



Cumberland Lodge

exchanging views, inspiring minds

Webinar briefing

Towards Justice

Insights into Truth and Reconciliation

February 2021

Martina Y Feilzer



cumberlandlodge.ac.uk



#clTowardsJustice
@CumberlandLodge

Foreword



I am grateful to our freelance Research Associate, Professor Martina Feilzer, for preparing this short briefing document for us, ahead of our [Insights into Truth and Reconciliation](#) webinar at 11.00am on Wednesday 10 February 2021.

Our work on policing and criminal justice this year explores policing and criminal justice approaches to addressing past harms and injustices in society, in the UK. This briefing is designed to inform participants who will be joining the second of three public webinars we are hosting this winter, to pave the way for 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, in June 2021.

You can read more about our annual policing and criminal justice conference overleaf, and further details can be found on our website, along with information about how to join our webinars, at cumberlandlodge.ac.uk/whats-on. Video and audio-only recordings of our opening webinar in this series, on Responding to Past Harms, can be found [here](#).

Martina is producing a short briefing to accompany each of the webinars in this series. These will be incorporated into an expanded briefing to 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

About the author



Martina Y Feilzer is the author of this webinar briefing document. She has been commissioned to support 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).

[@martina0074](https://twitter.com/martina0074)

Police Conference

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

Guided by a steering committee of police leaders and serving officers, we run the renowned Cumberland Lodge Police Conference every summer, bringing 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 policing agenda in the UK.

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.



Insights into Truth and Reconciliation

The second Towards Justice webinar from Cumberland Lodge, on Wednesday 10 February 2021 at 11.00am, focuses on what we can learn about effective responses to past harms by examining how far Northern Ireland has progressed in addressing its troubled past. [Assistant Chief Constable Kerrin Wilson QPM](#) from Lincolnshire Constabulary will be in conversation with [Jonathan Powell](#), Chief Executive Officer of Inter Mediate and a former Chief Negotiator on Northern Ireland, to explore the role of police reform and the work of the Police Service of Northern Ireland (PSNI) in building community trust and regaining police and state legitimacy in a divided country.

This briefing outlines some of the responses available to the state in responding to past harms, and explores their potential for supporting reconciliation, as well as their limitations. Understanding the motivations that lie behind different responses is key to assessing their efficacy and whether they have achieved their aims.

The drivers of responses to past harms include state as well as individual victim and group interests. In democratic states that are committed to upholding the rule of law, based on principles of policing by consent, a lack of trust in police protection and a perception of unfair treatment by the police can threaten compliance with the law and with policing activity. This can increase the risk of continued or new unrest, within and between communities, as well as more conflict with the police.

Police Ombudsman reports published in 2003 suggested that police officers in Northern Ireland were more likely to use force in interactions with the public, and six times more likely to be assaulted, than police officers in the rest of the UK, highlighting the impact of long-standing distrust and fear.¹ In 2013/14, the cost of policing in Northern Ireland remained higher than that of

England and Wales, Ireland, and Scotland, despite its relatively low crime rates. For example, by 2013, Northern Ireland had a homicide rate that was similar to that of England and Wales, and relatively low in international comparison, and yet the costs of policing remained high due to the persistent paramilitary threat and the resource implications of investigating past crimes.²

There is clear evidence that public confidence in the PSNI is rising and is now fairly high amongst both Protestant and Catholic communities, particularly in terms of a sense of being treated fairly. Nevertheless, differences in confidence levels remain – for example, in 2018 there was a 13 percentage-point difference in levels of confidence that the PSNI treats members of the public fairly, between Catholic (68%) and Protestant (81%) respondents.³

Despite some improvements in community-police relations, peace in Northern Ireland remains fragile, and the new border arrangements as a result of Brexit have heightened concerns about the potential for a renewed outbreak of community conflict and paramilitary activity. The Government of Northern Ireland clearly has an interest in promoting community confidence in the police, and in rebuilding police (and by implication, state) legitimacy, to reduce this risk of violence and support the ongoing development of peaceful and stable community relations.

In the context of past harms that affect whole communities, individual victim interests are often difficult to identify, as people have different needs after victimisation, and desire different processes in response to the harms they have experienced. People also have different expectations of justice: some will want to forget about their victimisation; some will seek punishment of the offenders; others will work towards forgiveness; or be content with getting their voices heard, setting out the truths of their past, and preventing future harm to others. Thus, any single response to victims' wishes will satisfy some but not others.

This complex picture of how individuals respond to suffering and harm is further complicated when group interests are

taken into consideration. This is illustrated in Northern Ireland, which remains a deeply divided society, and both sides of the divide claim victimisation and past harm. This has hampered recent attempts to address 'legacy issues' from The Troubles that lasted from late 1960s to the late 1990s. These attempts faltered between 2016 and 2018, until, in 2020, new proposals were announced.⁴ It has become clear that assigning 'victim' status after community conflict is a contentious issue and has the potential to create further tensions rather than achieve the desired recognition of harm and promote community reconciliation.

It has become clear that assigning 'victim' status after community conflict is a contentious issue and has the potential to create further tensions rather than achieve the desired recognition of harm and promote community reconciliation.

The process of identifying victims and perpetrators of past harms is an essential part of the process of healing and reconciliation, regardless of the approach taken. This is not a neutral process, and there are only a few instances of past harms where such recognition has not been contested or influenced by a new political settlement. This process is particularly problematic in cases of large-scale conflict or harms involving state agents as well as community members.

In relation to criminal justice processes, designating people as either a 'victim' or 'perpetrator' carries the additional risk of doing more harm than good, because of the perceived arbitrariness of the designation or concern about the potential for miscarriages of justice. In some instances, this process can fuel further conflict. One such example was seen in the debates about offering immunity to British soldiers for their actions in Northern Ireland during The Troubles.⁵

In relation to criminal justice processes, designating people as either a 'victim' or 'perpetrator' carries the additional risk of doing more harm than good, because of the perceived arbitrariness of the designation or concern about the potential for miscarriages of justice.

Thus, when we consider different responses to past harms, a number of tensions become apparent between: conceptions of justice as accountability (or as checks on the exercise of power);⁶ justice as an end to the impunity of individuals; and justice as repentance and reconciliation, based on truth-telling and public recognition of harm. Such tensions exist in most – if not all – responses to past harms, and they feed into different expectations about what those responses should be in the first place. The specific nature of past harms (their scale and nature, the current state of community relations, and levels of trust in the police and the state) and the individual and group perspectives involved, provide an important context in which responses should be formulated.

Against this backdrop, potential responses to past harms are outlined below, along with their key features, benefits, and known limitations.

Transitional justice

'Transitional justice' is an umbrella term, usually reserved to describe a period of transition from oppressive and violent state regimes to more peaceful and democratic societies. According to the United Nations, in 2004, 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'.⁷

This applies to some of the events to be discussed in this webinar, including responses to the past in Northern Ireland. In other situations, however, the harm is narrower and the focus is more

specifically on repairing community relations, (re)building trust, and securing the legitimacy of state activity and state power.

There is no single approach to transitional justice: societies in transition often go through a variety of post-conflict processes. These can include: reparation initiatives; 'rule of law' programmes; criminal prosecutions; truth commissions; or amnesties.

There is no single approach to transitional justice: societies in transition often undergo a variety of post-conflict processes. These can include: reparation initiatives; 'rule of law' programmes; criminal prosecutions; truth commissions; or amnesties.⁸ Both formal and informal approaches may be involved, and these will be specific to: the unique history of the population or country in question, the scale of past violence and abuse, and the level of international involvement. A crucial aspect of transitional justice is the process of re-establishing state legitimacy and the legitimacy of the relevant institutions of justice.⁹

Questions that often arise in the context of transitional justice include:

- When can a process of transition be regarded as complete?
- Which of the transition processes will be the most effective and appropriate in a particular post-conflict society?
- How do state agents that may have been involved in causing the past harm move to a position whereby they can use their powers based on both external and internal legitimacy?

Criminal justice response

In cases where past harm constituted a breach of criminal law – either national criminal law or international law – criminal justice institutions should investigate and instigate criminal justice proceedings. In order to deal with the gravest crimes, such as

genocide or war crimes, the International Criminal Court (ICC) was established in 1998 by the Rome Statute, with the aim of putting an end to the impunity of crimes committed by states.

The jurisdiction of the ICC is restricted: it is a court of last resort, it does not apply its jurisdiction retrospectively, and it focuses on the cases of individual people. The ICC has heard a relatively small number of cases since its inception, and its trials have led to only a small number of convictions. This is set against the significant costs of maintaining the court, controversies relating to its focus on African conflicts and crimes, and perceptions of bias around who is designated a perpetrator in complex national conflicts.

Any criminal process involving interpersonal crimes is challenging because it calls for a response that is swift, efficient and compassionate to victims, whilst maintaining the rights of the accused to fair and impartial proceedings. These problems are magnified when those who have caused harms such as deaths, serious injury or trauma are state actors, or when the harms in question happened in a distant past. These kinds of investigation require significant resources and dedicated teams of investigators.

Bringing such proceedings comes with additional investigatory difficulties, both for the prosecution and the defence, in terms of establishing and securing evidence, addressing witness memory fade, and identifying any false memories. Additionally, where past harms were committed by state actors, buy-in may be required from the state's home organisations, and a balance needs to be struck between the independence of the investigation or inquiry and any exploitation of local intelligence in terms of understanding the organisational context or using relevant local contacts and witnesses. These difficulties, combined with genuine desire to support those who claim to have suffered great harm in the past, increase the risk of wrongful convictions and miscarriages of justice.

In adversarial court proceedings, victims may feel side-lined by the complex process and even suffer secondary victimisation

through the experience of giving evidence and being cross-examined. Some critics argue that the formality of the criminal justice process causes victims to lose their case to the state, thus disempowering them rather than enabling them to participate on an equal basis and tell their story.¹⁰ The criminal justice system also requires a clear distinction between victims and offenders, which can create mutually exclusive categories that do not reflect the realities of conflict or crime.

The criminal justice system also requires a clear distinction between victims and offenders, which can create mutually exclusive categories that do not reflect the realities of conflict or crime.

Nevertheless, court proceedings and sentences have important communicative functions, such as publicly denouncing offenders, and expressing formal blame and censure to different audiences. Ideally, they are exercised according to settled standards, which allows the state to retain authority, in order to ensure the safety of those involved, respect for the rule of law, consistency of response to crime, and the maintenance of human rights standards.¹¹ Successful convictions may also satisfy victims' desires for the punishment of those who harmed them and the prevention of future harm.

Truth and reconciliation commissions

Restorative justice processes, broadly conceived, have been hailed as another, and more forward-looking, alternative to standard retributive criminal justice proceedings – in particular, when it comes to large-scale abuse or harms. The most famous example of this approach is the South African Truth and Reconciliation Commission (SATRC), but a number of other countries have established truth commissions (e.g., Brazil and Sierra Leone), and other countries have built restorative justice

elements into their youth and criminal justice systems (e.g., England and Wales, New Zealand, and Australia).

In the early stages of post-Apartheid South Africa, the SATRC and Nelson Mandela were credited with making a key contribution to South Africa's transition towards peace and democracy. This was held up as a model for other countries to follow,¹² but more recently, the success of South Africa's police reform and state transition have been questioned, in the light of high crime rates, continued police violence, and evidence of a persistently segregated and divided society.

Restorative justice approaches recognise harms as violations of people, communities and relationships. They primarily focus on making good the harm caused to individuals and communities, and requiring accountability from those who were responsible.

Restorative justice approaches recognise harms as violations of people, communities and relationships. They primarily focus on making good the harm caused to individuals and communities, and requiring accountability from those who were responsible. Restorative justice approaches are conceived as being less formal than criminal justice proceedings and more inclusive because they seek to involve everyone with a stake in the conflict. They are based on a positive (and sometimes idealistic) notion of community, where conflict can be resolved, and all parties successfully reintegrated.

The hope for such approaches is that the process of establishing the facts of past harms and securing expressions of remorse from those who were responsible will lead to a sense of catharsis, forgiveness and reconciliation. In the context of the SATRC, concerns have been expressed about the relatively small number of individuals who acknowledged responsibility for Apartheid crimes – around 1,000 – and the standards of truth that are required in the context of the Commission.

The hope for such approaches is that the process of establishing the facts of past harms, and securing expressions of remorse from those who were responsible, will lead to a sense of catharsis, forgiveness and reconciliation.

Additionally, the evidence of truth-telling as a precursor for forgiveness and/or healing and reconciliation is mixed. Truth-telling, in the context of state-managed truth commissions, as well as other restorative justice processes, is often carefully managed. This raises the question of the relationship between establishing truths and achieving justice, and shows that truth and justice often operate somewhat independently, and arguably, with different objectives.¹³

Independent inquiries and Lessons Learned Reviews

In England and Wales, in cases of past harm where conduct is deemed to have been wrong, but where standard criminal justice proceedings are inappropriate or have previously 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 \(I\)](#). The power to set up an independent inquiry rests with Government Ministers, 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 made 30 recommendations for change and improvement in 2020, all of which were adopted.¹⁴

The evidence of how effective independent inquiries and reviews are is mixed. Some inquiries can last many years, leading to lengthy reports with recommendations that, whilst accepted by governments, are not always fully implemented; others lead to criminal proceedings against individual perpetrators of crime or wholesale policy change. The extent to which victims feel able to participate in public inquiries depends on the way in which

the inquiries are framed, and this can lead to tension in the early stages. The Independent Inquiry into Child Sexual Abuse suffered from adverse publicity early on, when questions were raised about the independence of its first chair, and one of the victim representation groups stated that it had lost confidence in the process. The chair was subsequently replaced, and that group has remained involved in the inquiry, despite its initial concerns.¹⁵

Inquiries and reviews are resource-intensive, but when they are established with a clear focus and expectations, and with the proactive engagement of the relevant parties, they can provide opportunities for victims to have their voices heard, for a formal recognition of harm and expressions of accountability and apology to be made, and for learning and policy change to be achieved, to help prevent future harm.

Inquiries and reviews are resource-intensive, but when they are established with a clear focus and expectations, and with the proactive engagement of the relevant parties, they can provide opportunities for victims to have their voices heard, for a formal recognition of harm and expressions of accountability and apology to be made, and for learning and policy change to be achieved, to help prevent future harm.

Following the recent Windrush Lessons Learned Review, the Home Secretary offered the chair of the review an opportunity to assess the extent to which her recommendations had been implemented, one year down the line – an example of accountability for government action that is rarely seen.

Conclusion

Approaches to past harms can take different forms, but consideration of the aims of different responses is vital for framing expectations at the outset, avoiding the creation of new divisions, and increasing the chances of offering some sense of

closure to victims, perpetrators and the wider community. It is important to acknowledge that a criminal justice process does not necessarily need to be involved in order to hold to account those who have committed past harms. In some instances, the requirements of the criminal justice system to prove guilt can clash with the desire to establish the truth of past harms and to bring about effective community reconciliation.

It is important to acknowledge that a criminal justice process does not necessarily need to be involved in order to hold to account those who have committed past harms.

Supporting individuals and communities to come to terms with past harms is an important part of any response, and holding to account those who were responsible is key to the maintenance of social order, the protection of victims, the prevention of future crime, and the preservation of a state's ability to convince its citizens to trust it with their safety and security, rather than taking the law into their own hands.

Evidence from a number of examples of past harm reveals that the amount of time that has passed has an impact on subsequent assessments of a response's effectiveness or success. This was a factor in the initial enthusiastic endorsement of the SATRC as a wholesale success, which gave way to more sceptical assessments, more recently. It is also important that responses to past harms – particularly to large-scale conflicts – are viewed as a process rather than a single intervention or event.

This briefing suggests that we are yet to identify a single effective process for responding to past harms that is without significant limitations or shortcomings, but it does highlight some of the considerations that might guide decisions about the most appropriate response for different scenarios. What is key is that any response to past harms both avoids risking further harm and recognises the full range of interests and perspectives involved – of the victims, of those who have caused harm, of the communities they belong to, and of the state more broadly.

Join the conversation

In this free, interactive webinar from Cumberland Lodge – Insights into Truth and Reconciliation – we explore different responses to addressing past harms and injustices in society – including public inquiries, criminal charges, transitional justice, and truth and reconciliation (or restorative justice) approaches.

In particular, we explore the role of truth commissions and reconciliation efforts, and draw on the experiences of Northern Ireland to examine how communities are confronting their troubled past and revisiting past crimes and large-scale disruption. We examine the role of police organisations in helping to rebuild trust in justice and the state, and the various challenges involved.

This webinar is streaming live on Wednesday 10 February 2021 at 11.00am. It takes the format of a conversation between:

- [Jonathan Powell](#), CEO of Inter Mediate and former Chief Negotiator on Northern Ireland
- [Assistant Chief Constable Kerrin Wilson QPM](#) of Lincolnshire Constabulary.

Please register in advance to join the discussion live on Zoom, at: https://us02web.zoom.us/webinar/register/WN_5QMxN3YIQ9W_0-oG_TAPtQ

Full details can be found on the Cumberland Lodge website, [here](#).

As a non-video participant watching live on Zoom, you will have the chance to take part by submitting questions to our guests, using the Q&A function. We are live-tweeting from this series [@CumberlandLodge](#), with the hashtag [#clTowardsJustice](#)

Coming up soon

The final webinar in this three-part series is:

- **Victim Perspectives on Past Injustices**
Thursday 25 February 2021, 11.00am GMT

For full details and the Zoom registration link, please visit:

www.cumberlandlodge.ac.uk/whats-on/towards-justice-law-enforcement-reconciliation



Endnotes

1. Jarman, N (2010). From War to Peace? Changing patterns of violence in Northern Ireland, 1990–2003. *Terrorism and Political Violence*, 16(3), 420–438.
2. Wilson, R (2016). Northern Ireland Peace Monitoring Report, No 4. <https://niopa.qub.ac.uk/bitstream/NIOPA/8064/1/NIPMR-Final-2016.pdf> [Accessed 2 February 2021].
3. Gray, A-M et al (2018). Northern Ireland Peace Monitoring Report, No 5. <https://www.community-relations.org.uk/sites/crc/files/media-files/NIPMR%205%20%282%29%20new%20version.pdf> [Accessed 2 February 2021].
4. Gray, A-M et al (2018).
5. Hansard (2019). House of Commons Hansard, Debate 20 May 2019, Volume 660. <https://hansard.parliament.uk/commons/2019-05-20/debates/06752875-A995-4952-A1C8-89E342B-72FA6/ImmunityForSoldiers> [Accessed 25 May 2020]
6. Roche, D (2003). *Accountability in Restorative Justice*. Clarendon Studies in Criminology. Oxford: Oxford University Press.
7. United Nations Security Council (2004). *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*. UN Doc S/2004/616, p4.
8. McEvoy, K, Dudal, R, and Lawther, C (2017). Criminology and Transitional Justice. In A Liebling, S Maruna and L McAra (Eds. 6th edition). *The Oxford Handbook of Criminology*. Oxford: Oxford University Press.
9. Eriksson, A (2009). *Justice in Transition: Community restorative justice in Northern Ireland*. Cullompton: Willan Publishing.
10. Christie, N (1977). Conflicts as Property. *British Journal of Criminology*, Vol 17(1), 1–15.
11. Ashworth, A (2002). Responsibilities, Rights and Restorative Justice. *British Journal of Criminology*, Vol. 42, 578–595.

12. Roche, D (2005). Truth Commission Amnesties and the International Criminal Court. *British Journal of Criminology*, Vol 45(4), Special Issue: State Crime, 565,581.
13. Brannigan, A (2013). *Beyond the Banality of Evil: Criminology and Genocide*. Oxford: Oxford University Press.
14. Home Office (2020). The Windrush Lessons Learned Review Update. 21 July 2020. <https://www.gov.uk/government/speeches/the-windrush-lessons-learned-review-update> [Accessed 5 Feb 2021].
15. BBC News (2020). How Does the Inquiry into Historical Child Sexual Abuse Work? 6 October 2020. <https://www.bbc.co.uk/news/uk-34965912> [Accessed 5 Feb 2021].

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

Since 1947, we have been breaking down silo thinking and building interdisciplinary, cross-sector networks that make a difference. We are an incubator of fresh ideas that promotes progress towards more peaceful, open and inclusive societies.

We actively involve young people in all aspects of our work, and our educational programmes nurture their potential as future leaders and change-makers.

Our stunning facilities are available to hire for residential or non-residential conferences, meetings and special events. Every booking helps to support our charitable work.

Cumberland Lodge
The Great Park
Windsor
Berkshire SL4 2HP
cumberlandlodge.ac.uk
enquiries@cumberlandlodge.ac.uk
01784 432316

    @cumberlandlodge

Cumberland Lodge is a company limited by guarantee.
Company number 5383055
Registered charity number 1108677
© Cumberland Lodge 2021. All rights reserved