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Twenty Years After: Statute of Limitations and the Asymmetric Burdens of Justice in Northern Ireland and Postwar Germany

Original article

C.K. Martin Chung*

Department of Government and International Studies, Hong Kong Baptist University, Kowloon Tong, Hong Kong.

School of History, Anthropology, Philosophy and Politics, Queen's University Belfast, Belfast, UK

**Correspondence: ckmartin@hkbu.edu.hk*

Dr. C.K.M. Chung, Room 1113, 11/F, AAB, Hong Kong Baptist University, Kowloon Tong, Hong Kong

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Abstract

In 2018, that is, twenty years after the conclusion of the Belfast Agreement ending the thirty-year conflict in Northern Ireland known as the 'Troubles', the UK Government started a consultation on dealing with its legacy. The House of Commons Defence Committee proposes the enactment of a statute of limitations to shield veterans from further investigations into Troubles-related crimes. It would represent a 'balanced' approach to justice, as some paramilitary combatants had also received de facto amnesty through various schemes.

This paper argues that given the involvement of the British state in the historical conflict, a 'balanced' approach to dealing with the past is inadequate. Drawing on parallel parliamentary debates in Germany that began around 1965, that is, also twenty years after the end of conflict, the paper makes the case that an asymmetric approach is both promising and necessary for the reconciliation process to move forward.

Keywords: Statute of Limitations, Amnesty, Transitional Justice, Northern Ireland, *Vergangenheitsbewältigung*

1. Introduction

In early 2009, when the Consultative Group on the Past (CGP) in Northern Ireland published their report and recommendations for dealing with the legacy of the Troubles (1968-1998), they rejected amnesty as an option. It was not, however, because the Group, led by Robin Eames and Denis Bradley, thought that amnesty was a bad idea; rather, they had some rather favourable words for it: 'An amnesty now would have the advantage of removing some of the anomalies and inconsistencies in the handling of historical cases. … It would allow greater focus on information recovery… It would avoid problems arising from criminal case reviews. It might be one way of encouraging society to move on' (CGP 2009: 132). The reason why they rejected it was because society then was not ready. Instead, the Group proposed, *inter alia,* the establishment of a 'Legacy Commission' to deal with the legacy of the past by adopting 'a balanced approach between justice, truth and reconciliation' (CGP 2009: 133). The new Commission should also 'make recommendations on how a line might be drawn at the end of its five-year mandate'. That was the Group's last word on the matter, who were obviously quite sympathetic to the idea of amnesty in the not so distant future.

More than ten years on since some of the best minds of the community brooded over how to deal with the destructive consequences of the intercommunal conflict that took more than 3,500 lives and ruined many more who survived it, the same question of whether some form of amnesty makes sense for Northern Ireland still haunts the region and beyond. In July 2019, the Northern Ireland Office (NIO) released their analysis of the consultation 'Addressing the Legacy of Northern Ireland's Past', which

attracted more than 17,000 responses over four months to reflect on how best to bring forward the institutions and processes contained in the Stormont House Agreement (NIO 2018: 8). The analysis reveals that there is little support for a 'general amnesty'; rather, a 'clear majority of all respondents' are convinced that 'a Statute of Limitations or amnesty would not be appropriate for Troubles-related matters' (NIO 2019: 12, 21). Yet, a few months and one general election later, amidst the escalating Coronavirus outbreak, the Ministry of Defence (MOD) under Ben Wallace (Con) introduced the Overseas Operations (Service Personnel and Veterans) Bill in the House of Commons, whose presumptive five-year time limit on prosecutions – that is, a *qualified* statute of limitations by another name – threatens to spill over the Irish Sea to cover also the legacy cases in Northern Ireland, prompting quick rebuttal on the ground (Hansard 2020a; McEvoy et al. 2020: 3, 21, 32).

This article seeks first to trace this dramatic turn of approach to the past when it comes to statutory limitation, and then, by way of a comparative example, attempts to answer whether it is wise to do so at this juncture. For also around the 20-year mark of the end of armed conflict, the German Bundestag began a prolonged process of debating and eventually abolishing their statute of limitations in favour of unimpeded justice for the victims. The *Verjährungsdebatte* (1965-1979), or statute-of-limitations debates, proved one of the landmarks of postwar (West) German transformations, from which multiple lessons of 'mastering the past' (*Vergangenheitsbewältigung*) have been drawn (Reichel 2001; Sharples 2014). By dissecting and characterising the two parliamentary approaches to the same problem of statutory limitation for crimes by state agents, this study aims to explain the similarities and differences and argues for the superior appropriateness of one approach over the other.

It is not to be taken for granted that West Germany in the 1960s and 1970s and Great Britain at present are 'comparable cases'. They probably are not for specialists in British and German politics and history, given the obvious contrasts in electoral systems and parliamentary politics, legal traditions and the *Sonderweg* of German democracy, to name just a few. But in area specialists' viewpoint these are not necessarily disqualifying factors: after all, one could also come up with any number of *shared* characteristics of the two cases depending on the chosen aspect of comparison. As Rustow (1968: 47) put it succinctly in the inaugural issue of *Comparative Politics*, borrowing from Jacob Bronowski's insight of 'created order': comparability is not inherent in the cases, but 'a quality imparted to them by the observer's perspective.' Whether that perspective is convincing or not is another question, which cannot be answered by the objection of incomparability at the outset.

The 'quality' of comparability proposed in this two-case study is threefold: Firstly, the long shadow of past state crimes over the present. Despite the passage of time the quest for justice for the victims has not 'moved on' but still animates political debates and dominates front pages from time to time. Secondly, the critical juncture of two decades after the end of conflict at which a whole new 'peace' generation comes of age to carry the burden of former generations – the 'first guilt' from the crimes themselves and the 'second guilt' from the many failings in insufficient investigation or downright cover up and premature *Schlussstricht,* or 'drawing the line' under the past (Giordano 2000; CGP 2009: 63). Thirdly, the entanglement of conflict relationships that renders the upholding of justice for some a palpable injustice for some others. The political choice of enacting or abolishing a statute of limitations therefore assumes the proportion of a moral choice between lesser evils.

As we shall see in the case studies below, questions about which victims' interests should be upheld first, what kind of 'balance' should be aimed at, and the seemingly contradictory quests for 'drawing the line' and for 'justice no matter how belated' pervade the two parliamentary approaches under

examination.[1] Timing for the comparative intervention is of particular importance, for at any other given time, the two cases rarely 'talked' to each other – rather, 'lesson-learning' has been more or less a one-way street (Paterson and Jeffery 2001). The counterintuitive value of the German approach for the British problem of coming to terms with the Northern Irish past has never been as apparent as it is at present.

Based primarily on the parliamentary debates[2] concerning statutory limitation in both democracies undergoing prolonged transition from a state of conflict, the article proceeds with the structured narratives of the two cases, highlighting the distinct occasions for and the political forces behind the separate debates. Comparative analysis reveals and contrasts the two approaches: one seeking to achieve 'balance' based on the principle of self-prioritization, the other gearing towards reconciliation through a deliberately 'unbalanced' venture to maximize the chance of attaining justice for the victims of one's own crimes. In terms of normative contribution, the article posits that, as far as the burdens of justice are asymmetric for the different victim-perpetrator-bystander configurations in which the state is no 'unburdened' judge, its pursuit of a 'balanced' approach is doomed to fall short of what is required to mend the asymmetry created by past injustice.

2. Statute of limitations in the United Kingdom: From 'probing amendment' to 'statutory presumption against prosecution'

In this section, we will attempt to sketch the contours of the British parliamentary approach to the question of statutory limitation thus far. We will see that the MOD's current Bill introducing a statutory 'presumption against prosecution' of British armed forces regarding alleged conduct during overseas operations – which awaits its seconding reading in the House of Commons as of writing – is no isolated incident but the culmination of years of collaboration among concerted political forces to change the hitherto British approach to the past. In particular, it will become apparent that the whole debate has been centred on the victim-veteran, i.e. individuals like Dennis Hutchings and David Griffin,[3] who have been upheld by supportive MPs time and again as the quintessential 'victims' of unjust prosecutions (Hansard 2019e). Secondly, there is a downward moralizing tendency whereby the unjust 'amnesty' allegedly received by paramilitaries serves as justification for a statute of limitations for British veterans and soldiers. Furthermore, the common denominator of both the government and its parliamentary critics rests on the pursuit of a 'balanced' approach: for the government under Theresa May, it was about achieving a balance in investigative efforts reflecting the tripartite shares of deaths during the Troubles (i.e. to arrive at 10% of investigation for 10% of deaths attributable to state forces); for its critics, balance meant de facto amnesty for veterans matching the de facto amnesty for terrorists allegedly 'granted' by the Good Friday Agreement (GFA), that is, even the 10% investigation prospect should be scrapped. These dimensions of comparability –

[1] By comparing German and British approaches to the past, however, one does not need to subscribe automatically to the thesis that the Shoah is comparable to any other historical atrocity, including the Troubles, the conditions and characteristics of which were in multiple ways unique (Bauer 2001: 62; Working Party on Sectarianism 1993: 27). Rather, the basic assumption of this article is the universal value of the *lessons* learned from answering the question of justice in different post-conflict institutional settings (Sa'Adah 2006).

[2] While parliamentary debates are often (rightly) downplayed as mere public posturing of politicians and political parties, they can also reveal – through careful discourse analysis – the particular pathos and ethos of parliaments in specific time and space, as Peter Shirlow (2018) has shown.

[3] David Griffin is a former royal marine being investigated for the killing of a man in Belfast back in 1972 and hailed by tabloids as another example of those victim-veterans wronged by 'lawfare' (e.g. Hardy 2018).

balance, victimhood, and comparative justice – will also be addressed in section three, which examines the German parliamentary approach to their statute of limitations.

To begin with the obvious: the UK does not have a tradition of statutory limitation for serious criminal offences. The early parliamentary discussions after the 1998 settlement were mainly focused on the compatibility of international conventions and the legal systems in the UK, with individual MPs and peers affirming the British tradition in contrast to others. The parliamentary ethos at the time was captured in the vivid words of the late Lord Williams of Mostyn, who was then serving as Attorney General for England and Wales as well as Northern Ireland, in response to the view that it makes no sense to prosecute people in old age for crimes they had committed in youth: 'Our jurisprudence does not normally operate on the basis of a statute of limitations. Hitler was not an old man between 1933 and 1939; nor was Stalin, at the height of his crimes … justice should not be mocked by the passage of time' (Hansard 2001). MPs, such as Michael Connarty (Lab), prided themselves of their legal tradition and tasked their government to 'persuade' their European counterparts to follow suit (Hansard 2011). Julian Lewis, the Conservative MP for New Forest East, who would later figure prominently in the debates on protecting British veterans from 'lawfare', or the perennial investigations into the deaths attributed or attributable to state forces during the Troubles, also lamented in 2007 that a statute of limitations would have obstructed the pursuit of justice for historical cases such as the murder of Bulgarian dissident Georgi Markov in London in 1978 (Hansard 2007).

2.1 Prelude: Soldier J and the failed 'probing amendment'

The recent parliamentary endeavour, supported by a number of Conservative and Democratic Unionist Party (DUP) MPs, to establish a statute of limitations for Troubles-related crimes and others allegedly committed by state forces has its genesis in the decade-long Bloody Sunday Inquiry. Although it succeeded in 2010 in prompting David Cameron, who just became prime minister then, to apologise on behalf of the UK to the victims of the 'unjustified and unjustifiable' shootings by British soldiers on 30 January 1972 (Hansard 2010a), it did not result in any direct prosecution. The arrest of 'Soldier J' more than five years later, in November 2015, was therefore seen as a major breakthrough in bringing justice to the Bloody Sunday victims (Rayner 2015). The possible prosecution of British veterans for Troubles-related deaths unsettled individual MPs across the House. Already in 2010, Harriet Harman (Lab) asked Cameron whether he would consider the question of 'immunity from prosecution' in order to bring forward the 'wider process of reconciliation' as clearly favoured by the CGP (Hansard 2010b). In 2015, Jim Shannon (DUP) took the opportunity of the Armed Forces Bill deliberations to nudge the Conservative government to stretch somewhat the provision of 'immunity from prosecution' to spare former soldiers like 'Soldier J' from 'spurious allegations'. 'There has to be protection for our brave service personnel. Where we can, we should give them immunity' (Hansard 2015b).

Shannon's endeavour had no luck in the House of Commons, as the government responded that the use of such immunity as proposed in the Bill (i.e. eventually Art. 7 of the Armed Forces Act of 2016) was restricted to the aid of further investigation, not to grant blanket immunity (Hansard 2015c). The Strangford MP's attempt, however, was followed up on by Lord Craig of Radley in the House of Lords in early 2016. Referring to the UK Supreme Court's 2013 judgment (UKSC 41) on Smith and others v the Ministry of Defence[4] and the subsequent 'increasingly vexatious problem of prolonged and historic litigation' against veterans, the crossbencher asserted that the 'first step should be to

[4] On the details and significance of the case, see Solomou (2014).

introduce a statutory time limit for new cases against personnel on live operations. … to introduce a statute of limitation specific to military activity' (Hansard 2016b). Thereupon urged Lord Craig, who had survived the Irish Republican Army (IRA) mortar attack of Number 10 back in 1991, fellow peers to assist him to draft 'a probing amendment or two' to test the government's standing on the question of limitations.

That 'probing amendment' came in the form of 'Amendment 10', motioned by Lord Craig himself on 3 March 2016 during the second sitting of the Grand Committee discussing the Armed Forces Bill. A new clause was to be inserted: 'No member of the armed forces may be prosecuted for any offence alleged to have taken place more than 20 years ago while the member of the armed forces was engaged in military operations outside the United Kingdom' (Hansard 2016c). This proposed amendment, however, obviously does not include Northern Ireland as it covers only outbound operations. Nevertheless, it faced considerable opposition. Several peers objected on the ground that such a statute would contradict the whole tradition of English jurisprudence. Lord Thomas of Gresford (LD), on the other hand, mused on the 'unfortunate effect' it would have on the ongoing investigations in Germany concerning actions of former soldiers during the Holocaust (Hansard 2016d).

Faced also with the principled objection of the government (Hansard 2016e), Lord Craig withdrew his amendment. But that was not the end of the drive towards more 'protection' for soldiers or their commanding officers. For simultaneously, debates on the questions of immunity and pursuit of historical justice took place in parallel discussions in the House of Commons on another key piece of legislation that would have direct implications on the legacy of Operation Banner: the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016.

2.2 Veterans as victims of 'lawfare'

Leading the debate were again DUP MPs, who found the legal and social focus on former soldiers and police officers in Northern Ireland 'disproportionate' and therefore unjust. According to Jeffrey Donaldson, the then party chief whip: 'The reality is that 90% of all the killings that occurred in the Troubles were carried out by paramilitary organisations. However, if we look at … the amount of money spent on investigations and inquests, proportionately far more of that resource goes on the 10% of deaths attributed to the state' (Hansard 2016a). Later on, he also encouraged government ministers 'to give serious consideration to the introduction of a statute of limitations that would protect the men and women who served our country and who deserve that protection' (Hansard 2017a). Among other reasons, he cited the 'big impact on recruitment to our armed forces' that the investigations and re-investigations were allegedly having. The MP for Lagan Valley was supported by Conservative MPs like Jack Lopresti and Tom Tugendhat, who cited the Eighth Commandment to make the point that veterans – like Dennis Hutchings, a former British soldier who has been accused of attempted murder in Co Tyrone in 1974 and upheld by MPs as the victim-veteran of 'lawfare' par excellence – were being falsely accused by discredited lawyers like Phil Shiner (Hansard 2017b).[5]

The kind of statutory limitation that the DUP supports, however, is explicitly partial. Donaldson was adamant that there could be 'no amnesty for terrorist-related crimes' as he motioned to urge the government to achieve 'balanced and fair' investigations for legacy cases (Hansard 2017d). The DUP chief whip was obviously at pains to justify the perhaps unjustifiable: 'We see no moral or legal

[5] Phil Shiner was involved in compromised investigations by the Iraq Historic Allegations Team (IHAT) (Belfast Telegraph 2017).

equivalence between the armed forces and the police and illegal criminal terrorist organisations. We do not want them to be treated the same. We believe that our police officers, soldiers and veterans should be treated fairly, but they are not being treated fairly' (Hansard 2017d). How it is possible to treat someone 'fairly' while at the same time 'not the same' as others only Donaldson could tell. The point of the whole endeavour, therefore, is not simply to have a 'proportionate' system prosecuting veterans and paramilitaries alike based on the ratio of deaths attributable to them respectively. As Lewis later spelled out to Karen Bradley, the then Secretary of State for Northern Ireland, who had conceded that a more 'proportionate' system was needed: 'An end to disproportionate focus is not the answer we need. What we need is for a line to be drawn, and the way to draw that line is to have a statute of limitations and a truth recovery process' (Hansard 2018c). 'Truth', once again, demands the price of justice, so goes the argument of the DC chair, as also hinted at in the CGP Report (2009: 133).

2.3 'Standing up to international law' with the Northern Ireland case

Theresa May's government consistently resisted calls for a statute of limitations specifically for British soldiers. The main legal argument furnished is that, according to James Brokenshire, the predecessor of Bradley, the UK has international legal obligation to investigate crimes committed by British soldiers (Hansard 2017d). This is where the legacy of the Troubles in Northern Ireland assumes a significance that goes beyond the devolved region. Conservative backbenchers like Henry Bellingham, Julian Brazier and Leo Docherty have all spoken of the need to 'return' to humanitarian law (e.g. the Geneva Conventions) from human rights law (e.g. the European Convention on Human Rights, ECHR), which they saw as insidiously substituting the 'law of war' in recent years and thereby exacting an extra (and unnecessary) onus on the British armed forces in their operations (Hansard 2017d; Hansard 2018d).[6] In view of this 'negative' development, which obviously has profound implications for reviewing British military actions in Iraq, Afghanistan and elsewhere, a statute of limitations appears as a 'backstop' of sorts – that is, in case the attempt to go back to humanitarian law fails, as the 2017 Conservative Party Manifesto has promised to achieve (2017: 41).

What then is the role of Northern Ireland in all this? A most telling comment from the Conservative supporters of a statute of limitations came from Julian Lewis on 2 February 2017:

> We have to find a system to ensure that what happened in Iraq[7] is never allowed to happen again. At some stage, that might mean standing up to the provisions of international law, and if we were to do that, we would have to use the strongest possible case. What case could be stronger than the existence of a settlement in Northern Ireland in which one group of people were protected while the soldiers who represented the majority of the people were unprotected and left exposed indefinitely? (Hansard 2017c)

The DC Chair's fellow Conservative MP Richard Benyon, who initiated the Armed Forces (Statue of Limitations) Bill on 1 November 2017, also expounded on the significance of statutory limits not only for past conflicts but also for those in the future: 'this is a matter not just for veterans, for whom we rightly have concern, but for our armed forces of today and in the future' (Hansard 2018d). Indeed, to follow Lewis's logic, to use Northern Ireland as the 'strongest possible case' for the UK to stand up to international human rights law so that, by extension and by precedent, British obligations to re-examine and account for its military activities in Iraq, Afghanistan and other future theatres of conflict

[6] On the interaction between human rights law and humanitarian law, see Orakhelashvili (2008).
[7] Lewis obviously meant the debacle of the IHAT, not the war itself. See DC (2017b).

would significantly diminish makes some sense. After all, what else could move the British population to support a statute of limitations more effectively than appealing to their sympathy and sense of justice for those sixty- and seventy-year-old pensioners like Dennis Hutchings? The same sympathy may not be expected for British soldiers of more recent conflicts, who are still relatively 'young enough' in the public's view to face possible prosecution and punishment for their misdeeds during the operations.

But Lewis should also know very well that to instrumentalise the Troubles in such a way would not work after all. Regardless of what one thinks of the 'expansion' of human rights law into the territories of humanitarian law, problem is that even a 'return' to the law of armed conflict would not have the effect that the DUP MPs are wishing for. The simple fact is that, according to official British account, the conflict bearing the euphemism 'the Troubles' was not a 'war', and consequently the 250,000 British soldiers who served in Northern Ireland were not involved, technically speaking, in a war situation. As reminded by the DC's invited legal experts giving oral evidence to one of their related inquiries, 'successive British Governments were determined not to apply humanitarian law and to maintain the position that the Army were there operating under the normal domestic law' (DC 2017a: Q16). The same historical fact was also raised by Karen Bradley when challenged by fellow Conservative MPs for not including the option of statutory limitation in the Legacy Consultation, as promised by her predecessor (Hansard 2018h). So either the British government retroactively recognises the conflict as 'war' – which would mean that the IRA had been right all along to claim that they were fighting a 'war of liberation' against the British colonisers, hence conducting legitimate acts of war, not terrorism (Bloomfield 2007: 38, 216) – or to unilaterally 'return' to humanitarian law in its legal treatment of past and future conflicts involving British military personnel *except* Operation Banner.[8]

2.4 Comparative justice and a balanced approach

Another recurring complaint of the supporters of statutory limitation is that it is unfair that the paramilitaries have it (or something similar in effect, according to them), while veterans don't. In the words of Richard Benyon (Con):

> There already is a bias. … There is a limit of two years for any former terrorist found guilty after the Good Friday Agreement was signed. Many feel that the on-the-run letters, which were part of the Good Friday Agreement, effectively give terrorists a statute of limitations (Hansard 2017f).

The conflation of the two-year 'limit' in the sentence review mechanism of the GFA[9] and the proposed statute of limitations is blatant, and so is the attempt to shove the much criticised on-the-runs (OTRs) under the GFA, as if those who had opposed the peace agreement had nothing to do with the scheme.[10] The fundamental problem, however, is the downward moralizing tendency via comparison with the unjust but 'better deal' that the paramilitaries purportedly got. Such was the contrast put

[8] Note therefore the language of the March 2020 Overseas Operations (Service Personnel and Veterans) Bill speaking of not wars but 'operations' including peacekeeping, dealing with terrorism, civil unrest or public disorder (section 1). And when 'war crimes' are taken out of 'relevant offence' (schedule 1), crimes committed in non-war 'operations' are presumably 'relevant' except when committed against fellow security personnel (section 6).

[9] The mechanism provides for accelerated prisoner release on licence under certain conditions for scheduled offences. See Morgan (2000: 502-3).

[10] On the contested link between the DUP and the scheme, see Powell (2008: 241).

forward by Lewis, 'if a terrorist has killed 16 people and gets prosecuted, for example, they are let out after two years. … Whereas if a soldier has killed one person wrongly and they are prosecuted, they serve a life sentence' (DC 2017a: Q77). In other words, because the British state has committed a wrong to grant the loyalist and republican prisoners such a 'good deal' at the expense of justice to the victims, it should commit another such wrong to give the same to British soldiers, again at the expense of justice, but to other victims this time.

When pressed again by Conservative backbenchers like Johnny Mercer – now Parliamentary Under Secretary of State (Minister for Defence People and Veterans) – and Ranil Jayawardena on the issue of veteran protection on one of her last days as prime minister before announcing her resignation as party leader, Theresa May pointed out the pitfall of this way of downward comparison: by arguing that British soldiers should be given a statute of limitations because paramilitaries had been given de facto or partial amnesty, one is in fact seeking to bring British soldiers *down* to the level of terrorists, which MPs in support of statutory limitation have ironically spoken against (Hansard 2019b). Instead of giving in on several such occasions, May steadfastly stuck to what Ian Paisley Jr. (DUP) called her 'new gold standard' of reforming the existing system: future investigations need to be 'fair, balanced and proportionate' (Hansard 2017e; Hansard 2017d).[11]

May's 'balanced' approach, however, differs markedly from the CGP proposal ten years ago. Whereas the group led by Robin Eames and Denis Bradley emphasised the need to engage the question of justice *in tandem* with 'the process of recovering information of importance to relatives' within the overarching framework of intercommunal reconciliation (CGP 2009: 17-8, 133), Theresa May and Karen Bradley meant by 'balance' the rectification of the 'disproportionate' legal focus on the alleged crimes of British veterans. As Karen Bradley sought (in vain) to reassure Lewis in writing, who was dismayed by the NIO apparently going back on its promise in the legacy consultation (see below): the government's balanced approach means that the future HIU 'will look at more deaths of security forces than deaths by security forces' (Bradley 2018). This kind of numerical balance is far from the balance between reconciliation, justice and truth that the CGP envisaged.

According to the NIO's own analysis, it would seem that this understanding of what it means to have a 'balanced' approach to dealing with the past is shared by 'many' at present (NIO 2019: 10-11). Among the responses published is that of the Police Federation for Northern Ireland, who also see the problem of 'imbalance in legacy [investigations]' and prefer the solution of '1:9 security forces/terrorists ratio' in future investigative efforts, i.e. May's 'balanced' approach, instead of trying to achieve balance by giving amnesties to all – terrorists and security forces alike (Police Federation for Northern Ireland 2018: 3, 27).

2.5 The dawn of statutory presumption against prosecution

When the NIO rolled out the consultation back in May 2018, the DC was unimpressed because the promised option of statutory limitation was not included. Lewis called it 'a step backwards' (Hansard 2018g). Bradley retorted that it would be 'misleading' to include such an option only open for soldiers as it could not be legal,[12] and nobody wanted a universally applicable statute of limitations (Hansard 2018e). Hence when on 11 June 2018 Gavin Williamson, then defence secretary, promised Mark Francois (Con) that the MOD would now take over the cause and look into the practicality of the

[11] 'Transparent' and 'equitable' are sometimes added to the list (NIO 2018: 6).
[12] See legal opinions given to the DC (2017a: Q98, 108).

proposal, it looked like a viable alternative legislative avenue compared to the recalcitrant NIO (Hansard 2018b).

And at long last, after a sustained campaign by several individual MPs and a few e-petitions,[13] it was the MOD that was able to put forward something that resembles a statute of limitations. On 22 July 2019, Penny Mordaunt, the successor of Williamson and predecessor of Ben Wallace, kicked started a 12-week consultation on measures 'to address the basic unfairness of repeated investigations many years after the event', which include a 'statutory presumption against prosecution'. This 'presumption' was proposed to be applicable to alleged offences more than 10 years old (down from Lord Craig's original proposal of 20 years in 2016) (Mordaunt 2019; Hansard 2019a).[14] But to the chagrin of Unionists, it would apply only to offences committed *outside* the UK, thus not applicable to alleged crimes by British soldiers in Northern Ireland. Likewise, the current Bill presented by Wallace in the House of Commons on 18 March 2020 with an even shorter (5 years) limitation period covers only 'overseas operations' outside the British islands – as a first step. For just before the introduction of the Bill, Baroness Goldie, a minister of state at MOD, revealed in the House of Lords that a separate 'Stormont Bill' would eventually 'replicate the same types of protections we are trying to achieve' for overseas operations (Hansard 2020b). Whether this is achievable, however, with a weakened Unionist position in the Northern Ireland Assembly after the 2017 election is doubtful.

3. Statute of limitations in the Federal Republic of Germany: From hesitant extensions to complete abolition

While understandable from the points of departure of its main proponents, the British parliamentary approach to the question of statutory limitation thus far is not unproblematic in view of the incomplete reconciliation process in Northern Ireland. To point out but the most obvious, the victim-veteran-centred approach inevitably leaves the *first* victims – i.e. victims of state-responsible crimes – as an afterthought. As Stephen Pound (Lab), the long-year shadow minister for Northern Ireland and one of the lone voices in the by-and-large internal Conservative and Unionist affair,[15] forcefully puts it: 'justice cannot be time-expired. … Above all, we need to remember two groups: the veterans, by all means; but also let us never forget the victims' (Hansard 2019d). Ultimately, this leads us to the question of *prioritisation*: whose victims' justice should be prioritised among apparently competing claims? And by whom? On the other hand, how can one find fault with a British government pursuing a 'balanced' approach to justice to achieve a 'fairer' share of investigative rigor for its service personnel? Or even the more ambitious 'justice' that the DC has been relentlessly seeking for veterans? To answer these questions and to address their related dilemmas, we shall now proceed to explore an *alternative* approach to the problem of statutory limitation offered by the (West) German

[13] Including e-petitions 243947, 219576 and 251994 between 2018 and 2019. Details are available on https://petition.parliament.uk.

[14] According to Kieran McEvoy of Queen's University Belfast, however, such 'presumption' does not seem to amount to much more than the prosecutorial test. Personal interview by the author, 8 Oct. 2019.

[15] None of the opposition parties are against a statute of limitations in principle: the Scottish National Party is critical of the government's intention to derogate from the ECHR but supportive of looking into the possibility of statutory limits (Steven Paterson in Hansard 2017d); the Social Democratic Labour Party tried to redirect the debate towards 'health, education and the economy' as more 'pressing issues' than a statute of limitations (Margaret Ritchie in Hansard 2017d); the Ulster Unionist Party, on the other hand, was only irked when the DUP sought to put the blame on David Trimble concerning the OTRs (Danny Kinahan in Hansard 2017d), and Lady Hermon (Ind) rose to support the judiciary in Northern Ireland when it was criticized as sectarian (Hansard 2018f). Here, one wonders how the debates might have turned out had the Sinn Féin MPs taken up their seats at Westminster instead of pursuing their long-held abstentionist policy.

parliamentary example following the dimensions of comparability – balance, victimisation and comparative justice – that have structured the narrative of the British case.

To begin with the obvious again: Germany, unlike the UK, did have a long tradition of statutory limitation, dating back from the very beginning of unified Germany in 1871 at least (Sharples 2014: 84). The battle for its abolition – with regards to genocide and murder in general – was thus an uphill struggle. The Bundestag only needed to do nothing in the 1960s and 1970s, and Nazi crimes would have become *'verjährt'* or 'un-prosecutable' by default. Those members of Bundestag who wanted to turn their country away from this path set before it, like Walter Menzel (*Sozialdemokratische Partei Deutschlands*, SPD), Ernst Benda (*Christlich Demokratische Union*, CDU) and Hildegard Hamm-Brücher (*Freie Demokratische Partei*, FDP), had to overcome (initial) parliamentary majorities and internal party inertia or even hostility. With the help of international admonition, the victims' and survivors' initiatives and participation, and the timely injection of appropriate intellectual resources for confronting the Nazi past, the West German parliament was able to move from hesitant extensions of statutory limits to avert the disaster of 'expiring' Nazi murders in 1965 to, finally by 1979, successfully abolishing the statute of limitations for murder (and genocide) altogether.

3.1 Prelude: Failing to avert the statutory limitation for manslaughter

Already in the 1950s, the question of statutory limits surfaced on the political agenda. For according to the German Criminal Code back then,[16] manslaughter (*Totschlag*) and accomplice to murder (*Beihilfe zum Mord*) fell under the statutory limit of 15 years (Sharples 2014: 84), which means Nazi perpetrators of these crimes could no longer be prosecuted after 8 May 1960, when the end of the Second World War in Europe was taken as the starting point of the limitation period (von Miquel 2004: 194). The Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) in Ludwigsburg was created in 1958 under the aegis of Wolfgang Haußmann (FDP), minister of justice in Baden-Württemberg, partly with the goal of achieving *timely* prosecution of Nazi crimes (originally restricted to those committed outside Germany)[17] before their respective statutory limits lapsed. That goal, however, proved unrealistic given the sheer amount of new evidence coming to light, especially from Poland (Just-Dahlmann and Just 1988: 13). With this backdrop, while some continued to seek a general amnesty for all Nazi era-related crimes, arguing that it would be in line with the 'Christian-humanistic tradition' of mercy (von Miquel 2004: 187-8), others made attempts to stop the clock of limitation, one way or another. Neither had any success, however, under Konrad Adenauer's centre-right government. Even the modest initiative by Menzel to relocate the beginning date of the tolling period from 8 May 1945 to 15 September 1949 – when Adenauer was elected as the first federal chancellor – was to no avail, despite protest and petition from the Israeli government and 49 British MPs (von Miquel 2004: 203; Sharples 2014: 90). Manslaughters committed before 1945 therefore were allowed to become *'verjährt'* on 8 May 1960.[18]

[16] Paragraph 67 of the 1953 version.

[17] Terms of reference later expanded in 1964 and 1966 to include Nazi crimes committed in West Germany. (Weinke 2009: 81-2; Zentrale Stelle 2018: 6).

[18] The case of accomplice to murder was more complicated – and ironic in historical respect – for it should actually fall under the 20-year statutory limit, that is, same as murder, according to a court ruling in late 1960 based on a legislation from the Nazi era that had rendered both crimes, murder and accomplice to murder, punishable by death. See von Miquel (2004: 208-9).

3.2 Remembering the victims through statutory extension

Menzel's effort was not totally in vain. In fact, the legal expediency of postponing the starting date of the tolling period rather than extending the statutory limits themselves became the short-term 'solution' in 1965, when the 20-year period for the prosecution of murder committed before 1945 should have lapsed. Now under a conservative-liberal coalition federal government with a justice minister (Ewald Bucher, FDP) staunchly against statutory extension, the chances for the opposition to succeed in stopping the statutory clock were not higher than in 1960. However, there was one significant difference – and also in sharp contrast with the British case – this time around, there was a strong internal division within the governing coalition on the issue of *Verjährung* that ultimately helped achieve the compromise.

Bucher, who was already among those opposed to the SPD initiative back in 1960 on the grounds that it would damage the principle of legal certainty (*Rechtssicherheit*), was now in late 1964 convinced that all the evidential materials could still reach German authorities 'in time' (i.e. before 8 May 1965) for the clarification of murder cases in the Nazi era, hence no statutory extension was needed (Deutscher Bundestag 1980: 37, 56). With the SPD still reeling from the previous defeat in 1960 while also eyeing the September 1965 federal elections ahead, it was left to a lone CDU 'backbencher', Ernst Benda, to lead the way to change course for West Germany (von Miquel 2004: 245). Together with over forty fellow parliamentarians alongside a similar proposal by the SPD parliamentary party, the German-Jewish legislator [19] proposed to abolish statutory limits for crimes punishable by life imprisonment (Vogel 1969: 28; Deutscher Bundestag 1980: 153). In the reasoning for the bill presented in the Bundestag on 10 March 1965, the Christian Democrat sought not only to counter the various objections to tinkering with the standing statute of limitations, but also to inject a new meaning into the 'extension' (*Verlängerung*) of statutory limits. Importing a Jewish saying he had seen at Yad Vashem in Jerusalem, Benda ended his speech by pointing to the two outcomes of the decision the Bundestag was about to make: 'Forgetfulness extends (*verlängert*) the exile, the secret of redemption is remembrance' (Vogel 1969: 32).[20]

By failing to extend statutory limits, Benda appeared to be warning fellow Germans, Germany risked the extension of their 'exile', or pariah status, in the international community, or internal exile from their 'sense of justice' (*Rechtsgefühl*) (Deutscher Bundestag 1980: 154). By linking up remembrance, redemption and the statute of limitations, the lawmaker underscored the paramountcy of remembering one's own crimes for mending relationships broken by them, whereas keeping the door open to legal prosecution is an essential expression of that national remembrance. The paradoxical nature of this dual 'extension' was not lost on a contemporary observer: '[The Bundestag] has faced up to the German past without hiding and dodging, it has conjured up painful memories, but precisely by doing this, it has pointed to a way out of the exile, the way that the Jewish mystic[21] has spoken about' (Zundel 1965).

At the end of the debate, a majority position was found by retroactively moving the limitation period starting date from 8 May 1945 to 31 December 1949 for relevant crimes still not yet *'verjährt'* (Vogel 1969: 40-43). It was a disappointing compromise for those against *Verjährung.* In the longer perspective, however, Benda succeeded in turning the German parliamentary approach to the question of statute of limitations at a critical juncture and set the tone for subsequent debates on

[19] Benda's grandmother belonged to the 'wives of Rosenstrasse' who risked their lives to protest publicly for their Jewish husbands imprisoned during the Nazi era (Strothmann 1965).
[20] Unless otherwise stated, all German sources cited are translated by the author.
[21] The saying is attributed to the Baal Shem Tov, a renowned rabbi in eighteenth-century Eastern Europe.

'extension'. At the same time, that ever-present mindset demanding comparative justice for the 'crimes of others' or the setting off (*aufrechnen*) of one crime against another lurked behind the historic parliamentary act and would resurface when the end of the extended limitation period approached in a few years' time (Vogel 1969: 29-30).

3.3 The unbalanced focus on German guilt and its discontent

Four years is not a long time but politically it was for West Germany between 1965 and 1969. The period saw three governing coalitions in Bonn, with the CDU leaving the centre stage after two decades and the SPD taking its place. Culturally and socially, it also marked the beginning of a new era with the generation born after 1945 coming of age and the birth of a new ethos associated with the '1968 movement' sweeping across the Atlantic. The second major change to the statute of limitations in 1969 also reflected the wider societal transformation of the times, which brought belatedly the abolition of the statutory limit for genocide (*Völkermord*) and a longer extension of the statutory limit for murder in general. For its supporters, the German statute of limitations was unduly frustrated once again, and 'injustice' was thereby committed by the 'unbalanced' focus on German crimes against the others – a complaint that harks back to the establishment of the Central Office in Ludwigsburg itself which was mandated to deal single-mindedly with *National Socialist* crimes.

It was to the credit of Social Democrats that this round of the uphill battle was won. Early on in May 1967, the senior Social Democratic members of the first grand coalition (CDU/CSU-SPD) (*Christlich-Soziale Union*) cabinet – Gustav Heinemann, the justice minister, and Willy Brandt, the foreign minister and future chancellor – took the initiative to take murder in general out of statutory limitation, but to no avail due to reservation and even rejection in all three parliamentary parties, including the SPD itself (von Miquel 2004: 320-32). The federal system of West Germany, however, provided for alternative legislative routes (Glaeßner 2006: 399). The Hamburg government, long controlled by the SPD, took its proposal to abolish statutory limits to the Bundesrat in March 1969 (von Miquel 2004: 346). As pressure mounted for the federal government to make up its own mind on the question, the inevitable confrontation in the cabinet came about in April of the same year in which the Social Democrats emerged victorious (von Miquel 2004: 350). Now even the federal government was ready to abolish the statutory limit for murder once and for all (Deutscher Bundestag 1980: 363).

Victory in the cabinet, however, did not automatically translate into triumph in the Bundestag. Not only was the weakened chancellery of Kurt Georg Kiesinger not in the position to enforce discipline within the *Unionsfraktion*, but the government's proposal also ran into conflict with the simultaneous Great Criminal Law Reform (*Große Strafrechtsreform*), according to which the statutory limit for murder was to be extended to 30 years, i.e. 10 years longer than the original limit (Deutscher Bundestag 1980: 378). Thereupon the SPD parliamentary party decided to adapt their motion to the reform legislation, which was eventually adopted (Deutscher Bundestag 1980: 380, 417).

Before the passage of the new compromise, the parliamentary debates in the summer of 1969 were anything but monotonous. First the opposition (FDP) accused the grand coalition of unwittingly taking the path of the Nazis by tinkering with the statute of limitations once again, thereby 'deviating further and further from the rule of law (*Rechtsstaatlichkeit*)' (Deutscher Bundestag 1980: 411). Within the grand coalition itself, while Benda – now federal minister of the interior – found a strong seconder in Martin Hirsch (SPD) in emphasizing the link between remembrance and statutory limitation (Deutscher Bundestag 1980: 407), a fellow Christian Democrat challenged this approach head-on.

In a clear juxtaposition with Benda's borrowing from Jewish theology, Adolf Süsterhenn (CDU), one of the founding fathers of the German Basic Law, summoned none less than a revered pope to assert the minority position within his party that 'letting go and moving on' was preferable to extending statutory limits again and again. He cited an early fifth-century letter by Pope Innocent I:

> The sins committed by nations or great groups often remain unatoned for, for one can simply not proceed against such a great number of people. Therefore I say that the past must be left to Divine Judgment and be averted with the utmost effort for the future (Deutscher Bundestag 1980: 424).

Though in general expressing qualified approval for the second extension, the senior Christian Democrat nevertheless found fault with the 'one-sided' international focus on German crimes committed against the others (i.e. Germans as perpetrators), while those crimes committed against the Germans (as victims) were neglected. Referring to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the General Assembly of the United Nations on 26 November 1968, Süsterhenn criticized not only its retroactivity but also its lack of 'balance'. 'The Convention is one-sidedly (*einseitig*) oriented towards what Germans had done to the others. It leaves no legal possibilities for the prosecution of what others had done to the Germans. … I believe we must profess the concept of indivisible justice (*unteilbare Gerechtigkeit*)' (Deutscher Bundestag 1980: 420-1).

3.4 The rejection of comparative justice and the abolition of statutory limitation

The CDU/CSU *Fraktion's* discontent with the 'unbalanced' approach to the prosecution of past crimes was in fact a recurring theme throughout the postwar decades in West Germany. Writing in 1958, that is, the year that the Central Office was founded, Fritz Bauer, the great German-Jewish attorney general who was instrumental in bringing forth the Frankfurt Auschwitz Trials in the 1960s (Renz 2015), spoke of his 'amazement' by the counterproposal that the Central Office should *also* deal with past wrongdoings *suffered* by Germans such as 'during the war captivity, expulsion or violent eviction' in the so-called former eastern territories (*Ostgebiete*) (Bauer 1998: 98). And in fighting his first *Verjährung* battle, Benda had to explicitly reject the comparison with the 1946 'Amnesty Act' of Czechoslovakia that erased criminal responsibility for acts committed as reprisals against the German occupiers (Frowein et al. 2002: 53), which he called 'shameful' but nonetheless 'deserves no discussion' in the Bundestag in relation to the debates on the German statute of limitations (Vogel 1969: 30). Such a tendency to compare in order not to prosecute further, however, failed time and again to become the political consensus, in 1958 as it was in 1965 and beyond – at times with the help of an emergent remembrance culture (*Erinnerungskultur*).

The 1969 federal elections returned a social-liberal coalition government in Bonn, which banished the CDU to the opposition for more than a decade to come. Since then, the kind of self-critical national memory that the SPD came to embody – especially after Willy Brandt's symbolic gesture of repentance at the Warsaw Ghetto memorial in 1970 – took on a life of its own to shape political outcomes like never before, such as in the third and final battle in the Bundestag for taking murder out of statutory limitation. Before January 1979, the prospect for another extension or abolition of the statutory limit for murder was shaped by the same old party positions long held since the beginning of the *Verjährung* problem. On the one side there were the usual suspects – the CSU and the FDP – who would not want to see yet another extension for well-recited reasons such as the feared damage to the rule of law (von Miquel 2004: 364). On the other side was the SPD that once again acted as the champion of

abolition, and the CDU that was neither for another extension nor for de facto amnesty for Nazi criminals. The divisive issue therefore threatened to add tension to the governing coalition (SPD-FDP), and public opinion was slightly (51%) on the side of those who would want to 'draw the line' with the past once and for all (von Miquel 2004: 365).

The broadcast of a TV programme changed that. By all accounts, the *Holocaust*, a four-part TV series, was a media phenomenon in West German history, which brought renewed popular attention to the enduring problem of German guilt (Fischer and Lorenz 2007: 243-4). Almost overnight, the West German public's attitude towards the question of *Verjährung* changed: from 51% in support of an end to the prosecution of Nazis before the broadcast to 35% afterwards; from only 15% against the end of punishment to 39% after January 1979 (von Miquel 2004: 365). With the change of public opinion came the change of politics. In February and March, two separate but like-minded initiatives to take murder out of statutory limitation were launched by MPs across government and opposition (Deutscher Bundestag 1980: 440-5). Though the consensus was that murder in general and not Nazi murders in particular was the target of legal change, both initiatives explicitly mentioned the latter as giving the proposed change its 'particular meaning' (Deutscher Bundestag 1980: 441, 444).

But what meaning could there be to continue prosecuting crimes committed some 40 years ago? Could there be just remembrance for the victims *without* prosecution of the perpetrators so the society can 'move on'? The federal justice minister Hans-Jochen Vogel (SPD) had a new answer to this old question: to educate the German youth about the failures of the past generation. Referring to and also digressing from the opposition's objection that the proposed abolition would 'demand too much' from the judiciary to do the 'humanly impossible' (*Menschenunmögliches*) to clarify the past (Deutscher Bundestag 1980: 536), the Social Democrat retorted that the abolition would not make the task of clarification more difficult, but the other way around. 'I believe it would be more difficult to explain to the young people, the younger generation the horror of what had happened then … if we say at the same time: but the statutory limit lapses on 1 January 1980' (Deutscher Bundestag 1980: 547). With this new task of educating posterity through court proceedings, an additional argument was furnished for the abolition of statutory limits for good and not merely another extension, for there is no imaginable 'expiry' date for German learning from the Nazi past.

Forty years on since the Bundestag voted in favour (255 vs 222) of finally abolishing the statutory limit for murder on 3 July 1979, prosecution of those involved in Nazi atrocities is still ongoing in reunified Germany (Hinrichs 2019). It results occasionally in conviction (e.g. Oskar Gröning in 2015), stoking debates on the merits of sending nonagenarians to jail and on alternatives to imprisonment such as contributing to youth education instead (Hall 2015).

4. Asymmetric burdens of justice and the problem of balance: A normative argument

For the proponents of a British statute of limitations/statutory presumption against prosecution, that is precisely the outcome to be averted at all costs: that there is no end to the investigation (and possible prosecution and conviction) of British veterans and security personnel well into the distant future. And British veterans are no Nazis or terrorists, they argue, hence there is no point comparing the respective treatments of the two. As Jim Shannon emphatically asserts, the 'upholders of law and order', who 'gave their all in service to Queen and country' do not deserve equality in treatment but 'truth, honour and real justice' (Hansard 2019c). In order to address this major objection to the comparative lesson-drawing enterprise, which cannot be answered by the comparative analysis alone,

the last part of the article is devoted to the development of a normative argument in support of the asymmetric approach to the past.

To the assertion that law-abiding British veterans are victims of 'lawfare', a compendious answer has already been offered by Philippe Sands QC, professor of law at University College London, one of the legal experts giving oral evidence the DC hearings: the 'fact scenario embeds certain assumptions when only an independent investigation can ascertain what the facts are. It is chicken and egg' (DC 2017a: Q25). In other words, whether one is talking about law-abiding veterans or veterans who have committed crimes, only an independent investigation can tell. The core of the problem, therefore, is that not a few of the previous investigations have been found wanting in terms of independence, objectivity and rigour (British Army 2006: 431; Her Majesty's Inspectorate of Constabulary 2013: 16-17).

To borrow from Ralph Giordano's concept of 'second guilt' (*die zweite Schuld*) once again – of which he calls the postwar generation of Germans the 'actual victims' because 'what the grandparents and parents have not paid off is transferred onto them' (2000: 27) – and apply it horizontally, one can say that the 'innocently burdened' British veterans – i.e. those who have done no wrong during Operation Banner – are victims of second guilt as well. For if investigations in the past had been fit for purpose, the elderly pensioners would not have to be re-subjected to investigation or the spectre thereof at present. In this light, further attempts to minimize or even eliminate the prospect of *proper* investigation of state crimes through a statute of limitations or statutory presumption against prosecution would only serve to extend the 'exile' that Benda spoke of, and the horizontal transference of past-burdens becomes vertical in due course. Ben Wallace showed keen understanding of this when he – as parliamentary under-secretary of state for Northern Ireland – defended the continual investigation of crimes involving British veterans: 'if politicians interfere with that course of justice, we will not solve the problems of Northern Ireland. We will just *extend* those problems' (Hansard 2015a; emphasis added).

And Julian Lewis was right, too, to point out the detrimental effect of the political settlement in 1998 on the justice for the victims of both paramilitary violence and state crimes,[22] that is, 'punishment not fitting the crime' (Hansard 2018a). But the 'solution' of comparative justice wherein the two-year limit of imprisonment is to be evened out by a five-year statutory presumption against prosecution simply does not address *that* injustice or insufficient justice. If nothing else, it will have required a positive answer from those responsible for the political settlement – governments, parties, referendum supporters and beneficiaries of subsequent peace – to those victims and survivors who didn't and don't support it (including perhaps even the democratic process through which the issue was resolved), who have a rightful claim to the full course of justice.

Such is the nature of entanglement when it comes to protracted multi-group conflicts. As reconciliation observers and participants have found, victims and perpetrators (as well as bystanders) have different burdens to bear in order to achieve the healing of their relationships, whether it be the different emotional hurdles to be overcome by the survivors and by the perpetrators (Grosser 1994: 7), or the interpretation of the traumatic past itself – what Charles Maier calls the 'asymmetrical obligations of memory' (1988: 166). With regard to the problem of statutory limitation, one may argue that there is also the case of asymmetric burdens of justice: each party has its own guilt to deal with; and each party's continual prosecution of *their* crimes against *their* victim-others is the piece of the

[22] According to McEvoy et al. (2020: 11-12), British soldiers convicted of Troubles-related crimes could have benefited from the same sentence review mechanism provided for in the GFA but chose 'release on life licence' instead.

puzzle that they and only they can furnish to restore a balanced relationship, i.e. the *balance* that the CGP envisioned back in 2009. By appropriating the role of the unburdened judge, that is, by aiming to achieve 'balance' on one's own, any burdened party risks missing their own asymmetric task of reconciliation.

Therein lies the particular value of the (West) German case for the British situation at this juncture: the counterintuitive lesson that an 'unbalanced' approach to the question of statutory limitation – which the UK had helped shape in the first place – is both understandable and politically doable. If the present state of health of Germany's internal and external relations possesses any enviable quality considering the abyss from which these had arisen (Gardner Feldman 2012), it is probably well worth considering adding this comparable case to the list of comparative examples (including first of all the Netherlands and South Africa) which the Northern Ireland peace and reconciliation processes have long drawn lessons from. The British state of course also shares[23] the duty to deliver justice for victims of non-state crimes in the United Kingdom and to protect society, the dereliction of which did and will once again constitute the guilt of the state towards its citizens. The 'unbalanced' approach to the past merely speaks against the principle of self-prioritisation (the victim-veteran over the victim-other) and downward moralizing comparison (injustice justifies injustice), not against the delivery of justice itself.

As with other post-atrocity relationships, the more 'unbalanced' one is in favour of the victims of one's own wrongdoings (i.e. victim-other-centred), a more just and humane order of existence eventually emerges that also benefits in turn the relationships of one's 'in-group'. After all, the irony of the UK Supreme Court judgment in 2013 (UKSC 41) that gave impetus to the whole parliamentary debate on a statute of limitations is that it involves the death and injury of *British* soldiers resulting from the alleged failures or negligence of *British* commanding officers and policymakers. In disparaging the UKSC judgment, then, the supporters of statutory limitation claim to be protecting veterans and service personnel from 'historical litigation', while in fact undermining their added protection furnished by the said decision and the British tradition of no statutory limits for serious criminal offences.

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[23] To what extent others, such as the Republic of Ireland, share the asymmetric burdens of justice for the Troubles is brought to light once again with the extradition of John Downey from the Irish Republic to the UK on 11 Oct. 2019.

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