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Webinar briefing

Towards Justice **Responding to Past** **Harms**

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Towards Justice: Responding to Past Harms

Cumberland Lodge Webinar
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About the author



Martina Y Feilzer is supporting our work on policing and criminal justice in 2021, as a freelance Research Associate. She is a Professor of Criminology and Criminal Justice at Bangor University and her research is on: public perceptions of criminal justice at local, national and European levels; the relationship between the media and public opinion of criminal justice; questions of legitimacy, trust in justice and penal policy; and comparative and historical criminal justice research.

Martina is Co-Director of WISERD, the Wales Institute of Social and Economic Research and Data at Bangor University, and Co-Director of the Welsh Centre for Crime and Social Justice. She is currently developing a research programme on the experiences of police officers going through periods of transition after regime change or past injustices.

Martina started her career as a Research Officer at the University of Oxford and joined Bangor University in 2007, as a lecturer. She has accumulated a wealth of experience in empirical research, in the field of criminal justice, and has worked on policy-relevant research in relation to youth justice, probation, parole and policing. She works with both quantitative and qualitative research methods, and prefers a mixed-methods approach to research.

Most recently, Martina has worked in collaboration with North Wales Police to develop police degree programmes under the College of Policing PEQF (Policing Education Qualifications Framework).

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Foreword



I am grateful to Professor Feilzer for preparing this short briefing document for us, ahead of our webinar on Thursday 27 January 2021, [Towards Justice: Responding to Past Harms](#). Through a series of online discussions with high-profile guest speakers, we are exploring policing and criminal justice approaches to addressing past harms and injustices in society.

This briefing is designed to inform participants who will be joining the first of three public webinars hosted by Cumberland Lodge this winter, in the lead-up to the 2021 Cumberland Lodge Police Conference, [Towards Justice: Law Enforcement & Reconciliation](#). This year's conference takes place virtually, in light of ongoing COVID-19 restrictions on large gatherings, in June 2021.

You can read more about this annual conference overleaf, and further details can be found on our website at cumberlandlodge.ac.uk/whats-on, along with information about how to join three interactive webinars in this series.

Martina will be producing a short briefing for each of the webinars and participating in the webinar discussions. A consolidated briefing document will also be circulated ahead of our summer conference, and later this year we will publish a summary report on all our key findings and recommendations from this work, to be launched in Westminster.

We hope you find this briefing, and the ensuing discussions, both stimulating and informative for your work and practice. Please take the opportunity to put any questions you may have to our guest panellists, during the live event, on Zoom.

A handwritten signature in black ink that reads "Edmund Newell".

Canon Dr Edmund Newell

Chief Executive

Cumberland Lodge Police Conference

Cumberland Lodge has been creating a safe space for constructive dialogue on the most pressing policing and criminal justice matters, since 1981.

Guided by our Police Steering Committee of police leaders and serving police officers, we run a renowned Police Conference each year. It brings together a multi-agency delegation of senior police officers, NGO leaders, lawyers, academics and senior civil servants, to tackle a key issue at the forefront of the police agenda.

Our involvement in this arena goes back to the earliest days of the foundation, with meetings on policing matters having taken place here since the 1950s. Recently, we have explored topics ranging from surveillance to drug abuse and gang crime, multiculturalism, and relationships with the media.

Our guest speakers have included Government representatives, senior policymakers and All-Party Parliamentary Group chairs, prominent senior serving officers, NGO leaders, Police and Crime Commissioners, academics, MPs and Cabinet Ministers. Our Steering Committee is currently chaired by Chief Constable Olivia Pinkney QPM (National Police Chiefs Council lead for Local Communities), and her predecessor was Dame Sara Thornton DBE QPM, now the UK's Independent Anti-Slavery Commissioner.





Briefing

Towards Justice: Responding to Past Harms

Towards Justice: Responding to Past Harms

The questions raised by this opening webinar, Towards Justice: Responding to Past Harms, go to the heart of the purposes of national and international criminal justice systems. One core aim of the criminal justice system is to hold to account those who have broken the law and caused harm to others in the process. This is embedded in the very maintenance of social order – it protects victims and prevents future crime, and encourages us, as citizens, to trust the state with our safety and security rather than to take the law into our own hands.

The criminal process is beset with problems when it comes to interpersonal crimes – responding quickly, efficiently and with compassion to victims of crime, whilst maintaining the rights of the accused to fair and impartial proceedings. These problems are magnified when the people who have caused harm – including deaths, serious injury or trauma – and committed wrongs are state actors, or when the harms being addressed happened in a distant past.

State actors can cause harms not only through deliberate activities, with intent, but also by fulfilling their duties so poorly as to cause additional harm to crimes experienced, or by failing entirely in their duties to both protect vulnerable and powerless victims from harm and hold to account those who caused the harm. Such instances raise complex issues for the criminal justice system and wider questions about the legitimacy of criminal justice and the exercise of state power.

These discussions challenge us to think about whether there is a need to distinguish between different types of historic wrong, and the role that policing and law enforcement might play in each.

Examples of different wrongs include:

- Past conduct that breaks existing criminal law and was committed with impunity by individual offenders, due to police failure to act on evidence of crime (e.g., cases of historical sexual abuse)
- Past conduct that breaks existing criminal law and was committed by state agents (e.g., actions in Northern Ireland or at Hillsborough)
- Past conduct by state agents that is considered to have been wrong (e.g., the Stephen Lawrence case or the Windrush Scandal).

Different harms occur in their unique social, political and historical contexts, however, and may resist simple categorisation. Should such harms be regarded as sitting on a continuum, or are they in fact unique and should we treat them as such? What is clear is that such wrongs cause serious harm to individuals, as well as to wider social groups, with ongoing contemporary ramifications that require different institutional responses.

In the case of indictable or indictable-only offences (which do not carry time limitations), if serious harm constituted a breach of criminal law at the time, criminal justice institutions are obliged to investigate and instigate criminal justice proceedings. Bringing such proceedings comes with additional investigatory challenges, however – both for the prosecution and the defence – in terms of establishing and securing evidence, and addressing witness memory fade as well as false memories, etc.

In cases where conduct is deemed to have been wrong but where standard criminal justice proceedings are inappropriate or have failed, and events ‘have caused or are capable of causing public concern’, inquiries can be set up under the parameters of the *Inquiries Act 2005*.¹ The power to set up an independent inquiry rests with a Government Minister, and recent examples include the ongoing Independent Inquiry into Child Sexual Abuse, and the Grenfell Tower Inquiry. In the case of the Windrush scandal, the Home Office established a

Lessons Learned Review in 2018, which concluded in 2020 and made 30 recommendations for change and improvement.

Restorative Justice processes – broadly conceived – have been hailed as another and more forward-looking alternative to standard criminal justice proceedings, particularly when it comes to large-scale abuse and harm. The most famous example of this approach is the South African Truth and Reconciliation Commission, but a number of other countries have also established truth commissions (e.g., Brazil, Sierra Leone, etc.) and others still have built restorative justice elements into their youth and criminal justice systems (e.g., England and Wales, New Zealand, and Australia). The hope, here, is that the process of establishing the facts of past harms and expressions of remorse will lead to a sense of catharsis, forgiveness and reconciliation. The evidence of truth-telling being a precursor to forgiveness and/or healing and reconciliation is mixed, however, and truth-telling in the context of state-managed truth commissions, as well as other restorative justice processes, is usually carefully managed.²

Perspectives on how to deal appropriately with historic harms involving state actors will differ according to the different groups affected – including the victims of direct or indirect harm, suspected wrongdoers, the general public, institutions of justice and state representatives. Deciding which situations warrant a form of accountability – be it through prosecution for individual crimes, restorative justice, or a public inquiry into organisational wrongdoing – is not straightforward and frequently results from external drivers rather than from proactive law enforcement and state recognition.

Most police work is driven by the report of a suspected crime (it is estimated that over 80 per cent of crimes recorded by the police are the result of complaints by victims or witnesses) and in this respect, high-profile past crimes and injustices are no different. Recognition of them often comes from external drivers – largely outside of state influence – such as: reports by investigative journalists, as in the high-profile miscarriage of

justice cases of the 'Birmingham Six'; complaints by the family members of victims, of police neglect and failure, as in the case of the investigation into Stephen Lawrence's murder; campaigns for justice by the families of victims, as in the Hillsborough disaster; or public campaigns supported by parliamentary representatives, as in the pardon of Alan Turing and the subsequent legislation (the Alan Turing Law) that was passed in 2017.

Responding to past harms

The desire to put right the past is driven by a perception that, in order to move on towards a 'better' future, we need to recognise and publicly acknowledge past wrongs, aim to repair the harms that were caused in some way, hold to account those who were responsible for them, and learn valuable lessons for the future. The discussion of resolving large-scale past wrongs in the context of state or state agent involvement would fall into the remit of transitional justice studies – an umbrella term usually reserved to describe a period of transition from oppressive and violent state regimes to more peaceful and democratic modes of governance.

According to the United Nations,³ transitional justice encompasses 'the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.

This applies to some of the events under discussion here, such as the actions of state agents in Northern Ireland, but in other situations, the harm being addressed is narrower and the focus is more specifically on repairing community relations and (re)building trust and securing the ongoing legitimacy of state activity and state power.

Occasionally, societal change forces a recognition of past conduct, and even law, as wrong and harmful. Such discussion of investigating and righting the past depends on a widespread acknowledgement of past conduct as wrongs/ crimes/injustices. For instance, in the debates about offering

immunity to British soldiers for their actions in Northern Ireland, we see a lack of agreement about past actions.⁴ How far we unravel the actions of the past depends on the scale of harm, the level of intent to cause harm, the evidence of harms caused, and the victims and the accused.

There is a risk to judging the past according to contemporary values, where responses move beyond establishing the facts of what happened and acknowledging the wrongs of the past towards trying to measure past conduct against the values of the present. The term ‘memory activism’ is used in this context, describing a ‘victim-centric use of memory’ that disconnects it from past context and complexity with the intention of ‘using the past for the aims of the present’.⁵

The passing of the Alan Turing Law in 2017, in England and Wales, a collective clemency law extending a posthumous pardon awarded to Alan Turing by the Queen in 2013 to everyone who was convicted under the historical offence of buggery raises questions about the purpose of mobilisation and its effects.⁶ In contrast, where external mobilisation is not available, or victims’ ‘suffering is not considered strong or crucial enough’⁷ or in line with a contemporary agenda, past wrongs will often remain forgotten and unaccounted for.

Rebuilding trust in justice is a key reason for the principles of holding to account, whichever form this may take. In ‘deeply divided societies where state authority is widely disputed’⁸ – as well as in communities that lack confidence in state actors due to past experiences of over-policing and under-protection or discrimination – the re-building of trust in the rule of law and state legitimacy depends on dialogue and engagement with the community and civil society,^{9,10} accompanied by processes that offer forms of justice.

Where public trust in the police has been shaken – either by abuse or lack of protection – rebuilding public trust in the police as a legitimate authority is essential, so that community members feel compelled to obey their instructions.¹¹ The legitimacy of state actors matters, because ‘when citizens

recognise the legitimacy of an authority, they believe that the authority has the right to prescribe and enforce law-abiding behaviour'.¹² Where state activity continues to be regarded as an abuse of power, compliance with instructions will be hard to extract, and conflict may persist.

When we consider different responses to past harms, a number of tensions are apparent between conceptions of justice as accountability, 'one of the most important checks on the exercise of power',¹³ justice as an end to impunity and prosecution of individuals, and justice as repentance and reconciliation. As mentioned above, perspectives on what justice is may differ between different audiences and different social, cultural and political contexts.¹⁴ Court sentences include important communicative elements – publicly denouncing the offender, expressing blame and censure to a number of audiences – and for some, restorative justice programmes 'lack the sort of public accountability we expect from criminal justice institutions'.¹⁵

There are additional, and more practical, challenges in subjecting past harms to standard criminal justice proceedings, or even to public inquiries. Investigations require significant resources and dedicated teams of investigators. Where past harms have been committed by state actors, buy-in may be required from across state actors' home organisations and a balance needs to be struck between ensuring the independence of the investigation/inquiry and exploiting local understanding of context and local contacts. Tensions that are evident in all criminal justice investigations, between believing a victim and upholding a defendant's rights, are magnified in the context of past harms.

Join the conversation

This Cumberland Lodge webinar on 27 January 2021 will draw on a range of perspectives to explore these matters further. Full details of the event, and how to join it online, can be found on the Cumberland Lodge website at: cumberlandlodge.ac.uk/whats-on/towards-justice-responding-past-harms

Our guest speakers are:

- **CC Simon Bailey QPM** – Chief Constable of the Norfolk Constabulary
- **Wendy Williams CBE** – Author of the Windrush Lessons Learned Review
- **Matthew Scott** – Criminal Barrister at Pump Court Chambers

As a non-video participant, you will have the chance to get involved via our live question-and-answer session, using the Q&A function on Zoom.

Upcoming discussions

This webinar will be followed by two further webinars in February, to set the scene for the June 2021 Cumberland Lodge Police Conference, [Towards Justice: Law Enforcement & Reconciliation](#).

If you have not yet had the chance to, please register to join us for the next two webinars in this series:

- **Insights into Truth & Reconciliation**
Wednesday 10 February 2021, 11.00am GMT
Zoom registration link: https://us02web.zoom.us/webinar/register/WN_5QMxN3YIQ9W_0-oG_TAPtQ
- **Victim Perspectives on Past Injustices**
Thursday 25 February 2021, 11.00am GMT
Zoom registration link: <https://www.cumberlandlodge.ac.uk/whats-on/towards-justice-law-enforcement-reconciliation>

Endnotes

- 1 Bingham, A, Delap, L, Jackson, L, Settle, L (2016). Historical Child Sexual Abuse in England and Wales: The role of historians. *History of Education*, 45(4): 411-429.
- 2 Stanley, E (2005). Truth Commissions and the Recognition of State Crime. *British Journal of Criminology*, 45(4), Special Issue: State Crime: 582-597. See p.591
- 3 United Nations Security Council (2004). *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. UN Doc S/2004/616. See p.4
- 4 Hansard (2019). House of Commons Hansard, Debate 20 May 2019, Volume 660. <https://hansard.parliament.uk/commons/2019-05-20/debates/06752875-A995-4952-A1C8-89E342B72FA6/ImmunityForSoldiers> [Accessed 25 May 2020].
- 5 Caroli, P (2018). The Thin Line between Transitional Justice and Memory Activism: The case of the German and English 'Pardons' for convicted homosexuals. *International Journal of Transitional Justice*, 12: 499-514. See p.511
- 6 Caroli, P (2018). The Thin Line between Transitional Justice and Memory Activism: The case of the German and English 'Pardons' for convicted homosexuals. *International Journal of Transitional Justice*, 12: 499-514. See pp.499-500
- 7 Caroli, P (2018). The Thin Line between Transitional Justice and Memory Activism: The case of the German and English 'Pardons' for convicted homosexuals. *International Journal of Transitional Justice*, 12: 499-514. See p.512
- 8 Mulcahy, A (2006). *Policing Northern Ireland: Conflict legitimacy and reform*. Willan Publishing. See p.3
- 9 McEvoy, K, Dudal, R, and Lawther, C (2017). Criminology and Transitional Justice. In Liebling, A, Maruna, S, McAra, L (Eds. 6th edition). *The Oxford Handbook of Criminology*. Oxford: Oxford University Press. See p.408
- 10 Della Porta, D (2014). Cycles of Protest and the Consolidation of Democracy. *Partecipazione & Conflitto*, 7(3), Special Issue: New Directions in Political Sociology.

- 11 Tyler, T R (1990). *Why People Obey the Law*. New Haven: Yale University Press.
- 12 Murphy, K, Bradford, B, Jackson, J (2015). Motivating Compliance Behaviour Among Offenders: Procedural justice or deterrence? *Criminal Justice and Behaviour*, 43(1). See p.4
- 13 Roche, D (2003). *Accountability in Restorative Justice*. Clarendon Studies in Criminology. Oxford: Oxford University Press. See p.3
- 14 Xue, H (2014). A Point to Meet: Justice and international criminal law. *Asian Journal of International Law*, 4: 35-39. See p.37
- 15 Roche, D (2003). *Accountability in Restorative Justice*. Clarendon Studies in Criminology. Oxford: Oxford University Press. See p.3



Cumberland Lodge empowers people to tackle the causes and effects of social division.

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