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7. Why Care about the Violence of the Past? Addressing Collective Responsibility in British Debates about Colonial Violence during the Mau Mau Insurgency

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7.1 Introduction

In 2015, the British colonial historian David Anderson, in an oral-history interview about his role in the so-called Mau Mau Trial two years previously, expressed the kind of frustration that might not have been expected for most outside observers. Indeed, the trial had ended with a victory of the legal claim Anderson supported. The legal firm Leigh, Day and co. together with a team of historians had forced the British government to issue an official apology and pay compensations for Kenyan victims of British colonial violence and miscarriage of justice during the Mau Mau insurgency in Kenya (1952–9). And yet, Anderson qualified this victory as a “missed opportunity” to truly reckon Britain’s colonial past through an examination of this specific chapter of violent decolonisation. Prior to the trial, he had hoped debating British violence in public would correct the “complacent” popular narrative of British peaceful decolonisation, and more importantly incite a debate about the kind of responsibility this entailed for contemporary British society.¹ Following Anderson’s observation, this chapter examines the Mau Mau debate – from the resurgence of public interest in the Mau Mau insurgency in Britain in 2005 to the Mau Mau trial and the British government’s official apology in 2013 – as a rare occasion of public attention to colonial violence in Britain. Focusing on the strategies of historians, journalists, lawyers or politicians to address historical violence for the priorities of contemporary audiences, the chapter explores the rationale British actors ascribe to the process of coming to terms with past violence. In so doing, it seeks to highlight the specific place of “responsibility” in discourses about the mobilisation of the past in Britain, and to ask why the concept of “responsibility” remains near-absent from present-day memory debates in Britain.

The Mau Mau debate remains one of the only instances of a large-scale conversation in Britain that addressed colonial violence in the public eye. It involved historians, the media, the courts, and the political class, ending in 2013 with an official apology by the British government

¹ Interview David Anderson with author, Oxford, 16 October 2015.

to victims of torture and colonial violence in Kenya. In other national contexts, it would be treated as a “memory debate,” with special attention to remembrance and commemoration of the past in the present. Whether in Germany’s debates on *Erinnerungskultur* (Reichel, 2001) or the French preoccupation with *devoir de mémoire* (Ledoux, 2016), for example, memory in the 2000s had become self-evident as a political priority of different social and political actors. Activists, historians, politicians, and journalists have fought over historical narratives with the explicit goal of “dealing with the past,” which they have all interpreted through a common frame of references that privileged concepts of moral duty to acknowledge victims’ narratives, and in this vein the “responsibility” of the state. In Britain through the case of Mau Mau, however, even as stories of British colonial violence, torture, and cover-up made the headlines across the country, neither “memory” nor “responsibility” figured prominently in these debates. This chapter therefore explores the meaning of the absence of explicit mobilisation of these concepts for a debate that nonetheless revolved around them.

The chapter has two main goals. Firstly, it is concerned with the discursive strategies of historians, journalists, and politicians who tried to draw the public’s attention to the crimes that defined “Britain’s dirty war” in Kenya in a period otherwise broadly treated as an orderly and peaceful transition from official colonialism into independence of African states (Webster, 2005; Ward, 2001). In other words, how did these actors try to make the public “care” about historical crimes?² Which discursive tools did they have in their disposal to mobilise the past for present day audiences? As they did not explicitly evoke “memory” or “responsibility,” what vocabulary did these actors use instead to address these concepts implicitly, or which other concepts did they use when addressing these historical events in the present? Deprived of a specific memory vocabulary to articulate the importance of past crimes for present audience, these actors often turned to moral arguments that shocked and outraged audiences.³ These, however, often lacked a political rationale that would explain why the past was socially relevant in the present day beyond an immediate – and fleeting – shock value. In fact, the lack of memory vocabulary highlights the absence of a concept of “memory politics” in Britain, which affects the possibility to address the past in public and change British narratives about the place of colonial history in a broader national discourse.

² Here, it is important to address the emotional character of public debates and how memory actors appeal to public emotion, or caring, rather than simply trying to make the public “know” new information (Prochasson, 2008).

³ These actors who engage with the past publicly are often referred to as “memory actors,” “memory agents,” or even “vectors of memory.” These concepts will be used interchangeably throughout the chapter, with specific attention to the particularity of each memory actor’s strategies (Wood, 1999).

Secondly, in exploring this episode of postcolonial Britain, this chapter joins attempts to make sense of the relationship between “memory politics” and “responsibility” and more importantly, between discourse and the political practice of responsibility. As Sarah Gensburger and Sandrine Lefranc (2017) note, the establishment of “memory cultures” that initially sought to provide ways to “come to terms” with the crimes of the Holocaust and the Second World War, drew a direct line between a “memory,” or a change to discursive practices, and “justice,” or an abstract goal that goes beyond the level of discourse. In other words, to attain justice, a process of memorial reckoning needs to be initiated, which acknowledges the importance of a specific crime, whether the Holocaust, other genocides, the enslavement of Africans, or colonialism, within a national discourse. Here, calls “not to forget” operate within a logic that assumes that acknowledging past crimes – and thus also implicitly their legacies in the present – contributes to the creation of more progressive societies,⁴ and thus key in pursuing the goal of “never again” (Baer and Sznajder, 2017, 4–18). While describing these processes, Gensburger and Lefranc – together with other scholars like Lea David (2020a and 2020b) and Natan Sznajder (2017) – have critiqued the effectiveness (or even the very potential) of achieving “justice” through memory politics. They have focused on political mechanisms, like Truth Commissions, trials or memorialisation, that assumed memory had the power to bring “reconciliation” or “justice.” And yet, this chapter focuses on a case study that consisted in various actors demanding justice for historical crimes, but without the means to articulate the relevance of memory for justice.

In fact, as memory actors demand justice in the present day for historical crimes, they need to make the rationale for remembering palatable for political audiences. The use of abstract concepts that underpin the logic of remembering thus requires specific articulation in society through a political vocabulary of memory that defines acts of remembrance as political priorities and thus integrates memory into the political process (Lotem, 2021). In this vein, much research into the emergence of memory cultures, particularly in Western Europe, addresses how dark sides of a nation’s history resurface generations later to interest the public. Theoretical frameworks as diverse (and often contradictory) as those of Aleida Assmann (2006), Jeffrey Herf (1999), Henry Rousso (1990), Benjamin Stora (1991), Michael Rothberg (2009), or Joanna Michlic (2012) all approach what Rousso terms “the return of the repressed,” or the process of making “forgotten” or “silenced” history matter for the public. The strategies

⁴ The term “progressive societies” is used here as a catch-all term for what Gensburger and Lefranc (2017) refer to as the expectation that dealing with painful pasts would create societies that face their own racism, or in the words of Benjamin Stora (1991), would “heal” the wounds of societies. The word “progressive” thus refers to a loose set of values that are often related with the desired outcome of facing the past.

of actors wishing to incite a debate about historical crimes often consisted in appealing to public emotion through the mobilisation of political vocabulary that positioned memory and responsibility as a political priority for a society to “move forward” and reckon with its past. In other words, the creation of such formulas like the German *Vergangenheitsbewältigung* (which comes closest to the English formula dealing with the past) or the French *Devoir de mémoire* (the state’s duty to remember its victims), followed a process in which activists, journalists, politicians, and historians grappled with the meaning of responsibility for contemporary societies. Beyond appealing to the public’s sense of outrage, they placed the rationale of responsibility within a national narrative and contemporary sense of belonging. In both cases, the successful anchoring of memory and responsibility in the political discourse following debates about the Holocaust were key in other movements’ mobilisation of these ideas further to demand “memorial justice” for crimes of colonialism and colonial enslavement (Prochasson, 2008; Lotem, 2021; Zimmerer, 2011).

And yet, while the French and German cases represent a blueprint of success in politicising memory and thus to “break the silence” on dark histories, they should not be confounded with the normative kind of success politicians and earlier memory scholars hoped these debates would achieve. In fact, actors’ ability to politicise colonial memory through appeals to existing concepts of memory often only served to amplify social tensions rather than to appease them. In France, the debate about colonial memory produced reflections about so-called “memory wars,” where representatives of different groups harnessed the vocabulary of memory to formulate their grievances in public (Stora, 2007; Lotem, 2021). In Germany, the establishment of the Holocaust as a defining feature of German autocratical memory did not help fight antisemitism or racism. Even as scholars harnessed the vocabulary of the Holocaust to successfully incite debates about German colonial history, protagonists in these debates often fought about abstract German “memory cultures” rather than about any justice to victims and the legacies of colonial oppression (Brusius, 2021).

This chapter thus does not examine the Mau Mau debate against the backdrop of other memory controversies that succeeded in appeasing tensions, fostering reconciliation, or fighting racism. It is far more interested in the mechanisms that enable actors to politicise memory, with a specific focus on the centrality of “responsibility” in making a case for addressing one’s own dark history. In particular, the Mau Mau case was an opportunity for British memory actors to articulate a reason to care about the violence of the past. These actors – whether historians or journalists – recognised its potential and sought to incite a public reflection on the meaning of colonial violence for present-day Britain. Nonetheless, these actors had no previous memory

vocabulary to fall back on to place discussions of colonial violence within a continuity of debates about British responsibility.

7.1 Forgetting the Mau Mau

In the opening to her 1984 forward to the thriller *Death in Kenya*, first published in 1958 as *Later than You Think*, the novelist Mary Margaret Kaye felt obliged to state that “Few people nowadays will remember the Mau Mau terrorist rising in Kenya, and millions more will never even have heard of it. But it was an unpleasant business while it lasted” (Kaye, 1984, 1). This reflects the disappearance of references to the Mau Mau insurgency from the public conversation in Britain after Kenyan independence in 1963. By the 1980s, most images of Kenya reflected either the colonial nostalgia of the lush hills and wildlife of *Out of Africa* or even Roger Whittaker’s song *My Land Is Kenya*.⁵ Over the course of the insurgency in the 1950s, however, it was hard to escape news of violence in the metropole.

Mau Mau became the British name for a secret society that was established in 1952 by members of the Kikuyu, the largest tribe in Kenya. It fought against the expropriation of lands by White settlers as well as against the Kikuyu elite. To crush the Mau Mau uprising, the British colonial authorities – with Kenya’s small settler population and Kikuyu loyalists – employed a mix of military anti-insurgency tactics. Most notably, they detained tens – if not hundreds – of thousands of men suspected to be Mau Mau sympathisers in “re-education camps,” while keeping over a million women and children in “villagised” settlements to cut Mau Mau supply routes. These camps and villages became the sites of abuse and torture (Anderson, 2005; Elkins, 2005; Bennett, 2012).

In the early days of the uprising, metropolitan audiences were mainly exposed to news about the savagery of Mau Mau and the resistance of besieged settlers. This changed gradually as more news of excess of British violence reached different metropolitan figures, most notably the Labour MP Barbara Castle, who spearheaded a campaign to raise awareness of condition in Kenyan camps in 1956 (Elkins, 2005). By 1959, outrage in the metropole had bubbled as news of a massacre in the Hola Camp caused public scandal and put pressure on the Conservative government to close down the remaining camps.⁶ But after the 1963 transfer of power in Kenya, the previous visibility of the insurgency gave way to public silence. Nonetheless, as MM Kaye observed that only few would remember the “unpleasantness” of the Mau Mau uprising,

⁵ In fact, the most well-known examples of Kenya’s presence in popular culture are from the cinema and music. (Pollack, 1985; Radford, 1987; Whittaker, 1982).

⁶ See for example the Commons debate on the Hola Camp Massacre in Hansard, 27 July 1959.

historians and Africanists, mostly centred around John Lonsdale at the University of Cambridge, had already produced a significant body of research about it (Berman and Lonsdale, 1992; Carruthers, 1995).

The public forgetting of Mau Mau thus stood in stark contrast to academic interest in it, as the latter had not trickled down into the public sphere. For Africanist historians like Bruce Berman, commenting in 2007, this was particularly frustrating. He claimed that while for all this time “all the dimensions of British misbehaviour during the Emergency were known in general, if not in intimate detail” to Africanists, then publicly, there was a “complete public ignorance of the history of Africa in general, and Kenya in particular” (Berman, 2007, 532–3). The task of those interested in sparking interest in the violence of British decolonisation, then, was to make the public “care” about Mau Mau and thus overcome public ignorance and lack of interest. To this extent, historians and journalists employed diverse strategies to fight against this forgetfulness that was helped by the narrative of British “peaceful decolonisation,” or the notion that the transition between colonial control and postcolonial independence was not characterised by violence, but by a British benevolent acceptance of the end of empire as a “thing of the past” (Schwarz, 2011, 338).

7.2 Historians and the Public: Breaking the Silence on the Mau Mau

The first wave of public interrogation of the Mau Mau insurgency in the early 2000s owed much to the work of the historian David Anderson, first based in London’s School of Oriental and African Studies and then at the University of Warwick. A former student of John Lonsdale, he had become ever more interested in a public reckoning with the violent history of British decolonisation, and mostly in the aspect of British abuse of justice systems in the colony. His research project in the early 2000s thus consisted in examining the testimonies of over 1,000 Mau Mau members who were sentenced to be hanged between 1952 and 1954. Through their testimonies, he traced the many motivations of Mau Mau activists, but also British reactions to the insurgency and mainly the suspensions of norms of justice in the colonial context (Anderson, 2005).⁷ Beyond his research, which he published with a trade publisher rather than with an academic one to reach popular audience, Anderson sought to harness his network of students to gain public traction. The most notable one was his supervisee, the American historian Caroline Elkins, who had spent years gathering oral testimonies in Kenya’s Central Province about the abuse in the “pipeline” of British camps and villagised settlements. In 2002,

⁷ Interview David Anderson with Author, 16 October 2015.

with support of former student John McGhie at the BBC2, Anderson and Elkins presented the latter's research in a documentary called *Kenya: White Terror*. Initial interest in the production came following plans in Kenya to sue the British government for compensation over torture and abuse.⁸ The documentary, however, was the first attempt to present British audiences with the scale of violence and abuse meted by British authorities, White settlers, and Kikuyu loyalists.

Through interviews with Elkins, Kenyan survivors, and two British officers, the programme's main objective was to expose British responsibility for the atrocities in Kenya. Elderly Kikuyu victims of torture and rape told their stories and repeatedly confirmed – upon specific questions – that the perpetrators had been British. Elkins' testimony structured the documentary, as she demonstrated her outrage at British abuse of justice. Here, she played the role of an all-American scholar, an external observer who conveyed a sense of shock and outrage at her discoveries of abuse by the British state and military. Two other interviewees provided two facets of "Britishness." The first was John Nottingham, a former colonial administrator who had quit his job in anger over British atrocities and remained in Kenya thereafter. Telling of his experiences in Kenya and the shock over the violence used by the British, he concluded his testimony with an admission of shame "for coming from a Britain that did what it did here." The second interview was with Terence Gavaghan, a pensioner based in London, identified as the person who had initiated and encouraged beatings and torture of inmates in the camps under his direct supervision. He denied ever partaking in acts of torture and claimed that not a single one of the 20,000 prisoners in his camps had died. When asked whether he had ever given others the order to beat prisoners, however, he reacted with silence and the menacing statement: "I am looking at you with certain thoughts in my mind."⁹

Through the different testimonies, the documentary addressed the role of both the British state and individuals in perpetrating violence in Kenya. All speakers returned to the specific position of "the British" in the conflict and conveyed to contemporary audiences that the Mau Mau insurgency was a shameful chapter in British history of decolonisation. Simultaneously, these testimonies did not always translate into articulating the issue of "responsibility." Firstly, while the different interviewees addressed the role of the "British" in committing atrocities, they often failed to show the profile of the actual perpetrators. Only one individual, Terence Gavaghan, appeared as personally responsible for overseeing and possibly committing acts of torture. While he was an unsympathetic witness, he nonetheless denied all

⁸ BBC2, *Correspondent*, "Kenya: White Terror"; first aired on 17 November 2002

⁹ *Ibid.*

allegations and did not engage with questions brought to him. In this vein, the documentary offered sympathy with the victims through their testimonies and a sense of general outrage at the injustice they suffered. It did not, however, trace perpetrators back to the metropole to create a link between the violence of the past and present-day concerns. Secondly, and just as importantly, the witnesses did not articulate what British responsibility in the present day would mean, or what, indeed, history meant to contemporary Britishness. Elkins played the role of the external expert, whose outrage was visible, yet did not coalesce around any narrative of responsibility. Together with Nottingham's testimony, hers reprimanded audiences for not feeling "shame" about the past, but did not articulate what this shame would amount to in the present. Ultimately, the role of *Kenya: White Terror* was to reveal the horrors of the Mau Mau insurgency to British audiences, rather than to articulate a specific kind of responsibility that should be acted upon with this new information in hand. It was, of course, only a documentary. Yet, the lack of a clear appeal beyond a sense of outrage – and what dealing with the past meant in the present – would persist later as the Mau Mau insurgency claimed further headlines.

In 2005, three years after the airing of *Kenia: White Terror*, the publication of Elkins' (2005) and Anderson's (2005) books *Britain's Gulag* and *Histories of the Hanged* with large trade publishers sparked the first true public debate about the Mau Mau insurgency. The two books, while published as competitors, complemented each other in fact. Anderson focused on the period of the armed insurgency between 1952 and 1954, while Elkins examined the emergence of the system of camps between 1954 and 1959. Put together, they painted a vivid picture of British colonial excess, going beyond what existing research had already provided.

The two books received broad attention in newspapers and were often reviewed together. Yet, most reviews – and public attention in general – focused on Elkins' book. Beyond the book's revelations of the harrowing conditions of the detention system, reviewers were attracted to the way Elkins presented her argument. Firstly, she presented her research through a personal backstory of an erstwhile naïve American scholar, "intending to write a history of the success of Britain's civilising mission in the detention camps of Kenya." (Elkins, 2005, xii) She had then discovered the truth not through the availability of research, not least of her supervisor Anderson, but through her own individual hard labour. Despite this "disingenuous" framing, in the words of the Africanist Bruce Berman (2007, 533), this gave the book a sense of purpose, which was only complemented by *Britain's Gulag's* combative style of writing, sometimes mixed with inaccurate data, to maximise her portrayal of British atrocities. Elkins insisted that British atrocities had been comparable to the main horrors of the 20th century. The title of her book directly compared the British system of camps to Soviet-style oppression, while

in her analysis she repeatedly compared British colonialism to Nazism. Moreover, she used inflated numbers of casualties in the conflict to suggest that the Mau Mau insurgency had not been any less significant than the crimes of Nazism and Stalinism. On the one hand, the tinkering with numbers came back to haunt the debate over Elkins' trustworthiness, incited through a series of complaints to the media by a David Elstein, a friend of Terence Gavaghan (Lotem, 2021, 351–2). On the other hand, however, that same prioritisation of a combative argument had struck a chord with activists and journalists alike.¹⁰ While Anderson's academic style and precise characterisation of different actors failed to outrage readers, Elkins provided them with a clear argument that identified a perpetrator in the form of colonial Britain. In so doing, reactions to the book treated it as an accusatory document that demanded British attention to the country's past.

The reviews of the two books – that appeared in nearly every national British newspaper – focused on the reactions to these revelations. Tellingly, few wished to dismiss the damning evidence presented in the two books, with the exception of the *Telegraph's* Nicholas Best who condemned the “image of the British that will be unrecognisable to the many thousands of doctors, vets, nurses, teachers [...] who gave their lives to that country without ever torturing, raping or murdering anyone.”¹¹ Others, like Max Hastings in the conservative *Sunday Telegraph*, who deplored Elkins' “anger [that] causes her to eschew intellectual rigour in favour of a good deal of somewhat inelegantly written ranting,”¹² could not minimise the books' findings. Reviewers often expressed a sense of shock upon reading the stories of abuse, and often, as Richard Dawden wrote for the *Guardian*, welcomed the “jolt to our memory.”¹³ And yet, it also remained unclear what this jolt meant for readers in contemporary Britain. Comments did not have any memory rationale to explain why these historical revelations were important beyond individual emotions of pride and shame. These commentators did not invoke any collective responsibility. The one recurrent historical reference was Nazi crimes as a way to convey the gravity of British crimes. Nazi comparisons, however, also represented crimes perpetrated on a far larger scale than the ones in Kenya, and thus also illustrated the vast difference between collective German guilt and the lack of British systemic responsibility. Moreover, the victims of British crimes were – to some extent at the very least – connected to the fight against Mau Mau, a secret society that was referred to, even in the 1950s, as a

¹⁰ For example, years later Anderson still bemoaned how activists would take interest in the Mau Mau case specifically because of the inflated numbers and would state these continuously. Interview David Anderson with author, 16 October 2005.

¹¹ See the *Daily Telegraph*, 15 January 2005.

¹² *Sunday Telegraph*, 09 January 2005.

¹³ The *Guardian*, 05 February 2005.

“terrorist” organisation. The reference to “terrorism” remained particularly powerful during the days of the so-called War on Terror after the events of 9/11 and the invasions of Afghanistan and Iraq, which still dominated news-cycles in 2005. While the characterisation of Mau Mau as a “terrorist” organisation dated from the period of the insurgency, the popular rearticulation as terrorism as the main danger facing Western societies in the early 2000s affected popular perception of Mau Mau and reactions to it. For many commentators, it justified some of the British reactions to the insurgency.

One exception was a column by Ben MacIntyre, a correspondent of *The Times* and a former student of David Anderson. In a piece called “*Bury a Painful Past – or Dig It Up?*” he described the Mau Mau case as “a dingy act of amnesia by Britain that has never been acknowledged” and called on readers to face this painful past.¹⁴ This call to action focused on the necessity to learn about the past alongside Nazi and Stalinist crimes for the sake of a more nuanced British self-perception.¹⁵ And yet, these interventions struggled to tie the necessity to face a dark past with a political rationale beyond a sense of pride or shame. To some extent, this reflects the lack of previous debates about how to face Britain’s dark past in public, and thus the lack of links between memory and responsibility. Moreover, one should not exaggerate the scale of a debate about two books. While these gained notable visibility, they did not gain enough traction to incite the large-scale debate that David Anderson had wished them to generate when embarking upon his project in the early 2000s. He had initially hoped that a more sustained visibility of the Mau Mau case would trigger a reflection on “what it means for us, as a nation, to have accepted and condoned such miscarriage of justice on a scale that makes a travesty of British claims of fair play.”¹⁶ Only a few years later, the Mau Mau trial and subsequent apology by the British government became the site of even greater public interest in British crimes in Kenya, yet the debate it spawned did not necessarily result in an articulation of British “responsibility.”

7.3 The Mau Mau Trial (2009–2013)

While one strategy of memory activists has been raising awareness and appealing to public emotion for the sake of initiating a public debate about history, another one has consisted in seeking redress through the courts. The Mau Mau trial, which followed the limited public debate over the publication of Elkins’ and Anderson’s works, thus not only expanded the scope of

¹⁴ The *Times*, 01 October 2005.

¹⁵ For a similar call to learn about the “brutal handling of Mau Mau,” see the *Independent*, 23 April 2005.

¹⁶ Interview David Anderson with author, 16 October 2005.

public attention to the Mau Mau insurgency, but also reflected another strategy for “coming to terms with the past.” The debate that ensued highlighted the specificity of Britain’s memory discourse: on the one hand, the trial exposed the atrocities of the British army like never before, forced the media to engage with the history of Britain’s dirty war in Kenya, and ended with a state apology to victims. These outcomes, and particularly the government’s official apology, would have been expected to be perceived as successes by memory activists.¹⁷ On the other hand, however, the same historians who had worked so hard to provoke public interest saw this episode as a failure, as it did not coalesce into any medium-term changes in British self-perceptions and understanding. Partly, this owed much to the lack of a memorial political rationale in Britain, or a vocabulary that explicitly addressed British “responsibility” to the dark sides of its own history.

The plan to sue the British government for compensation for torture had been discussed as early as 2002 with a preliminary announcement by the Kenyan *Mau Mau War Veterans Association* (MMWVA) (Lotem, 2021, 355–6). The organisation was unable to consolidate its plans before 2003, however, when the Kenyan government lifted its colonial-age ban on Mau Mau membership and thus paved the way to legality for the association. The MMWVA then approached the *Kenya Human Rights Commission* (KHRC) to pursue its historical case. In 2006, the KHRC then sought out the London-based human-rights law firm Leigh, Day and Co. to sue the British state.¹⁸ Leigh & Day solicitors were initially sceptical of the “legal merits” of the case, as the time that had elapsed since the 1950s would make it difficult to move past the limitations hurdle. The availability of research presented one pillar to base their case on besides “moral grounds.” Furthermore, they were encouraged by the small buzz created by the publication of Elkins’ and Anderson’s works.¹⁹ The solicitors decided to prepare a representative lawsuit and by 2009, Leigh & Day had identified five claimants, three men and two women, and decided to go forward with the case. All five claimants represented different facets of British abuse that could not be justified by the logic of counterinsurgency. One of the men, Paulo Nzili, had fought alongside the Mau Mau and left the society during an amnesty, but had been arrested anyway. The second man, Ndiku Mutua, had never joined the Mau Mau,

¹⁷ On the importance of apologies in debates about “reconciliation,” transitional justice and memory politics, see Brooks’ (1999) coining of the term “age of apology.” Since then, many other works have addressed apologies and their political meaning (Gibney, Howard-Hassmann, Rhonda, Coicaud and Steiner, 2008; Gensburger and Lefrance, 2017).

¹⁸ Interview Daniel Leader, partner, Leigh & Day, with author 30.10.2015; see also Leigh & Day (2013) internal brochure. Leigh & Day’s history also included representing British former POWs who sought compensation from the Japanese government for torture they had endured while in captivity.

¹⁹ Interview Daniel Leader with author, 30.10.2015: “those two works [Elkins’ and Anderson’s] were what made us believe we’d have a stab at it. We thought we’d lose, but we thought we’d have a stab at it and not be laughed out of court.”

but had supplied fighters with four of his employer's cows. The third man, Wmbuga wa Nyingi, had been arrested despite claiming he had never been Mau Mau. He had been one of the victims of the 1959 Hola Camp Massacre (that had led to a public scandal in Britain),²⁰ when he had been beaten so badly that he was thought dead and left to lie with the 11 corpses of victims in the sun until he received treatment and survived. All three men had been tortured, and two of them castrated. Both women had been sympathisers who had provided food to the Mau Mau and suffered sexual abuse.

Leigh & Day issued its claim in June 2009 and flew twenty Kenyan veterans to London to participate in a press conference. The media covered the lawsuit sparsely and framed it as a human-interest story of five elderly Kenyans who travelled "4,000 miles to London to secure an apology."²¹ On *BBC Radio 4*, Martyn Day addressed the case in terms of collective moral necessity to avoid speaking of monetary reparations: "This case is about bringing all those issues [of colonial abuse] before the British court and a British judge to say 'what we did was wrong'."²² When media coverage did prioritise the story, no account doubted the claimants' accounts or indeed their trustworthiness as witnesses. To corroborate their stories, journalists mainly used Elkins' work.²³

Simultaneously, Leigh & Day initiated contact with the Foreign and Commonwealth Office (FCO), focusing on the claimants' need for recognition and a government apology rather than "big pots of money."²⁴ The law firm then engaged with the then foreign secretary David Miliband in order to find an out-of-court settlement. From the lawyers' perspective, Miliband and the FCO seemed receptive to a compromise, but the 2010 elections resulted in a change of government that closed the channels of communication.²⁵ Shortly thereafter, the FCO applied to strike out the case on two legal arguments. Firstly, the FCO claimed that on the grounds of Britain's past colonial law, liability had been transferred to the Kenyan government. British law envisaged the crown as divisible in colonial matters, which defined the Kenyan colony as a constitutionally separate legal entity to the metropole. Even as the British government issued orders in Kenyan matters, it thus acted in the name of the Kenyan entity rather than in the name of the British state. Independence then transferred responsibility for colonial acts from the

²⁰ The Hola Detention Camp was one of the last surviving camps of the so-called "rehabilitation pipeline" by 1959, when guards clubbed 11 "uncooperative" prisoners to death and wounded many others. News of the massacre reached the metropole and triggered a public scandal and a debate in the Commons, which threatened the survival of the government (Elkins, 2005). See also *Hansard*, 16 June 1959.

²¹ *The Independent*, 24 June 2009.

²² *BBC Radio 4, Today*, 23 June 2009.

²³ See the *Guardian*, 23 June 2009; the *Times*, 23 June 2009; the *Express*, 24 June 2009; *Independent on Sunday*, 28 June 2009.

²⁴ Interview Daniel Leader with author, 30 October 2015.

²⁵ *Ibid.*

colonial Kenyan entity directly to the Kenyan government. This argument would have legally absolved any British official who had condoned the use of torture up to the highest levels of government.²⁶ Secondly, the FCO argued for limitations, suggesting that too much time had elapsed since the acts of torture in order to allow for a fair trial.²⁷ Leigh & Day's legal strategy thus needed to overcome these specific hurdles rather than present a moral argument that articulated concepts like memory and justice.

The first hearing was scheduled for April 2011 to address the subject of liability. Leigh & Day's strategy for this first instance consisted mainly in working with three historians to produce witness statements about the direct complicity of the British government in torture in Kenya. Of the three historians, Caroline Elkins was the first to join the legal team in 2008. David Anderson followed suit in 2010. Both Elkins and Anderson had been sceptical at first about working on a lawsuit. Elkins (2011) worried about the seriousness of the law firm and its commitment to securing a just settlement for the victims. Anderson had further misgivings, most notably that a blanket settlement for compensation would benefit not only real victims of British abuse but also Mau Mau veterans who had committed atrocities.²⁸ Both ultimately decided to join the team and were joined by a third historian, Huw Bennett, whose doctoral thesis examined the British military's tactics of counterinsurgency in Kenya. Bennett's contribution was the most vital in this first hearing, as he was able to follow a trail of documents that connected the British military as an institution with direct liability – rather than the government – to the practice of torture.²⁹

Simultaneously, during preparations for the first hearing, Leigh & Day submitted a witness statement by David Anderson demanding to see documents that had been missing from the archives, pruned by the FCO during the process of decolonisation. Elkins had surreptitiously claimed, in her book and elsewhere, that the archives in Kew had been cleansed. However, her backstory of her individual, brave struggle against British obstructionism and single-handed discovery of Mau Mau atrocities framed the sweeping of colonial archives as a singular Kenyan aberration rather than standard procedure that had been a well-known fact since the 1960s and 1970s. Anderson presented the court with correspondence between the Kenyan government and the British Foreign Office, where the former had demanded to see documents whisked away from Kenya and the latter refused to provide them, yet in so doing confirmed their existence.³⁰

²⁶ Ibid. See also the *Guardian*, 25 January 2010.

²⁷ Ibid.

²⁸ Interview David Anderson with author, 16 October 2015. See also the *Times*, 23 June 2009.

²⁹ Interview Daniel Leader with author, 30 October 2015.

³⁰ On Anderson's longstanding involvement with the quest of finding the culled archives, see his piece in the *History Workshop Journal* (Anderson, 2015).

Due to disclosure obligations, the FCO initiated an internal search for the documents. This procedure bore fruit due to the personal investment of the Kenya desk officer, whom the *Times* described as “the unstoppable Edward Inglett”.³¹ He was particularly persistent in tracking down the missing documents and forced a hitherto publicly unknown facility in Hanslope Park, Buckinghamshire, to release boxes of documents relevant to the case. The government then disclosed thousands of documents to Leigh & Day to meet the deadline for the hearing set for three months later.

For the legal case, the importance of the Hanslope Park discovery was that it “painted in technicolour what everyone [...] had already known”.³² The documents did not reveal anything new about the use of torture in Kenya, nor were they necessary to prove the British government had been aware of atrocities. However, they provided details that illustrated vividly the extent of government and military involvement in decision-making regarding torture in Kenya. For the public, the Hanslope Park discovery helped give the case further significance. On 5 April 2011, before the hearing, the *Times* published a front-page article about the impending court case and the discovery of the Hanslope Park archives. Ben MacIntyre, the *Times* editor responsible for the article still in contact with his former professor, quoted Anderson’s statement that “these documents were hidden away to protect the guilty.” What is more, MacIntyre quoted from a “top secret” memo concerning a set of documents that might “embarrass HMG, [...] members of the police, military forces, public servants and others.”³³ The publication of the news about Hanslope Park transformed the court hearing from a human-interest story into a story about the British government’s cover-up of torture. As MacIntyre and other journalists continued reporting on the Mau Mau case, they quoted from documents like a telegram from 1955 sent from the Governor of Kenya Evelyn Baring to the Secretary of State for Colonies Alan Lennox Boyd, which conveyed details of a man that had been burned alive,³⁴ or Kenya’s attorney general’s letter that contained the ominous line, “if we are going to sin, we must sin quietly.”³⁵ These instances of British officials with a guilty conscience who were conspiring to hide atrocities from their own public made the story relevant to a British audience and triggered comments along the lines of Matthew Parris’ column in the *Times*:

What most tellingly condemns some of what is now emerging from secret archives on Kenya is how strenuously people tried to keep them secret. They

³¹ The *Times*, 08 April 2011.

³² Interview Daniel Leader with author, 30 October 2015.

³³ The *Times*, 05 April 2011.

³⁴ The *Independent*, 08 April 2011; the *Times*, 08 April 2011; the *Guardian*, 08 April 2011.

³⁵ The *Times*, 08 April 2011.

knew at the time that some of what was being done was shameful, and if disclosed would be seen as disgraceful at the time. [...] Secrecy is the clue. If people won't defend in public what they're doing while they're doing it, then let them not, half a century later, plead altered national values.³⁶

The *Times*' decision to cover the Mau Mau trial as a front-page story for a whole week thereafter took nearly everyone – not least Leigh & Day lawyers – by surprise.³⁷ During this week, the *Times* gave special attention to the case like no other news outlet before, during, and after the hearing. Other outlets dedicated their first-page space during this week to the hacking allegations against *News of the World*,³⁸ which the Murdoch-owned *Times* preferred to elegantly omit. Nonetheless, the reason the newspaper chose to cover the Mau Mau trial instead of any other news story was Ben MacIntyre's personal involvement. MacIntyre, a former student of David Anderson, had a personal interest in the Kenyan case. Just as MacIntyre consulted Anderson in the case, so did Anderson give MacIntyre access to classified documents, for which Leigh & Day were reprimanded in court. In fact, Anderson tried to use the *Times* as an outlet to reach the general public.³⁹ The cooperation between the two resulted in the publication of three editorials about the Mau Mau case and one long opinion piece signed by David Anderson.⁴⁰ Most poignantly, the editorials and the opinion piece called for the Mau Mau case to be used to re-examine Britain's national narrative and the role decolonisation played in it; for example, the 7 April editorial stated:

It [the Hanslope Park discovery] is also, potentially, the cue for a fundamental national reimagining of the last days of the British Empire. This country has long prided itself on a cleaner past than many other former colonial powers. If this is to remain the case, the truth, no matter how many yards of chaotic shelving it occupies, must emerge.⁴¹

Here, Anderson showed his desire to focus the debate on what he saw as the core issues of the perverting of colonial justice and Britain's long-term responsibility. However, unlike Elkins, he shied away from prioritising the appeal to public emotion over the mobilisation of sound

³⁶ The *Times*, 09 April 2011.

³⁷ Interview Daniel Leader with author, 30 October 2015.

³⁸ In the first half of 2011, the Metropolitan Police investigated recurrent allegations of phone hacking, police bribery and exercising improper influence by *News of the World*, owned by the media tycoon Rupert Murdoch. In July 2011, the scandal led to the Leveson inquiry into the influence of British newspaper industry on politics. In early April 2011, the Metropolitan Police arrested the first suspects from the news corporation, which fuelled further media interest. See the *New York Times*, 8 April 2011 and *The Guardian*, 15 April 2011.

³⁹ Interview David Anderson with author, 16 October 2015.

⁴⁰ See especially the *Times*, 07 April 2011 and 08 April 2011.

⁴¹ The *Times*, 07 April 2011.

historical analysis. He presented well-formulated indictments rather than Elkins' outrage.⁴² Simultaneously, his reluctance to simplify his message into a clear moral soundbite could have been one of the reasons the case did not stir a higher degree of public emotion. In this context, the hearing on 7 April 2011 began with "huge crowds" in court owing to the publicity generated by the *Times*.⁴³ These visitors petered out on the second day after realising the hearing consisted of dry, legal arguments. However, Leigh & Day's strategy of concentrating on the British army and its links to London overrode the government's wish to throw out the case on liability charges. On 21 July, the judge confirmed that the claimants had a legal case against the British government.⁴⁴

The second hearing, due to discuss the limitations issue, was set for the subsequent year, July 2012. As Archbishop Desmond Tutu made a direct appeal to the British government and called on it to show "magnanimity and compassion" towards the elderly Kenyan claimants on the eve of the trial,⁴⁵ the hearing began with displays of media support for the claimants. This support also resulted in calls from editorials of left-wing publications to "come to terms" with Britain's colonial past, such as the *Independent*'s call:

There is a moral obligation that cannot be dodged. Indeed, it is a disgrace that the plaintiffs have been forced to fight so hard and so long for even a chance of redress [...] But there is also a broader point here. It is also high time that Britain faced up to – and took responsibility for – the less palatable realities of our colonial past.⁴⁶

By this point, general sympathy for the claimants – an example of old victims of torture seeking redress – had mixed with outrage over betrayal of the sense of British "fair play," and thus translated into calls to reassess the understanding of British history in left-leaning media and by Ben MacIntyre in *The Times*. The transition from moral outrage over the individual fate of the claimants to focus on a shared British past was the result of the discovery of the Hanslope Park hidden archives and the increasing attention to the obstructionist nature of various organs

⁴² See David Anderson's piece in the *Times*, 07 April 2011, including the passage about how the "People ask why the British cannot admit to their colonial sins and move on, as indeed the Germans have done in Namibia."

⁴³ For a description of the event, Interview Daniel Leader with author, 30 October 2015.

⁴⁴ See the *Evening Standard*, 21 July 2011, and the *Telegraph*, 22 July 2011. During the interview, Daniel Leader alluded to his impression that the judge's interpretation of the law and verdict in favour of Leigh & Day was based on a visceral, emotional reaction to reading the evidence of torture in Kenya, as "you could see how his face turned red with fury when reading these descriptions [...] It just went against his idea of British fair play" (Interview Daniel Leader with author, 30 October 2015). It is only striking that the same emotional reaction could not be recreated on a larger scale.

⁴⁵ See the *Guardian* and the *Times*, 16 July 2012. Moreover, Tutu's call received broad and sympathetic reception in a selection of local and regional media not otherwise prone to cover the Mau Mau case. See *Yorkshire Post*, 16 July 2012, and the *Herald*, 17 July 2012.

⁴⁶ The *Independent*, 17 July 2012.

of the British state. Simultaneously, calls from MacIntyre and other publications did not specify what responsibility could mean beyond the context of the trial. The lack of any specific demands to change curricula or find specific ways to acknowledge British responsibility left the debate squarely within the legal context of the trial.

The second day of hearing bolstered support for the claimants' moral case. After the claimants had given their testimonies in the witness box, the government QC began his cross-examination with an acknowledgement that the government "does not dispute that each of the claimants suffered torture and other ill treatment at the hands of the colonial administration."⁴⁷ He thus acknowledged the claimants' moral case and focused the case's entire attention on the technical detail of limitations and whether a contemporary investigation could establish the truth about the responsibility for torture in Kenya in the 1950s. While the government's case relied on the fact that most men at the top of the chain of command had since died and were therefore unavailable for questioning, the rich documentation led the judge to rule in favour of the Kenyan plaintiffs.⁴⁸ The government appealed the decision, but quickly changed its mind and entered negotiations with Leigh & Day for an out-of-court-settlement. In June 2013, both sides reached an agreement and announced a settlement of £14 million to be paid to 5,000 victims of torture – overall nearly £20 million government expenditure, or £2,600 per person – combined with funding a monument to be built in Nairobi.⁴⁹ On that very day, the foreign secretary, William Hague, declared that "the British Government recognises that Kenyans were subjected to torture and other forms of ill-treatment at the hands of the colonial administration. The British Government sincerely regrets that these abuses took place and that they marred Kenya's progress to independence."⁵⁰ This represented the legal victory of Leigh & Day, but also a first government apology (if not the crown's) and official acknowledgement of British responsibility. Simultaneously, it also nipped in the bud the emerging debate about what the re-examination of British history meant for a sense of collective responsibility.

Hague's pronouncement ended a process of reparatory justice and met with broad approval from the press. Ben MacIntyre concluded that the admission "should be a source of national pride,"⁵¹ while even smaller, regional outlets took notice. The *Western Mail* dedicated its editorial to the case, noting that "the decision [...] should give the UK a new determination

⁴⁷ The *Independent* and the *Times*, 18 July 2012, and Interview Daniel Leader with author, 30 October 2015.

⁴⁸ Interview Daniel Leader with author, 30 October 2015, and the *Telegraph*, the *Independent*, the *Sun*, the *Guardian*, the *Times*, 06 October 2012.

⁴⁹ These victims were identified by a team of Leigh & Day lawyers sent to Kenya in 2013 to interview men and women subjected to torture by the British army. Interview Daniel Leader with author, 30 October 2015. See also the *Times*, 06 June 2013

⁵⁰ See the *Times*, the *Herald*, the *Independent*, 07 June 2013.

⁵¹ The *Times*, 07 June 2013.

to hold the highest standards of conduct in even the most dangerous circumstances.”⁵² Even conservative media like the *Telegraph* and the *Daily Mail* ran pieces that condemned Britain’s use of torture.⁵³ The press portrayed the settlement as a triumph of a British culture of “fair play” in dealing with one exceptional dark stain on the country’s history. In so doing, the victory of “Britishness” only increased the impression that the Mau Mau case was, indeed, an aberration rather than a defining feature of British colonialism. The compensation thus represented taking responsibility, which did not require any further scrutiny. Even here, some conservative voices criticised the settlement, especially on the issue of the “£20 million bill on Kenya.”⁵⁴ The *Telegraph*, despite welcoming Britain’s admission of guilt, bemoaned the fact that British taxpayers’ money was being handed out to terrorists.⁵⁵

7.4 Conclusion

For David Anderson reflecting over the Mau Mau trial, its ending, while a welcome victory, represented a missed opportunity to incite a broader debate about British responsibility. What had begun as an opportunity to attract broad attention to the violence of the end of empire turned into a case that suggested an “exception.” Still in 2005, Elkins’ unrefined tirades about Britain’s badly defined “civilising mission” triggered reactions that judged Kenya within the “balance-sheet” of Britain’s overall imperial project, whether comparing it to the Holocaust or demanding to focus on the good of the railways.⁵⁶ As the case gained traction, commentators discussed Kenyan torture increasingly in the same breath as references to Malaya, Cyprus, and Aden, or other colonial withdrawals that occurred amidst the violence of war. In particular, the discovery of the Hanslope Park archives put the spotlight (for a limited time) on the general colonial aspect of the case, as the hidden documents reflected a recurrent colonial practice of culling information that could be “embarrassing to HRM.”⁵⁷ The scale of the discovery illustrated that such colonial misconduct was not unique to Kenya. The government’s fear that the Kenyan case might “open the floodgates” for further compensation cases was one of the main reasons for its initial refusal to compromise on the Mau Mau lawsuit. However, the nature of legal proceedings aimed at overcoming barriers of liability and limitations encouraged a narrow focus on the specificities of the Kenyan case and thus also made sure the floodgates remained shut. The legal debate therefore highlighted two elements specific to Kenya: firstly, the scale of

⁵² *Western Mail*, 07 June 2013.

⁵³ See the *Daily Telegraph* and the *Daily Mail*, 07 June 2013.

⁵⁴ *The Sun*, 07 June 2013.

⁵⁵ *Daily Telegraph*, 07 June 2013.

⁵⁶ *The Guardian*, 27 December 2005 and *Daily Telegraph*, 15 January 2005.

⁵⁷ *The Times*, 05 April 2011.

atrocities committed in Kenya was superior to any other British colonial wars of decolonisation. Secondly, due to previous levels of interest within the academic community, the level of documentary evidence on Kenya was unique and allowed the court case to continue. Leigh & Day were not hired to incite a broad debate, but to reach a settlement for the Kenyan claimants. In much the same vein, William Hague issued the government acknowledgement of torture in Kenya, but also added that it did not apply to other colonial cases.⁵⁸

Just as importantly, to establish a rationale for mobilising the Mau Mau case as a precedent for a broader debate about responsibility, different actors in Britain lacked a vocabulary that presented memory as a political rationale, unlike in similar debates in France or Germany (Lotem, 2021). For historians, this required a narrative that would provide a reason for present-day audiences to care about the past beyond individual pride and shame, but rather – just like the French *devoir de mémoire* or German *Vergangenheitsbewältigung* – a rationale that placed historical reckoning, and with it memory, as a cornerstone of a new progressive identity. In other words, “coming to terms with the past” needed anchoring in the present. David Anderson, as a historian, was thus torn between academic practice and a political conversation that presented colonial history in normative binaries and did not prioritise memory as a political category. Caroline Elkins filled the slot of the public historian who attacked those in favour of a “positive” view of empire and was willing to inflate numbers for the sake of her argument. Yet as an outside commentator who focused on accusations, she did not embed these with demands for coming to terms with painful memories for the sake of the future.

Commentators in the media reacted in the same vein. Throughout most of the debate, they focused on individual “pride” and “shame” without a narrative that would go beyond these for the sake of a more sustained reckoning with what dealing with the past would entail. During the trial, as a general sense of indignation transpired into calls to assume “responsibility,” these were still intertwined with the mechanisms and practicalities of justice and did not survive the settlement. Indeed, the lack of any previous debates about the sense of coming to terms with a dark past made it harder to articulate why it mattered to re-examine it on a larger scale and what it would entail beyond the practicalities of reparatory justice. In this vein, the Mau Mau debate is significant for a reflection on the politicisation of memory through mechanisms like trials, compensation, and state apologies.

In fact, what the Mau Mau case does demonstrate is that the success of historians, Kenyan activists, journalists and lawyers in bringing the British state to acknowledge the state’s past crimes, issue an official apology and pay reparations of victims, did not automatically

⁵⁸ The *Telegraph*, 07 June 2013.

translate into a process of sustained public debate, let alone that of a social transformation. This chapter has shown that one reason for the lack of sustained public engagement with the memory of Britain's crimes of decolonisation was the lack of vocabulary – and with it a political rationale – to do so. For a historian who requires sources to interpret, explaining the source of this absence is difficult, to say the least. Its impact, however, can be seen not only in the difficulties of actors to incite a sustained public engagement with Mau Mau as a way to challenge the popular narrative of peaceful decolonisation in Britain. Even in British academia, where works on Britain's colonial history have been far more abundant than in France or Germany, works about memory politics are sparse, new, and mainly comparative in nature (Lotem, 2021; Gildea, 2020).⁵⁹ This points out to a lack of the same reflection about the impact of memory politics that anglophone – and often British – scholars have conducted elsewhere in Europe, whether in France, Germany, Portugal, Spain, Ex-Yugoslavia, Poland and elsewhere. In the Mau Mau case, neither David Anderson nor Caroline Elkins, who engaged in memory work, ever defined their interventions through the vocabulary of memory. Would such memory vocabulary have contributed to a more successful social engagement with the legacies of colonialism? This is not within the scope of a work of research that can only comment on what happened rather than the counterfactuals. Nonetheless, this chapter does suggest that to make the memory of colonialism a social priority in Britain, British actors need to take memory politics, and with it calls to a shared sense of responsibility, more seriously.

Lastly, this chapter needs to end on a word of caution. While British public discourse diverges from other European contexts through its lack of explicit engagement with memory, this chapter does not suggest that a more sustained public engagement with Britain's colonial history will, indeed, effect the kind of change many memory actors wish for. French and German examples that have been evoked throughout this chapter demonstrate that the politicisation of memory through appeals to a sense of shared responsibility open up public acrimonious debates about national identities and the place of minorities within contemporary politics. However, they do not serve as models to fight racism or establish more inclusive and cohesive societies. There is now enough evidence to counter the fantasy that memory is the “health of the world” (Orsenna, 1992, 7) that solves inequalities that had become entrenched through colonial and postcolonial continuities. And yet, what public attention to memory and its implications can achieve is a more truthful attention to the past, which is important in its own right.

⁵⁹ Interestingly, the earliest monograph that examines transmissions of colonial discourse and has “memory” in its title stops around the moment of formal decolonisation and does not continue to examine the memory of colonialism in the moment colonial “current events” become a thing to remember (Schwarz, 2011).

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