The politics of preservation: oral history, socio legal studies and praxis


Published in:
Journal of Law and Society

Document Version:
Peer reviewed version

Queen's University Belfast - Research Portal:
Link to publication record in Queen's University Belfast Research Portal

Publisher rights
Copyright 2021 Wiley. This work is made available online in accordance with the publisher's policies. Please refer to any applicable terms of use of the publisher.

General rights
Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy
The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact openaccess@qub.ac.uk.

Open Access
This research has been made openly available by Queen's academics and its Open Research team. We would love to hear how access to this research benefits you. – Share your feedback with us: http://go.qub.ac.uk/oa-feedback

Download date:14. Sep. 2023
The politics of preservation: oral history, socio-legal studies, and praxis

ANNA BRYSON

1. INTRODUCTION

Despite the fact that they share many of the same intellectual, social, and political roots, oral history is a surprisingly under-utilized resource in the field of socio-legal studies. This article explores some of the theoretical and experiential reasons for this deficiency. It begins with an overview of both fields to date, including instances of intellectual collaboration. It then considers tensions between qualitative and oral history interviews under the overlapping themes of preservation, accountability, and agency. The concluding section develops these theoretical arguments in light of ongoing ‘real-world’ work in transitional justice. I argue in favour of a flexible, pragmatic, and imaginative response to the politics of oral history preservation and a more critical approach to the relationship between oral history, law, and politics. This is designed to encourage the collection and preservation of material that is otherwise sidestepped, censored, or destroyed. Such an approach would yield benefits not only for the vexed process of ‘dealing with the past’ in post-conflict societies but for socio-legal scholarship more generally.
history and socio-legal studies in light of my ongoing ‘real-world’ work in the field of transitional justice. In particular, I argue for a flexible, pragmatic, and imaginative approach to the politics of oral history preservation. Such a framework is designed to encourage a more critical approach to the relationship between oral history, law, and politics and to thus facilitate the collection and preservation of material that is otherwise side-stepped, censored, or destroyed. Enabling access to such accounts has the potential to unsettle simplistic understandings of the role of law, the criminal justice system, and the lived experience of those who work within or come into contact with the law. This has demonstrable benefits not only for the vexed process of ‘dealing with the past’ in post-conflict societies but for socio-legal scholarship more generally.

2. ORAL HISTORY IN SOCIO-LEGAL STUDIES

Opposition to the strand of ‘legal historicism’ that sought to divorce law from politics was one of the key drivers for the development of socio-legal studies. Some socio-legal scholars (emboldened by a forward-facing commitment to change society through law) were initially sceptical of contamination by history. However, inspired by the cultural revolution of the 1960s, the potential contribution of the sub-disciplines of oral history and social history became increasingly apparent. Motivated by many of the same frustrations that gave birth to socio-legal studies, and tracking wider trends within the humanities and social sciences, the field of oral history departed from its post-war association with elite biographies and instead embraced the resistant thrust of ‘history

1 By way of background, the article is informed by 25 years of fieldwork, encompassing more than 200 interviews regarding the Northern Ireland conflict. These were conducted in the course of three research projects: an oral history of a divided Mid-Ulster town (1945–1969), a study of political prisoners in Britain and Ireland (1920–2000), and a wide-ranging exploration of the peace process (1969–2000) (see <https://www.peaceprocesshistory.org/>). Since 2014, I have worked on a number of interview-based socio-legal projects at Queen’s University Belfast (QUB), including the Economic and Social Research Council funded studies ‘Lawyers, Conflict & Transition’ (ES/J009849/1) at <https://www.lawyersconflictandtransition.org/>, and ‘Apologies, Abuses & Dealing with the Past’ (ES/N010825/1), at <https://www.apologies-abuses-past.org.uk>.

2 Transitional justice is concerned with the legal and social processes established to deal with the legacy of violence in post-authoritarian and post-conflict contexts. See R. G. Teitel, Transitional Justice (2000). Since 2015, I have worked alongside a team of lawyers to help to shape legislation for an Oral History Archive (OHA) to address the legacy of conflict in Northern Ireland, leading the OHA components of a related QUB LAW REF 2021 Impact Case Study. See further ‘Dealing with the Past in Northern Ireland’, at <https://www.dealingwiththepastni.com>.


4 The identification of documentary archives as key sites for the production of ‘objective’ historical knowledge is primarily associated with the German historian Leopold von Ranke (1795–1886). This ‘scientific turn’ had an enduring influence on legal history in the common law world well into the twentieth century. See D. Ibbetson, ‘Historical Research in Law’ in The Oxford Handbook of Legal Studies, eds M. Tushnet and P. Cane (2005) 863.

from below’. Invoking the spirit of Thompson’s classic *The Making of the English Working Class,* socialist historians in the 1970s such as Paul Thompson called attention to its capacity not only to empower the voiceless but ultimately to re-tilt the balance and *purpose* of history.

Within the wider historical profession, the practice of oral history raised concerns regarding the ‘historicity’ (or accuracy) of its claims about the past. For traditional ‘professional’ historians, inclined to the view that the authenticity of history is measured in detachment from the present, the fact that oral history intertwines past, present, and future is deeply problematic. In particular, concerns were voiced about the fallibility of memory, the subjectivity and interpretive bias of the interviewer and the interviewee, and the broader risks of the politicization of scholarship. However, since at least the 1960s, concurrent with the rise in popularity of social and cultural history, there has been growing recognition of the contribution of partial and biased – hitherto ‘unreliable’ – sources to historical inquiry.

Arguing in favour of a new version of historicity that can accommodate both the objective and the subjective ‘truth’ of individual and collective narratives, recent generations of oral historians have explored the interplay of language, meaning, and identity and have identified oral sources as precious evidence of ‘not just what people did, but what they wanted to do, what they believed they were doing, what they now think they did’.

Over the course of several decades, the field and practice of oral history has acquired most of what Krishnan identifies as the essential attributes of an academic discipline, including dedicated national and international journals and conferences, centres of excellence, and a well-established and diversely theorized academic literature. Interestingly, Krishnan suggests that while fields of study must have something distinctive in terms of theories, methods, or findings, these may be shared with another discipline. Oral history has become increasingly respectable and influential within history in general, but its influence on other disciplines, including law, is uneven. Within socio-legal studies, the areas in which it has had discernible impact include legal biographies; explorations of radical and justice-orientated social movements; criminological analyses of policing, prisons, and crime; and, of course, my own field of transitional justice.

---

7 One of Thompson’s explicit aims was to rescue those hidden from history from ‘the enormous condescension of posterity’. E. P. Thompson, *The Making of the English Working Class* (1963) 12.
9 ‘Historicity’ is a complex term encompassing a rich and diverse literature but, in basic terms, it speaks to a preoccupation with the authenticity of claims about the past. See F. Hartog, *Regimes of Historicity: Presentism and Experiences of Time* (2015, trans. S. Brown).
14 Reviewing the post-war theory and practice of oral history, Thomson identifies ‘four paradigm transformations’ in its international impact. Each has in turn influenced social history, public history, local history, family history, community history, memory studies, and indeed the way in which we conceive of history as a discipline and field of practice. A. Thomson, ‘Four Paradigm Transformations in Oral History’ (2007) 34 *Oral History Rev.* 49, at 50.
these contributions to legal history, criminology, and transitional justice, oral history is generally regarded as an occasional ‘add-on’ rather than a mainstream element of socio-legal studies. Drawing on my own experience, I have identified below a number of themes that might help to explain that deficiency and in turn signpost pathways to deeper and mutually beneficial collaboration.

3. PRESERVATION, ACCOUNTABILITY, AND AGENCY

Oral history, like socio-legal studies, has evolved into a heterogeneous and increasingly interdisciplinary field of practice. In essence, however, it involves ‘the interviewing of eye-witness participants about the events in the past for the purposes of historical reconstruction’.27 Viewed in this light, many social scientists engaged in qualitative interview research may with some justification consider that they are also ‘doing oral history’. Upon further probing, however, the fault-lines between qualitative and oral history interviews expose longstanding tensions between history and the social sciences.28 To focus my analysis, I have grouped what I consider to be the key related issues under the overlapping themes of preservation, accountability, and agency.

Time management: the practicalities of oral history preservation

A key distinguishing feature of oral history is the prominence given to the preservation of data. Reflecting on the American Oral History Association’s guidelines in 2009, Freund lambasted the social scientist’s tendency to ‘conduct interviews anonymously and confidentially’ and then destroy the audio recordings and transcripts. This, he suggested, is ‘diametrically opposed to the goals of oral history’.29 In recent years, there have been two significant developments concerning the preservation of data in the United Kingdom (UK). On the one hand, concerted efforts to promote a culture of ‘data sharing’ have ensured that this is now deeply embedded across academic disciplines and research institutions.30 Pulling in the opposite direction, the UK General Data Protection Regulation (GDPR) now imposes strict limits on how personal data can be processed and stored.31 Researchers essentially have three options. They can destroy data once the stated purpose has been fulfilled or they can strip it of any indicators that enable individuals to be identified. The latter may be relatively straightforward in the case of large n population surveys but in the case of, for example, an interview with a judge, stripping out all references to key cases is likely to result in meaningless (and arguably misleading) data. The third option involves invoking the exemption for data that is processed for ‘archiving purposes in the public interest’.32

28 For a masterful overview of the theoretical tensions between history and the social sciences, see P. Burke, History and Social Theory (2005, 2nd edn).
31 GDPR is a regulation designed to protect European Union citizens from privacy and data breaches in an increasingly data-driven world. It came into effect in May 2018.
32 Data Protection Act 2018, Schedule 1, Part 1, s. 4.
Not surprisingly, the UK Oral History Society has worked hard to reassure oral historians that, by invoking the appropriate legal exemption, it is possible for them to fulfil their ‘essential democratic mission’ to enable first-hand personal testimonies to be ‘validated, valued and heard’. There is also the reassurance that most well-resourced archives have the capacity to embargo interview data (wholly or in part) particularly where there is potential for ‘substantial damage or distress’ to an identifiable living person. In reality, however, many socio-legal scholars remain wary of sharing data in this way.

A key practical consideration is the inordinate amount of time (and, by extension, resources) required to prepare data for deposit. In order to invoke the ‘archiving in the public interest’ GDPR exemption, it is advisable to consult with an archive at the research design stage to agree the wording of the participant information sheet and recording agreement and to agree appropriate recording formats, copyright, and access. For the uninitiated, maintaining catalogues and spreadsheets for metadata and ensuring that audio files and transcripts comply with archival standards can be quite daunting. In addition, although the prospect of placing a stay on sensitive data is reassuring for many, the process of negotiating and enforcing an embargo can in reality prove time consuming and costly.

There is another practical consequence concerning the amount of time taken to conduct lengthy oral history interviews to archival standard: whether we like it or not, there is a political economy to the production of scholarship. Based on my experience, it generally takes not months but years to build up trust with interviewees and negotiate access; conduct background research; train in interview techniques, use of equipment, legal and ethical protocols, and data processing and analysis; conduct interviews and follow-up; maintain metadata; transcribe, edit, and code recordings; and write up the findings. This is in many respects a rewarding, worthwhile, and enjoyable process, but it can also be exhausting and all-consuming and undoubtedly limits the scope for publication (particularly where there are concerns about confidentiality). This is perhaps less of a worry for well-resourced academics with access to research assistance and professional transcription services, but it can be debilitating for early-career scholars. It is furthermore important to note that having the resources necessary to attend to archiving does not necessarily assuage concerns about accountability and trust.

**Unlocking the data: accountability and trust**

Although time consuming, there are of course numerous benefits to archiving research data. Besides the intrinsic merits of preserving historical evidence for future generations, the process of making interviews (complete with questions) accessible in an archive introduces a healthy measure of research accountability and analytical transparency. While the vast majority of qualitative researchers adhere to all necessary ethical standards, they retain considerable power to

---

34 Id.
35 Depending on the sensitivity of the material and the relevant institutions’ position on intellectual property and copyright, agreeing the terms of the contract can involve quite complex legal negotiations.
37 This is particularly important for the discipline of history. Indeed, some oral historians ruthlessly prioritize the original audio recording, arguing that a transcript ‘freezes out’ nuances of emotion and the subtleties of meaning embedded in ‘tone, volume, velocity, pitch and rhythm’. See Freund, op. cit., n. 29.
selectively raid their interviews for choice quotes to enliven and inform their analysis. Indeed, Abrams cautions that enthusiastic commitment to empowering the historically disenfranchised can, in the selection and analysis process, ‘all too easily transmogrify into academic privilege’.

On the face of it, the process of negotiating conditions for depositing interviews in an archive should afford more power and agency to the interviewee – at the very least, some say over what happens to their data. This is not, however, a bilateral transaction; the interviewer, on behalf of the interviewee, cedes power to a third party – namely, the archive manager and the archivists who curate and process the data. They in turn may be answerable to a government department or other funders who have influence over their decision-making powers. This highlights an underlying assumption that archives are unQuestionably ‘neutral’ and trustworthy institutions. As discussed further below, in some contexts, there is in fact a serious deficit of faith in the political establishment and by extension in official archives funded wholly or in part by the state.

Oral history practitioners have long called attention to the way in which both the identity of the interviewer and the interviewee and the specific context in which the interview is conducted (including such factors as choice of venue, time of day, gender, class, race, physical appearance, involvement of third parties, latest political developments, and use of props) will influence the ‘performance’ of the interview. The social anthropologist Elizabeth Tonkin, for example, emphasizes that oral history interviews are a by-product of particular temporal, economic, and political conditions. She notes, moreover, that ‘[t]he social contexts of oral histories include the additional condition that their tellers must intersect with a palpable audience at a particular moment in time and space’. While a skilled interviewer engages active listening and empathy to dissipate concerns about external audiences, the prospect of making the interview publicly available via an archive also undoubtedly influences the way in which an interview is conducted.

In the course of ongoing research on the history of the law centres movement in England, Wales, and Northern Ireland, we are beginning to get a sharper sense of the respective merits of shorter purpose-driven sociological interviews and longer ‘bi-focal’ oral history interviews. The latter are conducted with one eye on the project at hand and another on the creation of a heritage archive. These longer life history interviews provide invaluable ‘thick’ insights into the broader lived experience of key figures in the law centres movement, but the shorter interviews offer access to colour and detail that is unlikely to feature in the public-facing accounts. A key downside of the shorter interviews is the fact that the audio recordings and transcripts will be destroyed upon completion of the project. This is undoubtedly a significant loss to history and indeed to

40 As discussed further below, such fears are heightened in post-conflict settings, particularly where prosecution for historic crimes is a live possibility. See F. Sampson, “Whatever You Say...: The Case of the Boston College Tapes and How Confidentiality Agreements Cannot Put Relevant Data beyond the Reach of Criminal Investigation” (2016) 10 Policing: A J. of Policy and Practice 222.
41 For an overview of key dynamics, see the chapters in Part II of Perks and Thomson (eds), op. cit., n. 10.
43 The longer life history interviews will be deposited as part of the British Library’s National Life Stories collection. See <http://www.bl.uk/projects/national-life-stories>.
44 The benefits of ‘thick’ description are most prominently associated with the anthropologist Clifford Geertz. See C. Geertz, The Interpretation of Cultures (1973) ch. 1.
socio-legal scholarship – but so too is the potential sanitization of the archived accounts in line with increasingly stringent legal and ethical requirements and concerns about future audiences. It is important to acknowledge the ‘radical’ oral history research that has been done in the UK and Ireland in recent years. As Smith observes, it is nonetheless telling that, ‘while oral historians in Western Europe and North America have often focused on issues of identity and cultural difference, oral historians in Latin America and Eastern Europe have tended to pursue more overtly political projects’. This again underlines that issues of accountability and trust (and related concerns about the respective power and agency of the researcher, the research participant, and the archivist) can have a discernible impact on the production of scholarship. In the next section, I develop this critique by examining how these concerns intersect with fundamental questions regarding the structure and analysis of oral history interviews.

**Shaping the interview: structure, theory, and agency**

The literature on the intersection between structure, theory, and agency is notoriously complex. At base, the study of the structure–agency nexus (and related theories) concerns the extent to which human behaviour or action is shaped by forces that are beyond our control. As Marx famously observed, ‘men [sic] make their own history but they do not make it just as they please, they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past’. For the purposes of this article, I want to consider, first, how the structural context of an oral history interview affects the agency of both the interviewer and the interviewee and, second, how this maps onto broader questions about the relationship between theory and scholarship.

I have argued above that one of the benefits of enabling access to interview data is the fact that it renders researchers more accountable. For historians (including socio-legal oral historians) committed to empowering the marginalized, the related issues of reflexivity and what Frisch refers to as ‘shared authority’ are front and centre of scholarly debates. In the 1980s and early 1990s, the notion that oral history should be harnessed to raise consciousness about socialist, feminist, and anti-racist concerns and to thus affect social change found popular expression in

---

46 Thomson notes that ‘community oral history has a vibrant, radical tradition’ intersecting with the History Workshop at Ruskin (the trade union college), the community publishing movement, the radical adult education movement, and the women’s movement. A. Thomson, ‘Oral History and Community History in Britain: Personal and Critical Reflections on Twenty-Five Years of Continuity and Change’ (2008) 36 *Oral History* 95, at 96.
the Popular Memory Group at Birmingham’s Centre for Contemporary Cultural Studies.51 It has also, not surprisingly, featured strongly in the work of feminist oral historians.52 Beyond the vexed issue of power dynamics in the interview process, the issue of shared authority links to a much deeper problem concerning discursive authority. By way of illustration, in a ground-breaking piece on interpretative conflict in oral narrative research, Borland reflects candidly on her experience of subjecting her grandmother’s narrative to feminist discourse analysis. In response, Borland’s grandmother wrote to her to complain that

your interpretation of the story as a female struggle for autonomy within a hostile male environment is entirely YOUR interpretation. You’ve read into the story what you wished to – what pleases YOU . . . the story is no longer MY story at all.53

Reflecting on this experience, Borland concludes that researchers should forewarn research participants about their scholarly intentions before committing them to writing. In this way, she suggests that ‘we might more sensitively negotiate issues of interpretative authority in our research’ and establish our field collaborators as ‘an important first audience for our work’.54 Interestingly, however, she nonetheless defends her right to assert her agency as a scholar by bringing theoretical insights or what she calls ‘textured understanding’ to bear on her data.

Sugarman notes that, in general, ‘socio-legal scholars tend to be less sceptical of “theory” than historians, perhaps finding history’s preoccupation with the particular and detailed overwhelming, daunting, or simply “positivist”’.55 Historians, meanwhile, are often wary of what they see as using a broad theorizing brush to sweep around the awkward complexities of the past.56 This is not an abstract debate about process, as the relative weight afforded to theory in research design has demonstrable consequences for scholarship. The positivist primacy given to quantifiable facts, for example, has cast a long shadow on the field of criminology.57 In recent decades, this has provoked much lively debate about the relative weight that should be afforded to fact and theory.58 These key debates within criminology speak directly to the issue of whether and to what extent

54 Id., p. 421.
56 Turner refers to this as the privileging of ‘architectural majesty’ at the expense of awkwardly local detail. J. H. Turner, Theoretical Sociology: 1830 to the Present (2013) 861.
57 Reviewing all articles published between 2000 and 2009 in the top 15 journals in the field, Copes and colleagues found that only 3.69 per cent relied on text-based data. H. Copes et al., ‘A Content Analysis of Ethnographic Research Published in Top Criminology and Criminal Justice Journals from 2000 to 2009’ (2011) 22 J. of Criminal Justice Education 341.
58 In his seminal text The Criminological Imagination, Young introduced the caricature of a ‘datasaur’, ‘a creature with a very small head, a long neck, a huge belly and a little tail’. By steadfastly refusing to be led by theory, Young suggests that the datasaur inevitably produces aimless research; the researcher ‘knows he [sic] must move constantly but is not sure where he is going’. J. Young, The Criminological Imagination (2011) 15. Not surprisingly, this provoked a strong response. See for example M. Hough, ‘Confessions of a Recovering “Administrative Criminologist”: Jock Young, Quantitative Research and Policy Research’ (2014) 10 Crime, Media, Culture 215.
an oral history approach should seek to accommodate theoretical insights and how this should influence the design, structure, and analysis of the interview.

Qualitative interviews range widely in structure from the non-directive methods popularized by Rogers 59 to the standardized formats associated with door-to-door surveys. 60 Likewise, oral history formats may include ‘self-report, personal narrative, life story, oral biography, memoir, testament, in-depth interview, recorded memoir, life history, life narrative, taped memories, [and] life review’. 61 However, with oral history, there is typically more of a focus on the individual lived experience of the interviewee than the topic under investigation. 62 This is reflected in the length of the interview and the level of detail sought on, for example, early life and education, even when this is not immediately relevant to the theme of the project.

The life story format is quite rightly a highly respected genre within oral history, 63 but there are in my view a number of challenges associated with interviews that typically last between 8 and 15 hours. The first is that requiring this level of commitment from participants significantly limits the range of individuals with whom one can hope to engage, inviting criticism about the extent to which the sample can be deemed representative. 64 In a scathing critique, Tuchman cautions against a free-flowing approach that assumes that all narratives are of equal value and thus invites ‘all sorts of people’ to ‘ramble effortlessly and endlessly into a tape recorder’. The net result, she suggests, is that ‘a few veins of gold and a vast mass of trash are being preserved’ as ‘we are drowning ourselves in unneeded information’. 65 Although I am uncomfortable with the casual arrogance of this assessment, I nonetheless take the point that oral historians need to reflect carefully on interview selection and structure in order to make best use of resources.

Another practical challenge associated with lengthy life history interviews is that they are for the most part incompatible with international comparative fieldwork. By way of illustration, when undertaking research on lawyers in conflict and transition across six international sites, we conducted an average of 22 interviews per jurisdiction (with the assistance of local translators) in bursts of one to two weeks at a time. This may well invite criticism of ‘cappuccino fieldwork’ that looks good but lacks substance, but there is simply no way that we could have expected busy cause lawyers, many of whom were working against the clock as clients waited impatiently to access their services, to offer us 8–15 hours of their time. 66

A third and related challenge concerns the extent to which an interviewer feels comfortable probing their interviewee. It is of course imperative for interviewers to avoid an overly didactic or instrumental approach and to instead enter into what Parkin (in his analysis of Weber’s concept

---

64 Lummis suggests that issues of representation go to the heart of debates about the value and authenticity of oral evidence.
of Verstehen) calls an ‘empathetic liaison’ with the observed. There is, however, a danger of this bleeding into the caricature of the ‘neutral’ or passive interviewer. Most oral historians are well aware of these dangers and many would indeed argue that one of the key distinguishing features of oral history is its capacity to be interrogative. If, however, someone voluntarily gives up hours of their time over the course of several sittings, there is inevitably a danger that they might expect, if not a hagiography, then at least a somewhat uncritical appraisal of their contribution to history. This is less of a problem for the oral historian whose obligations end with the deposit of files in an archive, but it arguably creates tensions for the scholar tasked with interpretation, analysis, and critique. At risk of patronizing ‘non-elite’ interviewees, it is also fair to suggest that the researcher’s ability to probe and query is all the more necessary when interviewing the self-assured individuals who dominate the worlds of law and politics.

In many respects, the intrinsic value of oral history rests on its focus on the ‘thick’ meanings attached to individual lived experience and the privileging of the interviewee’s narrative over pre-ordained scholarly suppositions. While acknowledging the powerful contribution that such an approach can make to socio-legal studies, I think that it is important to hold in check the dangers of oversimplifying or underestimating deeply entrenched power dynamics, uncritically accumulating individual narratives, and in particular fetishizing the individual, authentic, and unfiltered voice of interviewees. In extremis, this can inhibit our ability to identify broader patterns and themes and breed inverted elitism, parochialism, and insularity. This takes on added significance in the ‘real-world’ context of efforts to engage oral history to deal with a conflicted past, and it is to this that we now turn.

4. CONCLUSION

In this final section, I want to return briefly to the area of socio-legal studies in which I primarily work, transitional justice. Some scholars working in settled democracies may consider that the role of oral history in transitional justice is too exotic or ‘exceptional’ to usefully inform broader socio-legal debates. In my view, however, there are at least two solid reasons for placing a spotlight on contexts of violence, upheaval, and rupture. First, it can be argued that the extreme circumstances of transitional justice shine a particular theoretical light on political and ideological

---

67 The principle of Verstehen for Weber demands the incorporation of objective understanding of subjectively meaningful action in order to understand both individual action and social structures. F. Parkin, Max Weber (2002, rev. edn) 19.
68 There remains considerable force in Gouldner’s caution about the myth of the ‘neutral academic’ and the related dangers of ‘fetishizing the underdog – to the point of producing . . . the urban sociologist’s equivalent of the “noble savage”’. A. W. Gouldner, ‘The Sociologist as Partisan: Sociology and the Welfare State’ (1968) 3 The Am. Sociologist 103, at 106.
70 Qualitative research with ‘politically conscious actors’ is always vulnerable to the charge that elite interviewees will speak to a particular political or cultural script. See J. M. Berry, ‘Validity and Reliability Issues in Elite Interviewing’ (2002) 35 PS: Political Science and Politics 679.
71 In a scathing criticism of what she dubs the ‘explanatory industry’ of gathering Southern Sudanese narratives of displacement, Kindersley cautions against the ‘narrative trap’ associated with a pre-determined ‘life story’ approach. She suggests that this involves a fundamental failure to engage with powerful historical and political concepts such as displacement and exile. N. Kindersley, ‘Southern Sudanese Narratives of Displacement, and the Ambiguity of “Voice”’ (2015) 42 History in Africa 203, at 232.
fault-lines that are also present but less visible in settled democracies. Second, and relatedly, the praxis of transitional justice – designing and delivering mechanisms such as truth commissions, special courts or tribunals, and amnesties, and thinking through how oral history might complement such processes – gives a ‘real-world’ edge to otherwise abstract methodological debates. Before considering the ways in which transitional justice usefully exposes the tensions between oral history, law, and politics, it is worth recapping on what oral history brings to the post-conflict table.

For most scholars and practitioners of transitional justice, realizing a legitimate and just political system wherein the rule of law prevails is fundamental to the transition to democracy. Indeed, the core components of the transitional justice ‘tool kit’ are all ‘creatures of law’. In such a context, as Thompson famously argued, law undoubtedly matters. Taking that as a given, I contend that a key element of the ‘value-added’ of oral history is its capacity to curb the narrowing and (case-by-case) fragmenting tendencies of law and to instead ensure that individual harms are cast in their broader structural and political context. As noted above, this enables us to go ‘beyond legalism’, engaging a much broader range of perspectives than the courtroom can accommodate. Extending the gaze of transitional justice in this manner can illuminate the complex ways in which issues such as gender, class, race, and geography shape experiences of conflict. In addition, the core commitment to preserve data in an archive is a useful bulwark against presentism, encouraging a ‘longer view’ that acknowledges both the historical roots of conflict and the need to provide future-facing opportunities for intergenerational reconciliation.

Concerns about the time and resources necessary to collect and preserve oral history accounts in an archive are perhaps less of an issue in transitional justice contexts where we might reasonably expect the democratizing regime to facilitate this process. However, the challenges associated with accountability and trust are significantly magnified. This has been well illustrated in the case of recent attempts to engage oral history to help ‘deal with the past’ in Northern Ireland. With the stated ambition of capturing a diverse range of perspectives on the conflict, UK government proposals for an Oral History Archive initially focused on inviting voluntary contributions via the Public Records Office of Northern Ireland. This immediately raised concerns about the independence of such an archive and its capacity to secure the trust of a suitably broad cross-section of society.

---

73 As Teitel notes, ‘[i]deas of full retributive or corrective justice regarding the past are considered necessary precursors to liberal change’. R. G. Teitel, *Transitional Justice* (2000) 4.
76 A number of commentators have argued that transitional justice tends to focus on comparatively narrow violations of civil and political rights and that it is less attuned to the enduring structural legacies of a violent past. See for example P. Gready and S. Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 *International J. of Transitional Justice* 339.
The debates on interpersonal and discursive authority referred to above focused mainly on the relationship between the interviewer and the interviewee. In the case of transitional justice, the power dynamics at play are typically scaled up to include the collective impact of individual testimonies on contested versions of the past.79 In view of this fact, it is not surprising that the voluntary oral history model proposed for Northern Ireland raised alarm bells as discussed in relation to structure and agency. These concerns included reference to the fact that self-selected groups are highly unlikely to constitute a representative sample of victims and survivors.80 Moreover, I would argue that there is a real danger in such contexts of passively privileging ‘soft-focus’ or ‘apolitical’ oral history at the expense of the ugly structural realities of past violence and its consequences. Such an approach arguably disempowers individuals, disconnecting them from any sovereignty over the conditions that help to explain their past experiences. This takes on an additional sinister edge when promoted as a ‘consolation prize’ for victims, in lieu of access to truth, justice, and accountability through the courts.81

This article set out to examine why oral history is a relatively under-utilized resource in socio-legal studies. Having examined a range of theoretical and methodological explanations – in the context of both individual scholarship and the ‘real-world’ context of transitional justice – I want to consider one final epiphenomenal issue: critical engagement.

In many respects, oral history has had an uneasy relationship with law. Concerns about legal liability have tended to provoke a number of opposing and equally problematic remedies. The first attempts to sidestep the law by depositing sensitive accounts outside the state. The Russian archival recovery project led by Figes, for example, was duplicated and preserved in the UK to avoid confiscation by Putin’s security service.82 As part of its ‘Sounds of Silence’ series, the Hrant Dink Foundation in Istanbul also collected interviews with Armenians who have their roots in various regions of Turkey, but the original recordings are believed to reside in Scandinavia.83 In the case of Northern Ireland, however, the limits of this approach were laid bare in the case of the Boston College Tapes project, which resulted in the Police Service of Northern Ireland successfully subpoenaing oral history interviews with republican and loyalist ex-combatants deposited at the Burns Library in Boston College to assist with investigations into unsolved crimes of the past.84 The fallout from that project undoubtedly cast a chill over oral history research well beyond the Northern Ireland conflict.85

The second remedy seeks to engage the law to remove the threat

---

80 Oral historians have long since cautioned that self-selected groups tend to attract the ‘central groups’ in society. See P. Thompson, ‘The Voice of the Past: Oral History’ in Perks and Thomson (eds), op. cit., n. 10, p. 33, at p. 38. This lends itself to what Gouldner refers to as ‘lower middle-class ethnocentrism’. Gouldner, op. cit., n. 68, p. 106.
82 See <https://www.orlandofiges.com/whisperers.php>.
84 A key factor was the UK/US Mutual Legal Assistance Treaty (MLAT). For analysis of the jurisprudential context, see W. Havemann, ‘Privilege and the Belfast Project’ (2010) 65 Stanford Law Rev. Online.
85 Given that the paramilitary punishment for informing was typically death, the daubing of ‘Boston College Touts’ on a wall in West Belfast was clearly designed to intimidate. Such concerns are not, of course, unique to Northern Ireland. See for example E. Jessee, ‘The Limits of Oral History: Ethics amid Highly Politicized Research Settings’ (2011) 38 Oral History Rev. 287.
of prosecution for pre-transition offences, in effect introducing some form of amnesty. This arguably opens up the space for truth recovery, but, as we have seen recently in Northern Ireland, the price for such a move may be the closing down of other avenues to truth and accountability. A third potential remedy seeks to elevate the law by prioritizing existing legal and ethical constraints to the point of prescribing an anodyne and disproportionately risk-averse approach to oral history wherein strict adherence to legal formalism is expected to provide all of the answers for oral historians. Such an uncritical approach to the relationship between law and politics is of course undermined by more than 50 years of socio-legal scholarship.

There is also a flip side of undue deference to a very traditional view of oral history within socio-legal studies. Some notable exceptions notwithstanding, there appears to be a prevalent view of oral history that accepts archives and archivists as axiomatically neutral, trustworthy, and omnipotent. The consequences of this includes the privileging of a certain type of ‘life narrative’ interview and the exclusion of shorter interviews that, although colourful, sharp, and informative, are deemed unfit for preservation. In order to mitigate this tendency, it is necessary to revisit what Thomson identifies as the second and third paradigmatic shifts in oral history (the ‘post-positivist’ approaches to memory and subjectivity and the transformation in perceptions about the agency of the interviewer). It also calls for re-engagement with the notion of shared authority popularized by Frisch in his ground-breaking book some three decades ago. That approach focused attention on the respective authority of the interviewer and the interviewee. I would argue, however, that particularly in the context of transitional justice, it is necessary to also engage the archives and archivists that (by dint of their role in facilitating preservation) determine what is and is not ‘oral history’.

Recasting oral history as a three-way production between interviewer, interviewee, and archivist, predicated on the principles of partnership, reciprocity, and trust, is in my view the most effective way to identify creative and pragmatic means of navigating the politics of preservation. For lawyers, in order to maximize the space for methodological innovation and the advancement of scholarship, what socio-legal studies needs is not more ‘oral history’ per se but, rather, deeper engagement with its more critical theory and practice. Likewise, oral historians have much to learn from the inherently questioning approach to law and legal phenomena that is the essence of socio-legal studies.

---

86 See McEvoy and Mallinder, op. cit., n. 74.
89 Frisch, op. cit., n. 50.