

Again, the post-truth era throws into sharp relief the role of law.[106] At one level, the answer is straightforward. Law is the place where bullshit stops—where what Arendt termed the 'thoughtlessness' towards truth is halted.[107] For example, a Trump appointed federal judge who dismissed the administration's rationale for deploying the national guard in Portland as 'simply untethered from the facts' is a perfect illustration.[108] Similarly direct, in his demolishing the then government's argument that the Johnson amnesty would 'facilitate reconciliation', Colton J said 'there is no evidence that granting of immunity under the 2023 Act will in any way contribute to reconciliation in Northern Ireland, indeed the evidence is to the contrary'.[109]

Given the rigour of its working methods—effective investigations, evidence, equality of arms, legal and intellectually reasoned argumentation, privileging of legality and so forth—law can (ideally) serve as a buttress against moral relativism, lies and bullshit. This is not to suggest that we must act as though critical legal studies had never happened. 'Judicial truth' is still of course socially, politically and culturally constructed.[110] Nonetheless, given the times we live in, as Blackburn has argued, 'we need to take the post-modernist inverted commas off things that ought to matter to us'.[111] A critically informed commitment to human rights and the rule of law, with all its flaws, remains the sine qua non of efforts to acknowledge past harms in the post-truth era.

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[104] Bryson and McEvoy (2023) op cit. The philosopher Harry Frankfurt distinguishes between lies and bullshit by arguing that a lie is inevitably subject to 'the objective constraints of the truth' in order be plausible, hampered by having to 'design falsehood under the guidance of truth'. Bullshit on the other hand is 'panoramic', largely 'unconstrained by truth', less 'austere' and essentially indifferent to the fact that at least some of the audience know that they are being bullshitted to providing it suits the broader purpose'. H. Frankfurt, 'On Bullshit', in *The Importance of What We Care About: Philosophical Essays*, (1986, 1988): 51–52.

[105] Guardian 29 June 2016 'Leave Co-Chair Takes Swipe at Critics After Brexit'.

[106] See A. Codello and T. Andina (eds) *Post Truth, Philosophy and Law* (2019).

[107] Hannah Arendt, The Human Condition (1958) p. 5.

[108] State of Oregon and City of Portland v Donald Trump, 04.10.25 Case No. 3:25-cv-1756-IM p. 23.

[109] Dillon et al op cit. p. 56.

[110] M. Moore 'The Plain Truth About Legal Truth' (2003) 26 Harv. JL & Pub. Pol'y 23.

[111] S. Blackburn *Truth: A Guide for the Perplexed* (2006) Penguin p. 221.

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